



## Casting 'Other' Judges' Roles

The Recorder

By **Mike McKee**

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A festering probate battle between former Marin County District Attorney Michael Gridley and his sisters has gone beyond family differences to become a test case over the scope of judicial authority in a wide range of cases.

But whether the stakes involve private judges such as those at JAMS Inc. or *pro tem* judges appointed by trial courts remains a matter of opinion, as San Francisco's First District Court of Appeal prepares to hear three cases Tuesday arising from the Gridley family fight.

"The other side wants to make it seem as if it's JAMS versus the probate court," San Francisco lawyer James Wagstaffe, who represents Gridley, said Friday. "But it's not."

The Kerr & Wagstaffe partner insisted that the jurisdictional issue is limited to whether a court-appointed, temporary judge's authority over a case can be usurped by a full-time judge.

But his opponent, Mary Mix, a partner with San Francisco's Livingston Mix, contends that the cases hold broader implications for the whole realm of private judging: specifically, whether retired judges from JAMS and other alternative-dispute providers retain jurisdiction when new issues are raised by parties who never stipulated to their participation.

"This appeal raises crucial issues surrounding the employment of private (and expensive) judges," Mix and San Francisco lawyer George Benetatos wrote in court briefs. "In an era when private judges are used more frequently, it is in the interest of all litigants to clarify when, and under what circumstances, non-stipulating parties will be compelled to litigate before a private judge."

The dispute has its origins in JAMS arbitrator Harry Low's 1994 appointment as a temporary judge in San Francisco Superior Court to hear matters regarding the will of Elsie Gridley, who at the time of her death in 1992 had a joint estate with her husband, Arnold, valued at about \$12 million.

Despite difficulties, the Elsie N. Gridley Irrevocable Trust was formed in 1996 with Arnold and Michael Gridley serving as co-trustees. Things went fairly smoothly until Arnold Gridley, inventor of the **motorized cable cars** popular with San Francisco tourists, died in 2004.

Two years later, Christine and Patricia Gridley — unhappy with their brother Michael's handling of the trust, including the sale of more than 1,800 acres of Solano County wetlands called the Dixon Ranch — filed a petition in San Francisco Superior Court to replace him as trustee, among other things.

The two sisters then asked San Francisco Superior Court Judge John Dearman to relieve Low of his authority, arguing that they had never stipulated to Low maintaining jurisdiction indefinitely. Dearman denied that request.

"Under the express terms of the appointment," Mix and Benetatos wrote in court papers, "Justice Low's authority was limited to the 'pleadings on file and which are then at issue' arising between the 'parties' who are defined as Michael and Arnold."

They argued that then-San Francisco Probate Judge Isabella Horton Grant had reserved to herself the



Mary Mix, Livingston Mix LLP  
IMAGE: Jennifer Pantal?on



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authority "to adjudicate and determine the 'final' accounting and distribution of the estate."

In addition, they insisted that at the very least Low's authority ended when Arnold Gridley died. "Since that time," Mix and Benetatos wrote, "appellants Christine and Patricia have consistently objected to Justice Low hearing any new matters."

Low seemed to concede to some of the sisters' arguments, ruling last year to retain 11 of their new claims because they "related to the administration of the estate," but returning four claims against various people — fraud, constructive fraud, attorney malpractice and conspiracy — back to the probate court.

Dearman then muddied the waters even more late last year by granting the sisters' request to consolidate the entire dispute in his courtroom, cutting Low out of it entirely.

"By disregarding the rule prohibiting one judge from attempting to overrule another," Wagstaffe wrote in court papers, "Judge Dearman has created a legally untenable situation where two judges of the same court have asserted authority over the same dispute. That is the very situation the law is designed to prevent."

Mix said last week that her clients want to go through probate court because of the high costs of a temporary judge from JAMS and because of some concerns about the right to a jury trial.

"This is not an anti-JAMS case," she said. "It's simply a case where at this point there are cost issues, there are jury trial issues, and things of that nature."

Wagstaffe, though, accused his opponents of forum-shopping and contends that the sisters never complained about Low for the first 12 years he was on the case. "This case is all about the smell of money," he said, noting that the Dixon Ranch property, which is now being developed, could bring in millions of dollars.

In court papers, Wagstaffe argued that Michael Gridley had the "absolute right" to select Low to preside over the entire case and that case law shows that a written stipulation isn't required to have a temporary judge assigned to a case.

"It may be implied by the conduct of the parties," he wrote.

"Here," he added, "the record confirms that appellants, one of whom has been represented by the same counsel since 1995, have consented to Justice Low's authority by actively participating in numerous estate and trust proceedings before him."

Both Wagstaffe and Mix agree that the court's decision will be important.

"If anything, it would clarify and be helpful so that temporary judges would know when and under what circumstances they need to get additional stipulations from attorneys," Mix said. "I don't see it dramatically changing how things are done [other than] making it clearer, now that we're using private judges more."

Wagstaffe said even Low and Dearman welcome a ruling. "Happily," he said, "both judges have said, 'We need appellate guidance here.'"

The cases being heard Tuesday are *Gridley v. Superior Court*, A120925; *Gridley v. Gridley*, A118084; and *Gridley v. Gridley*, A118452.

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