

January 13, 1992
REPORT TO THE COMMITTEE ON RULES, LEGISLATION,
AND INTERGOVERNMENTAL RELATIONS

STATUS OF THE HUMAN DIGNITY ORDINANCE

On August 26, 1991 the Los Angeles Superior Court decided the case of *Delaney v. Superior Fast Freight*, case number C750189. The case involved employment discrimination based on sexual orientation. The defendant, Superior Fast Freight, challenged the validity of the City of Los Angeles' ordinance which prohibits discrimination in employment based on sexual orientation. The City of San Diego's Human Dignity Ordinance ("HDO"), like the Los Angeles ordinance, prohibits such acts.

The Honorable Diane Wayne found the Los Angeles ordinance invalid pursuant to the California Supreme Court's decision in *Rojo v. Kliger*, 52 Cal. 3d 65 (1990) which interpreted Government Code section 12993 as preempting all local (not common law) employment discrimination laws.

In light of this ruling, Christiann Klein, Executive Director of the San Diego Human Relations Commission ("HRC") on behalf of the HRC, requested that the City Attorney's Office report to the Rules Committee in response to the following questions:

1. If the Los Angeles Superior Court ruling is upheld on appeal, will it in fact render San Diego's Human Dignity Ordinance invalid?
2. If this Los Angeles Superior Court ruling is upheld on appeal, will it affect in any way, or invalidate, the ordinance which The City of San Diego enacted to create the Human Relations Commission?

The answer to the first question is basically yes. The decision of any California district court of appeal is binding upon the San Diego County Superior Court. *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal. 2d 450, 455 (1962). If a challenge is brought against The City of San Diego's HDO, the rule of stare decisis theoretically requires the San Diego County Superior Court to follow the ruling of the Second District Court of Appeal.

If, however, an order invalidating The City of San Diego's HDO is appealed to the Fourth District Court of Appeal, a different rule may be applied. Under the rules of stare decisis, decisions of one district court of appeal are not binding on other district courts. Courts exercising concurrent jurisdiction are not required to follow the first decision announced on a particular point of law. *Galloway Crane and Trucking Co. v. Truck Ins. Exch.*, 67 Cal. App. 3d 386, 392 (1977).

Should a disagreement among districts arise, the California Supreme Court may resolve the dispute with binding affect on all districts. Therefore an adverse holding by the Second District Court of Appeal on the City of Los Angeles's ordinance would not require the Fourth District Court of Appeal to invalidate the City of San Diego's HDO.

Nevertheless, although a Second District holding does not have a binding affect on the Fourth District it would be considered carefully by the Fourth District should the same issue come before it. Decisions of first impression in other districts are reviewed for their persuasive value by districts considering the same issue. As a rule, districts will generally defer to the holding of the court of original jurisdiction unless it is felt the original holding was clearly erroneous. This avoids creating a conflict in the law where none exists. *Zenker-Felt Imports v. Malloy*, 115 Cal. App. 3d 713, 721 (1981).

As to the second question, should the Second District Court of Appeal affirm the decision of the Los Angeles Superior Court, the district court's decision would not affect San Diego's HRC. The HRC was established pursuant to San Diego City Charter section 43. Under the Charter provisions the HRC is an advisory board. The provisions of SDMC sections 26.0901 et seq. allow the HRC to advise the Mayor and Council about a wide range of discrimination problems, whether based upon race, religion, gender or sexual orientation, occurring in The City of San Diego.

The HRC and the HDO ordinances were enacted separately and have distinctly different purposes. Therefore, invalidation of the HDO will not affect the validity of the HRC.

Respectfully submitted,
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