

# City Attorney Briefs

February 2009

*Newsletter of the San Diego City Attorney's Office*

Volume I, Issue I

## Welcome from City Attorney Jan Goldsmith

By Jan Goldsmith

### Special points of interest:

- *Welcome from City Attorney Jan Goldsmith*
- *New FMLA Regulations*
- *San Diego City Attorney's Office Settles Case with drugstore.com*
- *Case Management System/Criminal Division*

Welcome to the first edition of our City Attorney newsletter, *City Attorney Briefs*. Our purpose is to keep you apprised of some of our work and discuss new laws.

Since taking office on December 8, there have been many changes in the City Attorney's office designed to improve how our office functions - internally and externally.

We are divided into four divisions that reflect our distinct roles under the San Diego City Charter. These divisions are: Advisory; Civil Litigation; Criminal; and Community Justice.

The Advisory Division provides advice to the City and each of its departments. Mary Jo Lanzafame, the Assistant City Attorney heading Advisory, has over 21 years of experience as a municipal lawyer.

The Civil Litigation Division prosecutes or defends civil lawsuits in which the City is a party. Andrew Jones, the Assistant City Attorney heading Civil Litigation, has over 12 years of trial experience and has tried over 50 jury trials and 100

bench trials.

The Criminal Division prosecutes criminal misdemeanors and infractions committed within City limits. David Greenberg, the Assistant City Attorney heading Criminal, comes from the District Attorney's office and has been a prosecutor for over 22 years.

The Community Justice Division delivers community-based legal work including consumer and environmental protection enforcement, code enforcement and neighborhood prosecution units. Tricia Pummill, the Assistant City Attorney heading this Division, also comes from the District Attorney's Office, with over 25 years of experience as a criminal prosecutor.

Collectively, our Division heads have over 80 years of experience. Within each Division we have added experience in key areas and developed new training and mentoring programs for the many fine attorneys who deliver legal work for the City. We have developed a supervision plan that will allow us to ensure quality control while avoiding the inordinate delays often experienced in the past.

At the same time we are working to improve the quality of our services, we faced an inherited budget deficit on December 8 of \$1.6 million. Within 45 days we reduced that deficit to \$679,000, while adding over hundreds of years of combined legal experience to our staff of lawyers. We will continue to work to improve our legal services while eliminating waste and expensive non-legal costs that have burdened our office budget.

During the next several months, we plan to begin taking back some matters that were previously assigned to outside counsel at additional City expense. Already, we are handling new matters that previously would have been unnecessarily assigned to outside counsel.

We have a lot more work to do before we are through rebuilding this office. We will have our "ups" and "downs." I am confident that with our strong group of professional lawyers and support staff, we will grow in the coming years to one of the top municipal law firms. We hope to help our City and our community through these troubled times and beyond.

### Save The Date:

**The Community Justice Division will hold an Open House at its offices on March 27, 2009, from 2:00 p.m. to 4:00 p.m. This division consists of three units: Consumer & Environmental Protection, Code Enforcement and Neighborhood Prosecution. We invite our partners in the community and in government agencies to visit our offices, meet our staff, and view displays highlighting our past work and our mission.**

**Date: March 27, 2009**

**Time: 2:00 p.m.—4:00 p.m.**

**San Diego City Attorney**

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**San Diego, CA 92101**

**RSVP to Susanne Sherry at  
ssherry@sandiego.gov**

## *San Diego City Attorney Settles Case with drugstore.com*

A judge in Napa County has ordered the online pharmacy, drugstore.com, Inc., to stop selling the Smith Bristol DietPad, the Slim Form Patch Weight Loss Patch, and the DynaSlim Topical Weight Loss Patch in California. These products are transdermal patches that were marketed as an aid to weight loss.

The City Attorney's Office filed a civil complaint alleging that the patches were mis-

branded drugs and could not be sold in California without first being approved by the U.S. Food and Drug Administration and the California Food and Drug branch. The Court ordered drugstore.com not to violate any laws regarding the sales of drugs or diet supplements. The Court also ordered drugstore.com to pay a civil penalty of \$30,165, \$5,000 in costs, and consumer restitution.

