

Queen's Bench

NEWSLETTER

QUEEN'S BENCH PRESENTS: THE JUDGE SERIES

By Theresa D. Moore

This Spring, Queen's Bench produced and hosted The Judge Series, a three-part webinar series featuring San Francisco Superior Court Judges. The series was an opportunity to hear directly from judges and addressed their perspectives on the legal field during COVID, women in the law, pandemic jury trials, good practices for oral argument, and the future of remote proceedings.

Each panel had a different format and unique feel, and all had a relaxed, intimate atmosphere that allowed participants a chance to get to know each judge and experience the law from their perspectives.

The Judge Series included:

- Lessons Learned Practicing During Covid and the Future of Remote Proceedings Post-Covid, featuring Judge Angela Bradstreet, Judge Kathleen Kelly, Judge Christine Van Aken, and moderated by Kimiko Akiya. This panel tackled ten COVID-related issues facing the court and litigants, including solutions and advice to lawyers as well as a general Q&A with participants.

continued on page 5



Queen's Bench
Bar Association

INSIDE THIS ISSUE

Queen's Bench Presents: The Judge Series	1
Queen's Bench Celebrates Legal Victory for Domestic Violence Survivors	2
Queen's Bench Mobilizes and Educates in Support of the Equal Rights Amendment	4
Queen's Bench Partners with Berkeley Law's Survivor Advocacy Project and IANGEL to Address Sexual Harassment	6
Invitation to Add Your Members to the Women Supreme Court Litigator's List	7
Committee Updates	8
Calendar Of Events	10

QUEEN'S BENCH CELEBRATES LEGAL VICTORY FOR DOMESTIC VIOLENCE SURVIVORS

by Elisha Jussen-Cooke

In June 2021, Queen's Bench joined in support of an amicus brief submitted by the California Women's Law center and 28 supporting co-signatories on behalf of a domestic violence survivor. In a victory for survivors of domestic violence, the survivor prevailed on appeal and the case, *K.L. v. R.H.*, was certified for publication on October 26, 2021.

The case centered on the propriety of mutual restraining orders and the impact on child custody that such orders can have. In *K.L. v. R.H.*, the survivor appealed the lower court's issuance of mutual restraining orders against her and her abusive ex-partner, as well as the joint custody order that followed therefrom. Emphasizing the problematic nature of mutual restraining orders, the amicus brief urged the court to treat these orders with extreme skepticism, which is in keeping with the letter and the spirit of the governing statutory scheme.

A restraining order can be a critical tool for survivors and their children to achieve safety and remove themselves from an abusive relationship. However, this tool can be dulled by the issuance of mutual restraining orders, which blurs the line between abuser and abused, and can lead to increased safety risks for survivors. Scholars and advocates specializing in domestic violence have shown that incidents of mutual abuse are exceptionally rare. As reported by the Judicial Counsel, mutual restraining orders can humiliate and discourage domestic violence survivors from seeking further assistance to escape abuse. Such orders can also create uncertainty for police when determining who to arrest upon responding to future domestic violence incidents, with the end result of further endangering victims and subjecting them to unjust criminal consequences.

Additionally, abusers may seek a restraining order as a defensive tactic to further manipulate and control the survivor, often accompanied by the implied threat that they will take custody of the children.

To safeguard against these potential harms, California law imposes additional procedural requirements when courts issue mutual restraining orders. The California statutory scheme governing mutual restraining orders requires that the trial court conduct a multi-layered, factually-intensive inquiry to determine which party was the primary aggressor, and allows issuance of mutual restraining orders only after a specific set of factual findings have been made. Among other things, the court must consider the intent of the law to protect domestic violence victims from continuing abuse and the history of the violence between the parties. The court must also consider whether either person acted in self-defense and whether there were threats that created a fear of physical injury. The intent of this statutory scheme is to ensure that mutual restraining orders are issued only in those rare instances where the evidence shows a pattern of abuse by both parties and that both acted equally as primary aggressors.

