



Do you calendar California state court deadlines?

Miscalendaring jeopardizes your cases, clients and practice. Learn how to avoid these problems in this free special report.



Click for Free Report

Classifieds/Jobs/Office Space : Experts/Services : MCLE : Search : Logout

FRIDAY MONDAY TUESDAY **WEDNESDAY** TODAY

Questions and Comments

Newsmakers

NEWS RULINGS VERDICTS

Previous

Next

Bookmark Reprints

Wednesday, August 7, 2013

This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

Appeals court ruling for hearing-impaired students could have broader impact

Lower courts must reconsider two decisions denying plaintiffs' accommodations under federal law protecting disabled people

By Saul Sugarman

SAN FRANCISCO - A 9th U.S. Circuit Court of Appeals decision on Tuesday could cost schools a lot of money to accommodate students with disabilities.

The unanimous decision reversed a pair of federal court judgments against two hearing-impaired high school students who were denied real-time text translations of spoken dialogue in their classrooms. The accused schools are located in Orange and San Diego counties' Tustin and Poway districts.

In their federal lawsuits, attorneys for the schools argued they had sufficiently accounted for the students' impairments by providing them a specialized education in accordance with the Individuals with Disabilities Education Act, or IDEA, a federal statute created in the 1970s to accommodate disabled children. District court judges agreed with the schools.

But complying with IDEA does not exempt the schools from the Americans with Disabilities Act, the 9th Circuit ruled. *K.M. v. Tustin Unified School District*, 2013 DJDAR 10409.

The opinion by Judge Marsha S. Berzon said IDEA only provides a "floor of access to education for children with communications disabilities." The ADA, on the other hand, requires public entities make services "not just accessible, but equally accessible," Berzon wrote in the opinion.

The 9th Circuit remanded the cases for further consideration.

Attorneys for the school districts and students could not be reached. On appeal, David M. Grey, of Grey & Grey in Santa Monica, argued for the plaintiffs. Riverside-based Jack B. Clarke Jr. of Best Best & Krieger LLP and Cerritos-based Marlon C. Wadlington of Atkinson, Andelson, Loya, Ruud & Romo APLC argued for the defendants.

Laurence Paradis, executive director of Berkeley-based nonprofit Disability Rights Advocates, said he believes Tuesday's decision could extend far beyond hearing impairment complaints and into "tens of thousands" of disability access claims of all kinds. A 1982 U.S. Supreme Court decision allowed schools to argue under IDEA that trying to help disabled students was sufficient even if they did not provide equal access, Paradis said.

Immigration

After long legal saga, asylum seekers from China awarded \$1.2 million

A federal judge has awarded two Chinese women \$1.2 million, finding the U.S. government liable for emotional distress they suffered since a Los Angeles asylum officer made sexual advances and asked for bribes to OK their applications.

Labor/Employment

Judge rejects narrower class in Wal-Mart discrimination case

In yet another blow to their efforts to hold Wal-Mart Stores Inc. responsible for alleged systemic gender discrimination, former employees of the big box retailer lost their bid to certify a statewide class late last week in the Northern D

Government

DEA evidence-sharing program sparks constitutional questions

Revelations of a Drug Enforcement Administration program that funnels evidence to federal and local law enforcement have raised due process concerns among many, some of whom argue convictions based on the data should be thrown out.

Obituaries

State Bar activist Tamara Dahn dies at 67

State Bar activist and legal services organizer Tamara Claudia Agnes Dahn died of cancer-related causes on Sunday in Auburn.

Discipline

Lawyer faces suspension for secretly videotaping in public restrooms

A State Bar Court judge has recommended that Mark D. Wenzel, convicted of secretly filming customers using restrooms at two Los Angeles Coffee Bean & Tea Leaf stores, be suspended from practicing law for one year.

U.S. Court of Appeals for the 9th Circuit Appeals court ruling for hearing-impaired students could have broader impact

A 9th U.S. Circuit Court of Appeals decision on Tuesday could cost public schools a lot of money to accommodate students with disabilities.

