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January 16, 2018

Presiding Justice J. Anthony Kline
Associate Justice James A. Richman
Associate Justice Therese M. Stewart
California Court of Appeal
First Appellate District, Division Two
San Francisco, CA

Re: *Central Valley Hospitalists v. Dignity Health*
Civil No. A148742
Opinion filed January 9, 2018

Dear Presiding Justice Kline and Associate Justices
Richman and Stewart:

The California Academy of Appellate Lawyers respectfully
suggests that this court modify its opinion in the above-
referenced case.

The members of the Academy are experienced appellate
practitioners whose common goals include promoting and
encouraging sound appellate procedures designed to ensure
proper and effective representation of appellate litigants, efficient
administration of justice at the appellate level, and
improvements in the law affecting appellate litigation.

The Academy believes the court should modify its opinion
based on the following points:

1. In addressing the delay caused by this appeal, the
opinion mentions “the months of delay of oral argument based on
claimed scheduling conflicts” of an “attorney who signed the
appellate briefs” but “did not even participate below—he did not

Received by First District Court of Appeal

sign the papers, he did not argue the motion.” (Opn. p. 20.) This statement could be taken to imply that an appellate specialist who did not handle the case in superior court is not needed for oral argument on the appeal. The Academy believes otherwise. Appellate specialists possess a degree of expertise and objectivity for which trial counsel’s experience of the case in superior court is no substitute. “[T]rial counsel obviously has become intimately familiar with the case; but, having ‘lived with’ the case for years, trial counsel’s ‘objectivity’ may be blurred.” (Eisenberg, *California Practice Guide: Civil Appeals and Writs* (2017) ¶ 1:96, p. 1-25.) “[T]he orientation of trial work and appellate work is obviously different,” and “appellate practice entails rigorous original work in its own right.” (*Marriage of Shaban* (2001) 88 Cal.App.4th 398, 408-409, 410.) “Having tried the case themselves,” trial attorneys “may lose objectivity and would be well served by consulting and taking the advice of disinterested members of the bar, schooled in appellate practice.” (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449-1450.) The Academy believes that this is as true for oral argument as it is for briefing, and is concerned about the opinion’s contrary implication.

2. The opinion also refers to the delay caused by “90 days of extension for the appellate briefing.” (Opn. p. 20.) The court’s docket, however, indicates that the parties stipulated to extensions of time for all three briefs—60 days for appellant’s opening brief, 60 days for respondent’s brief (plus a further 7-day extension on respondent’s request), and 30 days for appellant’s reply brief. The Academy believes that appellant’s counsel should not be faulted for obtaining briefing extensions in which respondent’s counsel acquiesced and which were reciprocated for respondent.

3. The opinion states that the court sent appellant’s counsel a sanctions letter on August 11, 2017, and that on August 14, 2017, appellant’s counsel filed a request for dismissal of the appeal. (Opn. p. 19.) One might infer from this recounting of events that the request for dismissal was prompted by counsel’s receipt of the sanctions letter. The court’s online docket, however,

demonstrates otherwise. The docket indicates that on August 11, 2017, appellant's counsel informed the office of the court clerk by telephone that appellant "intends on filing either a stipulation to dismiss or request for dismissal next week," after which the court's letter was posted to the docket. The Academy believes the opinion should be modified to avoid any misimpression about the actual sequence of events.

The Academy respectfully suggests that the section of the opinion entitled "Some Closing Observations" should be modified accordingly or deleted entirely.

Respectfully submitted,

CALIFORNIA ACADEMY OF APPELLATE LAWYERS
AMICUS CURIAE COMMITTEE

by 

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Central Valley Hospitalists, et al. v. Dignity Health
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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen and not a party to this action. My business address is P.O. Box 1659, Glen Ellen, CA 95442.

On January 16, 2018, I served one true copy of:

Request for Modification

By electronic service on counsel via TrueFiling as listed below.

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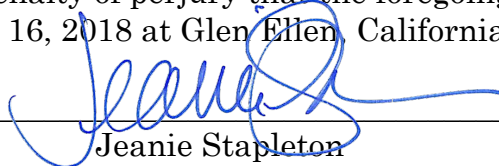
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Appellant Dignity Health*

By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Glen Ellen, California addressed to the persons listed below.

San Francisco County Superior Court
Attention: Clerk of the Court
400 McAllister Street
San Francisco CA 94102

I declare under penalty of perjury that the foregoing is true and is executed on January 16, 2018 at Glen Ellen, California.



Jeanie Stapleton