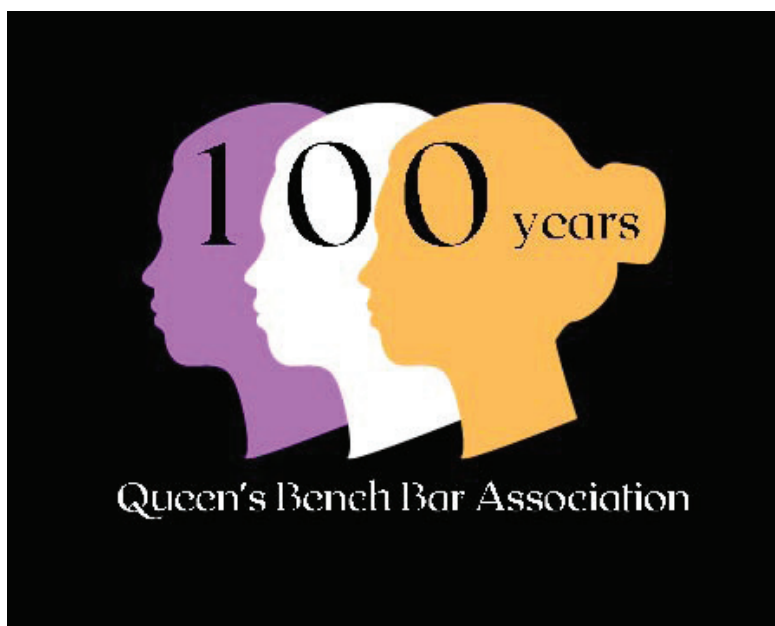
The amicus brief for *K.L. v. R.H.* that Queen's Bench signed onto with the California Women's Law Center and other organizations demonstrated the lower court's failure to properly follow the governing statutory scheme, which resulted in a wrongly-issued mutual restraining order against the survivor, R.H. The Court of Appeal found that the acts committed by K.L. against R.H. were significantly more violent than the acts of abuse alleged by K.L., and that the trial court erred by issuing a restraining order against R.H. and granting the parties joint custody. In addition to the

favorable outcome for the survivor, footnote 11 of the Court of Appeal’s published opinion was a noteworthy acknowledgment of the implicit bias in this area of the law. That footnote reads:

Recently, in the context of a juvenile dependency case, we cautioned against the danger of implicit bias affecting the judiciary’s perception of victims of domestic abuse. “We are also mindful of society’s preconceptions that often damage the credibility of victim-witnesses who present on the stand in atypical and non-paradigmatic fashions.” (Kohn, *Barriers to Reliable Credibility Assessments: Domestic Violence Victim-Witnesses* (2003) 11 Am. U.J. Gender Soc. Pol’y & L. 733, 734, fn. omitted.) We expect such victims to be ‘sweet, kind, demure, blameless, frightened, and helpless’ (id. at p. 734) and ‘not a multi-faceted woman who may or may not experience fear or

anger’ (id. at pp. 743-744, fn. omitted). ‘These are the preconceptions that judges and jurors bring with them into the courtroom when they assess the veracity of a victim-witness’s story.’ (Id. at p. 734, fn. omitted.) We encourage continued diligence and education to guard against such preconceptions.” (In re Ma.V. (2021) 64 Cal. App.5th 11, 26.) While not directly applicable to our analysis, we encourage the trial court to keep this in mind in this and other matters.

K.L. v. R.H. represents a major win for survivors of domestic violence and those seeking to challenge the issuance of statutorily unjustifiable mutual restraining orders. Queen’s Bench was honored to stand with the survivor, and the fellow amici, and hopes that this case will increase the recognition of the dangers of mutual restraining orders and implicit biases against survivors.



QUEEN'S BENCH MOBILIZES AND EDUCATES IN SUPPORT OF THE EQUAL RIGHTS AMENDMENT

By Kara Wild

On October 5, 2021, Queen's Bench hosted a virtual panel event entitled "The Equal Rights Amendment: Is Ratification Within Reach and What Would It Mean for Women?" With the Equal Rights Amendment tantalizingly close to becoming recognized as the Twenty-Eighth Amendment to the United States Constitution, Queen's Bench has established a campaign to promote and educate about its benefits to the wider community of lawyers and non-lawyers.