Consumers who purchased the patches should receive an email from drugstore.com no later than February 20, 2009. The City Attorney's Office is part of a statewide Diet Supplement Task Force comprised of the City Attorney's Office and ten District Attorney Offices. The Task Force monitors the diet supplement marketplace to ensure the safety and efficacy of products sold for weight loss.



# Update on FMLA Regulations

## NEW FMLA REGULATIONS – WHAT YOU NEED TO KNOW

**By Lori Thacker, Deputy City Attorney, Labor & Employment Unit**

The United States Department of Labor recently released new regulations interpreting the Family and Medical Leave Act (FMLA), which will significantly affect all employers subject to the law, including the City of San Diego. The new regulations, which went into effect January 16, 2009, are the first significant changes to the FMLA since its inception 15 years ago. Although the long-awaited revisions do not provide all the changes employer groups wanted, they provide necessary guidance and clarification to the FMLA, which has been the source of much confusion and frustration in the workplace. The new regulations address two new types of family military leave, and include many updates and changes to the prior FMLA regulations. Highlights of the changes include:

### **Military Family Leave**

The regulations interpret and implement the National Defense Authorization Act, which amended the FMLA by adding two new categories of unpaid leave for employees with family members serving in the military— Military Caregiver Leave and Qualifying Exigency Leave. Under Military Caregiver Leave, eligible employees who are family members of covered service members may take up to 26 weeks of leave to care for a covered service member with a serious illness or injury incurred while on active duty. Under Qualifying Exigency Leave, eligible employees may take up to 12 weeks of leave due to a qualifying exigency that arises because a covered military member is on active duty or called to active duty in support of a contingency operation.

### **Employer Notice Obligations**

The new regulations clarify and strengthen employer notice requirements. An employer must now provide employees with a general notice about the FMLA upon hire (unless already provided in a handbook or other materials), an eligibility notice, a rights and responsibilities notice and a designation notice. To help ensure compliance with the new notice obligations, an employer is now allowed five business days (rather than two) to provide the notices. To assist managers at the City of San Diego in administering these new notice obligations, form notices have been posted under the Supervisors Tool Box on the Human Resources website on Citynet. The City's general notice has also been updated and is available on Citynet.

### **Employee Notice Obligations**

For unforeseeable leave, employees must give notice of the need for leave as soon as practicable, and must follow the employer's usual and customary call-in procedures to report an absence, unless there are unusual circumstances. This is a modification from the old regulations, which allowed some employees to provide notice up to two business days after an absence.

### **Medical Re-Certification**

There have been many questions citywide regarding the ability to obtain medical recertification for open-ended, "lifetime," or "ongoing," conditions. Under the new regulations, an employer may request such recertification every 6 months.

### **Definition of Health Care Provider**

Many questions had also been raised regarding physician assistants. Under the new regulations, the definition of Health Care Provider now includes physician assistants.



**FMLA Regulations (continued from page 2)**

All Department directors, managers, supervisors, human resource professionals, payroll specialists or any other person administering leave policies must be knowledgeable of the new requirements so that the new obligations can be implemented in their respective departments. The above provides a general overview of some of the more significant changes to the FMLA. There are many more changes that may affect your administration of leave for an individual employee’s specific situation. Any questions that City Departments have regarding the new regulations, or their application to an employee’s particular situation, may be referred to our office’s Labor & Employment Unit.

*According to Aristotle*

*“A speech has two parts. You must state your case, and you must prove it.”*

**THREE DEPUTY CITY ATTORNEYS ARE CROSS-DEPUTIZED**

**Three San Diego Deputy City Attorneys were appointed as cross-designated Special Deputy District Attorneys for the County of San Diego, State of California, representing the People of the State of California in consumer and environmental protection prosecutions of mutual interest to our offices:**