But the 9th Circuit decision holds that isn't necessarily enough. Judges Richard R. Clifton and Sandra S. Ikuta concurred.

"Schools will no longer be able to say, 'Well, you're making progress in some form, so we've done our duty,'" Paradis said.

He said he was surprised "it took this long" for a ruling of this nature that involved the ADA. But it's also understandable, Paradis said, because ADA claims typically involve problems that encompass a whole system, whereas IDEA claims address problems of specific individuals.

Schools should not necessarily worry about an onslaught of new litigation brought by deaf students, according to Claudia Center, who directs the disability rights program at the Legal Aid Society Employment Law Center in San Francisco.

"There are a finite number of students who are deaf or hard of hearing," she said, noting also that cases like these tend to settle. "Most defendants would have just provided the translation services," Center said.

It's unclear how much schools will have to pay, but Center said the translation services "are among the most expensive."

"That's just the reality for those accommodations, and schools will have to fund them," she said.

saul_sugarman@dailyjournal.com

[Previous](#) [Next](#)

Corporate **Meltwater general counsel to depart the company**

Karyn Smith, general counsel of San Francisco-based Meltwater Group, confirmed Tuesday she will be leaving the media software company at the end of the week after about seven months on the job.

Discipline **Diamond Bar attorney faces disbarment over bank suit ruse**

An attorney who lured dozens of underwater homeowners into paying to join so-called "mass joinder" lawsuits against big banks should be disbarred, a State Bar Court judge has ruled.

Litigation **Lawsuit filed challenging Bay Area housing and transportation plan**

A group of San Francisco Bay Area residents sued the Association of Bay Area Governments Tuesday alleging its long-term housing and transportation plan will bring overly dense development to the region.

CalPERS sued over management of fund for long-term care insurance

A class action suit filed Tuesday alleges that California Public Employees' Retirement System badly mismanaged a \$3.6 billion fund for long-term care insurance.

Environmental groups sue state agency over demolition project

Several nonprofit groups sued the state Department of Toxic Substances Control Tuesday alleging it has authorized the disposal of low-level radioactive waste from a Simi Valley site without a proper environmental review.

Obituaries **Lawyer pushed for rights of small businesses**

A corporate and securities attorney with Torrance-based Petillon Hiraide & Loomis LLP and a devoted champion for small businesses, Lee R. Petillon died of lung cancer in late July. He was 84.

Litigation **Toyota's defense in acceleration trial to center on blood sugar level**

A centerpiece of Toyota Motor Corp.'s defense in an upcoming trial over the carmaker's acceleration problems appears to be the blood sugar level of crash victim Noriko Uno, according to court filings.

Government **Rather serious question ignored in**

mortgage condemnation chatter

All this talk about whether the government can use eminent domain to take these "underwater" deeds of trust has diverted attention from the question of whether cities can afford what they propose to do. By **Gideon Kanner**

Insurance**Clear win for insureds, though scope uncertain**

Though insurance attorneys will disagree on the degree of influence the *Zhang* decision will have, it certainly exposes insurers to greater civil liability and litigation costs. By **Robert J. McKennon**

Litigation**No reason to abandon jurisdictional parity for a state icon**

The doctrine of jurisdictional parity, gleaned from congressional intent, has guided national bank jurisdictional questions for well over a century. There is no reason to abandon that principle for Wells Fargo. By **David S. Olson**

Investments**Private equity fund accountable for a separate portfolio's withdrawal?**

On July 24, the 1st Circuit decided a case of first impression regarding whether a private equity fund could be liable to a multiemployer pension fund for the withdrawal liability of a bankrupt portfolio company. By **Michael L. Ludwig**

Litigation**The race to remove**

When removal occurs despite naming a local defendant. By **Brian Kabateck and Douglas Rothen**

Judicial Profile**Cynthia G. Aaron**

Justice 4th District Court of Appeal, Division 1 (San Diego)

Large Firms**Former Thelen attorneys who stuck together have thrived**

At its peak in 2006, Thelen LLP employed more than 600 lawyers and had offices abroad. Since its dissolution in 2008, many of its former lawyers have found long-term homes at new firms.