The event featured the following panelists:

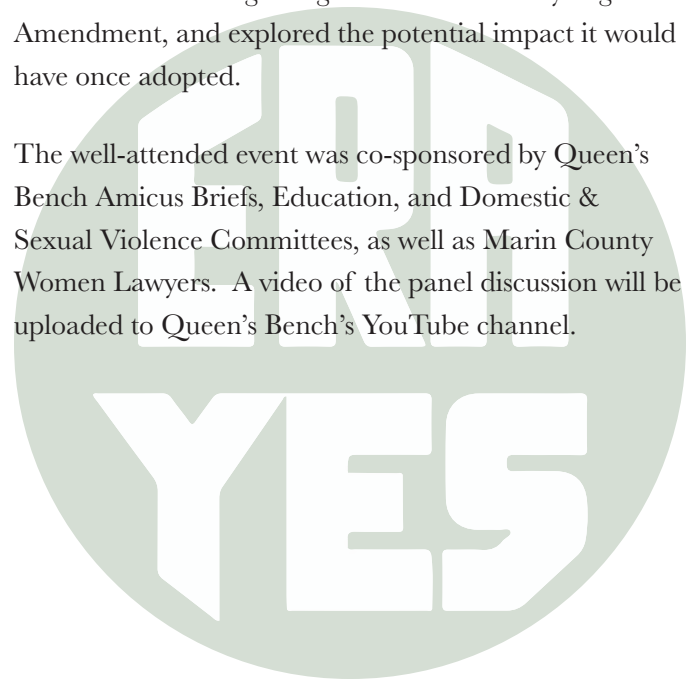
- Senator Patricia Spearman, State Senator for Nevada. In 2017, Senator Spearman sponsored State Senate Joint Resolution 2, which supported Nevada's ratification of the Equal Rights Amendment. Nevada later became the 36th state to ratify the Amendment.
- Linda Coberly, the managing partner of the Chicago office of Winston & Strawn LLP, who serves as chair of the national ERA Coalition's Legal Task Force, made up of leading constitutional scholars working toward ratification and recognition of the Equal Rights Amendment.
- Helene de Boissiere-Swanson, the co-founder of Katrina's Dream, which was created to carry on her late mother's dream of seeing the rights of women upheld by the law.
- Judge Barbara O'Hearn, an esteemed, long-time member of Queen's Bench, who served as a Congressional intern during the peak of the Equal Rights Amendment ratifying process.
- Kimberly Ellis, Director for the San Francisco Department on the Status of Women moderated the event. Appointed by Mayor London Breed, she is a longtime progressive activist who has

fought for the rights and representation of historically underrepresented groups on the local, state, and national level.

Many people—including lawyers—mistakenly believe that gender equality is already written into the Constitution. Specifically, they cite the language of Section 1 of the Fourteenth Amendment, which states: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Yet women have not always been able to rely upon the Fourteenth Amendment for equal protection, as it was intended to offer such protection to former slaves. Today, courts evaluate cases of governmental sex discrimination under the "intermediate" standard of review, rather than "strict scrutiny," the highest level of judicial review applied to cases of race bias.

In the spirited one-hour discussion, the panelists delved into the history of the ERA, discussed why the ERA is still needed for equal gender protection, opined on the likelihood of it being recognized as the Twenty-Eight Amendment, and explored the potential impact it would have once adopted.

The well-attended event was co-sponsored by Queen's Bench Amicus Briefs, Education, and Domestic & Sexual Violence Committees, as well as Marin County Women Lawyers. A video of the panel discussion will be uploaded to Queen's Bench's YouTube channel.