**Congratulations to Tricia Pummill, Joan McNamara and Kristine Lorenz.**

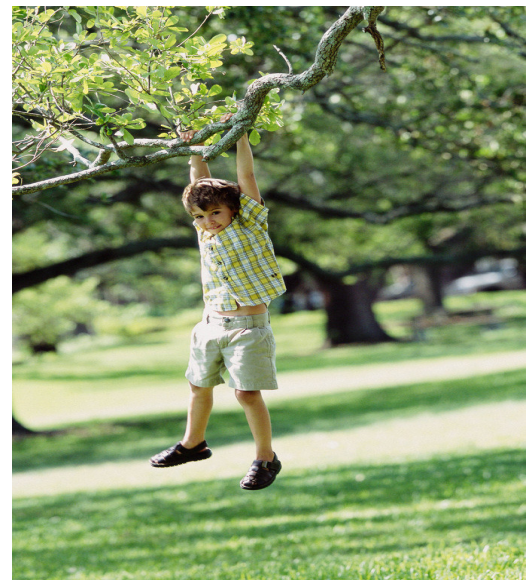


*“The power of persistence, of enduring defeat and of gaining victory by defeats, is one of those forces which never loses its charm.”*

*Ralph Waldo Emerson*

**NEIGHBORHOOD PROSECUTORS TO REPRESENT SOUTHERN & SOUTHEASTERN DIVISIONS**

The City Attorney’s Community Justice Division will reassign two Neighborhood Prosecutors to represent the Southern and Southeastern Divisions of San Diego. Our prosecutors will work in conjunction with the Police Department and community groups to help increase the quality of life and provide program opportunities and treatment options by addressing issues including chronic homelessness, serial inebriation and prostitution.





City Attorney Jan Goldsmith

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**Criminal Division looks forward to new Case Management System**

“Excellent,” “awesome,” and “fabulous” were just some of the words echoed throughout the room at a training session facilitated by David Greenberg, Assistant City Attorney for the Criminal Division.

Modeled after the District Attorney’s Case Management System, the City Attorney’s Office will implement a similar Windows-based system that will allow for unified search parameters, pre-defined reports, research on history and prior convictions, and statistics on cases, agencies and divisions. In addition, prosecutors will be able to modify or amend complaints, update progress reports, view discovery information and interact with the arresting agency or central district. The completion date is targeted for May 2009.

**Meet Don Worley, Deputy City Attorney, Civil Litigation**



The only dream of my youth was to live in California, natural for one born and raised in the Motor City, where the summers are too hot and the winters too cold.

After I went further into the colder East to get an Ivy League education at Yale, the Navy came along to fulfill my dream by sending me to San Diego. But, before I could settle down, off I went on an aircraft carrier to Japan, Philippines, Hong Kong, Madagascar, Yemen, Kenya, and the Gulf of Oman, where I met the Shah of Iran (for those not old enough to remember, the man who came before the Ayatollah).

After leaving the Navy, I went to night law school at University of San Diego, while I worked during the day at Title Insurance & Trust Co., General Dynamics/Electronics, and, finally, as a law clerk for Seltzer Caplan Wilkins & McMahon. After graduating Magna Cum Laude in 1970, I became an associate with the Seltzer firm, and, two years later, a partner. I left in 1975 to join what became McDonald Riddle Hecht & Worley.

Until now, my legal career has been in the private sector, though recently I had done some litigation for the County of Imperial. As result of the political nature of zoning and land use law, where I found my specialty, I became a friend of the late Bill Craven, then Chairman of the County Board of Supervisors, and later State Senator. In 1973, I found and married my soul-mate—Tricia Craven Worley, Bill’s daughter.

I took a year’s leave of absence in 1981 to pursue a Master of Laws in Transnational Business and Taxation from UOP/McGeoge School of Law. I studied in Austria and interned in the legal department of a shipping company in Copenhagen. I returned to law practice for another 23 years building a law firm which became Worley Schwartz Garfield and Prairie, when in 2004, I took a leave of absence to pursue acting in film, television, and commercials. A persuasive lawyer can tell a good story. An actor, likewise, is a story teller, so my transition from the one to the other should not be so surprising.

I am thrilled to be a part of rebuilding the San Diego City Attorney’s Office, and to return to the practice of my specialty— land use litigation.

The offices of the San Diego District Attorney and San Diego City Attorney are working cooperatively on training for prosecutors in the two offices. On February 12, 2009, thirty prosecutors in the City Attorney’s Office will attend a full day of training provided by the District Attorney’s Office for free. On February 5, 2009 the head of the City Attorney’s Consumer & Environmental Protection Unit, Tricia Pummill, provided training to the personnel of both the City’s consumer protection unit and the District Attorney’s consumer protection unit. These shared programs provide high quality and necessary training to our prosecutors in the most efficient cost-effective manner.