QUEEN'S BENCH PRESENTS: THE JUDGE SERIES

continued from page 1

- Tips from the Bench, featuring Judge Alexandra Robert Gordon, Judge Rita Lin, Judge Maria Evangelista and moderated by Theresa D. Moore. A lively conversation, this all-woman panel of judges dove into issues and experiences related to women lawyers and the power of persuasion. Each judge provided insight, advice and recommendations for a successful legal practice.
- Remote Civil Jury Trials, featuring Judge Russell Roeca, Judge Anne Christine Massullo, Judge Richard Ulmar, and moderated by Andrea Russi. The judges spoke of their experiences and their individual courtroom procedures trying jury cases during Covid. They discussed best practices for lawyers trying cases and answered moderator questions about the workings of the court during this period of time.



QUEEN'S BENCH PARTNERS WITH BERKELEY LAW'S SURVIVOR ADVOCACY PROJECT AND IANGEL TO ADDRESS SEXUAL HARASSMENT

By Andrea Carlise

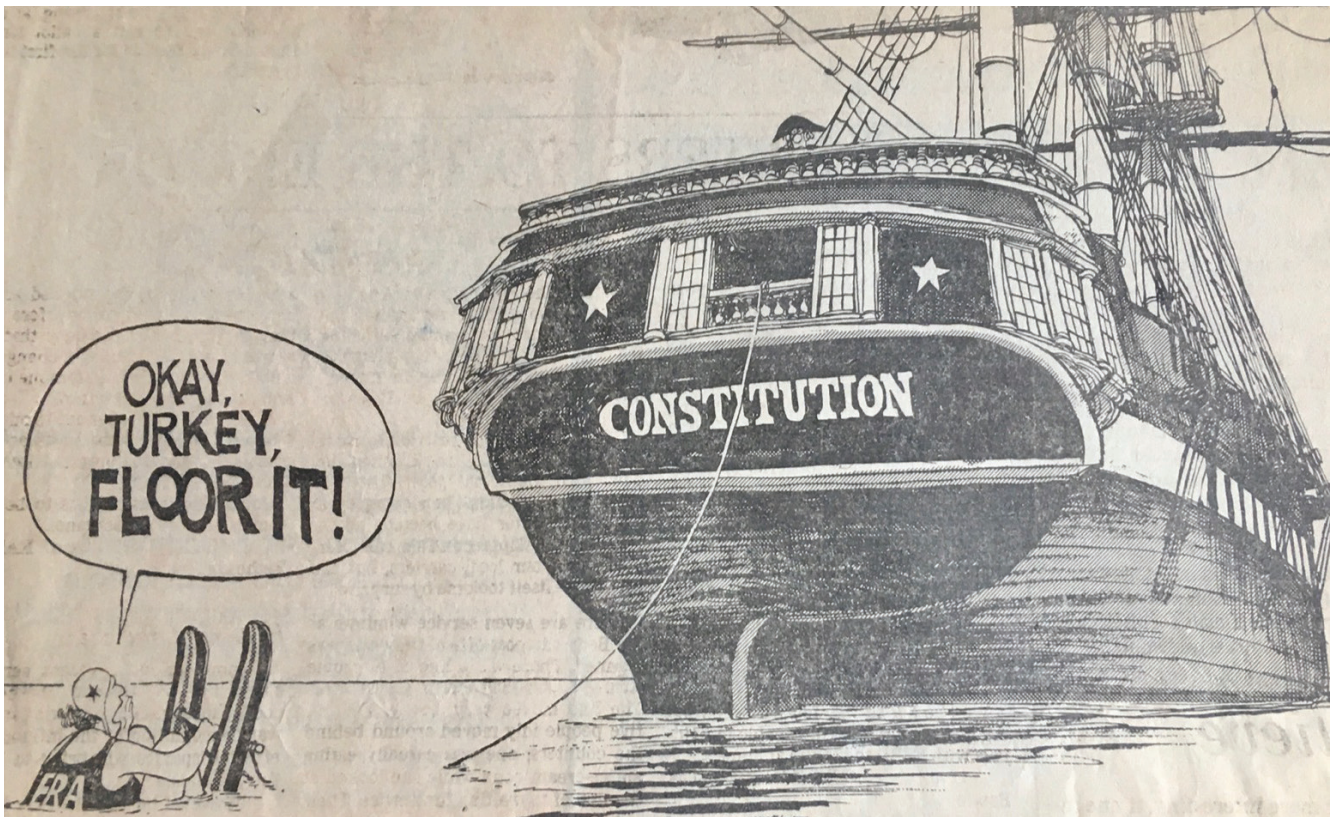
The Conference of Delegates Committee will continue its partnership with the Berkeley Law Pro Bono Program's Survivor Advocacy Project (SAP) during the 2021-2022 academic year. Berkeley Law's SAP builds generations of lawyers dedicated to preventing and combatting sexual assault, sexual harassment, and sexual violence. SAP provides support to communities within UC Berkeley and the Bay Area aimed at empowering and supporting survivors of sexual violence.

Last year, Berkeley Law students drafted two resolutions amending the California Business and Professions Code and the California Rules

of Professional Responsibility to support attorneys who are subjected to sexual harassment by clients during the course and scope of legal representation. The draft resolutions provide an avenue for lawyers who are sexually harassed or assaulted during an attorney-client relationship to disclose relevant evidence to support their legal allegations without fear of violating their ethical obligations to the client/ perpetrator.

This year, SAP students will conduct additional research to finalize the resolutions for submission to the Conference of California Bar Associations in 2022. The International Action Network for

Gender Equity & Law (IANGEL), a nonprofit organization founded by Queen's Bench past president Nancy Newman, will be joining the project this year as well. IANGEL will be lending its expertise to help guide SAP students through the research and writing process with the goal of developing MCLE curriculum about the subject of the resolutions. Berkeley Law's SAP students will help draft a "know your rights" educational program covering the law addressing sexual harassment and misconduct in attorney-client relationships and how legal reforms can support attorney-survivors and help prevent the harassment from occurring in the first place.



INVITATION TO ADD YOUR MEMBERS TO THE WOMEN SUPREME COURT LITIGATOR'S LIST

The Women's Bar Association of the District of Columbia (WBADC) invites you to add the names of Supreme Court practitioners in your organization to an active list of Women Supreme Court Litigators. Recently, the National Law Journal Supreme Court Brief (subscription required) included an article by Marcia Coyle entitled "Building a Bank of Female SCOTUS Advocates" that featured Jill Dash, a past president of the WBADC, discussing the WBADC's ongoing compilation of Women's Supreme Court Litigators. Past President Dash stated that the Supreme Court Litigators list was created in response to a WBADC program highlighting the reasons why so few women practice before the Supreme Court, where the consistent theme was that we need to make room for more women rather than argue that we need to build a pipeline (which already exists). This list was created as a resource for entities interested in diversifying their Supreme Court advocates. To date, our compilation of women Supreme Court litigators (<https://wbadc.org/women-supreme-court-litigators>) consists of more than 45 women with links to each litigator's web page or profile.

We invite you to invite your members who are Supreme Court advocates to add their names to this important list. Because there is an opt-in requirement, please send your interested members the application, which can be found using this link: <https://wbadc.member365.com/publicFr/form/index/978274c060e0b912c955da2afe2a2bbb520c46c3>.

CLICK HERE TO ADD YOUR NAME!

COMMITTEE UPDATES

AMICUS BRIEFS COMMITTEE UPDATE

Josephine K. Petrick & Kara Wild

The Amicus Briefs Committee was a co-sponsor of the Equal Rights Amendment panel on October 5 and played a lead role in Queen's Bench signing onto two amicus briefs. One was for *K.L. v. R.H.*, which resulted in the Court of Appeal siding with a victim of domestic violence and reversing the trial court's order; the other for *Dobbs v. Jackson Women's Health Organization*, which will be heard by the United States Supreme Court.

CENTENNIAL/HISTORY COMMITTEE UPDATE

Hon. Charlotte Walter Woolard, Ret., Clarissa A. Kang, & Alice Shaw (Purdy)

Please join the Queen's Bench Centennial Committee on the last Tuesday of each month for the committee's standing meeting to plan for Queen's Bench Centennial celebration, which will take place in Spring 2022. Please contact Centennial Committee co-chairs Clarissa Kang, Hon. Charlotte Woolard, and Alice Purdy at ckang@truckerhuss.com, judgewoolard@adrservices.org, or ashaw@fkkblaw.com for more details

DIVERSITY COMMITTEE

Sharon Alkire & Shivani Joshi

The Diversity Committee is working with the California Lawyers Association's Racial Justice Committee to develop a panel discussing the disparate legal treatment of Black Lives Matter arrestees in 2020 as compared to the January 6th, 2021 Capitol Insurrection arrestees. We invite anyone who is interested in this topic to join in the planning discussion. If interested, please email Shivani Joshi and/or Sharon Alkire at alkirelegal@gmail.com or shivani@legallyreliablejoshi.com.

DOMESTIC AND SEXUAL VIOLENCE COMMITTEE UPDATE

Elisha Jussen-Cooke

The Domestic and Sexual Violence Committee recently co-sponsored two events, including the October 5, 2021 panel presentation on the Equal Rights Amendment, and Cocktails & Couture. We look forward to planning events for 2022 that increase awareness about domestic violence and sexual assault, and that foster ties within the legal community aimed at empowering survivors.

EDUCATION COMMITTEE UPDATE

Kimiko Akiya & Stephanie Smeekens

The Education Committee helps coordinate MCLE programs for the members of Queen's Bench. If you or a committee has an idea for an MCLE program please contact co-chairs Kimiko Akiya or Stephanie Smeekens for further details.

LEGISLATIVE AND REPRODUCTIVE RIGHTS COMMITTEE

Karine Cargo & Beth Hodess

The Legislative and Reproductive Rights Committee is planning an upcoming meeting to map out programs and actions for 2022. Discussion will include planning for programs on:

1. Texas abortion law and other attempts to overturn Roe v. Wade;
2. The impact on Covid-19 on women practitioners resulting from the loss of childcare (possibly including a membership survey); and
3. A follow-up discussion with Andrea Carlise on the development of materials on Reproductive Rights for schools, which is a joint project with IANGEL.

Please join us and share your ideas. Keep an eye out for an email with more details on meeting location, date, and time.

SCHOLARSHIPS COMMITTEE UPDATE

Hon. Adrienne Miller, Ret. & Caroline Holmes

The Scholarship Committee is pleased to announce the recipients of the 2021 Agnes O'Brien Smith University of San Francisco Scholarship: Stephanie Roque-Hurtado and Katuska Betzabe Pimental Vargas. Through her scholarship submission and interview with the Scholarship Committee, Ms. Roque-Hurtado demonstrated her unflappable commitment to community and mentorship. She has served as a mentor to multiple lowerclassmen through three different organizations on campus, as well as serving as a teacher's assistant and case counsel for moot court. Knowing that first-year law students who began their law school career during the pandemic have faced unique challenges integrating into the law school, Ms. Roque-Hurtado has gone out of her way to make those students feel welcome. As a first-generation college graduate, it is incredibly important to Ms. Roque-Hurtado to give back and to continue the mission of expanding equal access to justice in the legal profession. We wish her the best of luck!

Prior to law school, Ms. Pimental Vargas worked as a community organizer, providing training on political campaigning to bring awareness to traditionally underserved communities. She was recognized as a "2020 Woman of the Year" by the California Legislature for her work as an advocate and community leader. In law school, she has maintained top marks, placing her in the top 25% of her class, and has become particularly interested in issues of privacy and civil rights. As a Dreamer, Ms. Pimental Vargas hopes to increase representation of underserved populations in the courtroom and bring more visibility to the people she represents. We wish her the best of luck!

CALENDAR OF EVENTS

UPCOMING EVENTS . APRIL 2022

QUEEN'S BENCH BAR ASSOCIATION CENTENNIAL CELEBRATION

APRIL 01, 2022 6:00 PM PDT TO APRIL 30, 2022 9:00 PM PDT

Please join us in celebrating 100 years of Queen's Bench Bar Association! Location TBD.



[CLICK HERE TO VISIT OUR CALENDAR ONLINE](#)

QUEEN'S BENCH NEWSLETTER

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