

Analysis:

Activist Judge Frank Roesch

October 2021

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Summary

Summary of Findings

Frank Roesch is a superior court judge in Alameda County, who has served in that role since his appointment by Democratic governor Gray Davis in 2001. Roesch has a B.A. from the University of California at Berkeley and a J.D. from Hastings College of Law.

As a judge, Roesch has a long history of improper biases. Roesch presided over a multi-million dollar asbestos case, only to recuse himself from a similar case the next year after accidentally admitting on camera he had previously been exposed to asbestos. In 2012 and again in 2020, parties successfully motioned for a new judge, claiming a fair hearing would have been impossible under Roesch. In October 2020, Roesch was publicly reprimanded for his biased presiding over two separate cases.

Roesch's decisions have been repeatedly tossed out by higher courts. In 2009, a California appeals court had to reverse a judgement from Roesch after he failed to realize that primary elections definitionally cannot be "final elections." The next year, a California appeals court unanimously overruled a prior decision from Roesch, finding he not only "erred" on matters of fact but even misapplied a legal concept taught to first year law students. In 2012, a California appeals court overruled Roesch, finding his decision in a case made a prejudicial error and misapplied the two case precedents he "principally relied" on. In 2015, a California appeals court overruled Roesch, finding he had "abused" his discretion by issuing a judgement in a case without holding a single evidentiary hearing. In 2018, two separate decisions from Roesch were overturned due to his egregious biases in the cases. In 2020, Roesch was overruled in a case by a California appeals court, causing the plaintiffs to successfully motion for Roesch's reassignment due to alleged bias.

Roesch's overturned rulings have also sought to undermine elected officials in California. In 2010, Roesch sided with public sector unions over California's fiscal health by trying to invalidate the state's furlough powers during a "fiscal crisis," only to be overruled by both a California appeals court and then the state's supreme court. In April 2021, a California appeals court thwarted Roesch's efforts to weaken SB35, a California law enacted to facilitate development and address the state's lack of housing.

Roesch's improper rulings have even threatened the rights and wellbeing of regular Californians. In 2010, Roesch unsuccessfully tried to block the City of Oakland from using public safety funds to hire desperately needed police officers, after the city saw a more than 80 percent increase in its homicide rate. In 2011, Roesch was overruled by a California appeals court after incorrectly denying financial assistance to a minor child. In 2012, a state appeals court found Roesch incorrectly tried to limit a man's "constitutionally protected speech." In 2012, a California appeals court found Roesch wrongly denied a man unemployment benefits, and in 2016, Roesch was again overruled in the case after incorrectly denying the man hundreds of thousands of dollars in legal fees.

Roesch has been repeatedly disciplined for his improper conduct as a judge. In 2011, he was reprimanded by a state commission after repeatedly denigrating and insulting a plaintiff, even proclaiming the plaintiff asked “an idiotic question.” In October 2020, a state commission unanimously admonished Roesch due to his egregious biases in two cases he had presided over. In the first case, Roesch denied a party its “fundamental” right to due process as part of his efforts to ensure a preferred judicial outcome. In the other case, Roesch sought to deny a man ownership over a property he had legally bought due to unfounded suspicions about “cheating.”

Background

Personal Information

Full Name:	Frank Roesch	
Education:	B.A., University of California at Berkeley (1970) J.D., Hastings College of the Law (1973)	
Employment:	Oct. 2001 – Present	Superior Court Judge, Alameda County
	Unk. – Unk.	Probate Referee
	Unk. – Unk.	Private practice
Civic Associations:	Unk. 1982 – Unk. 1983	President, California La Raza Lawyers

Background

Roesch has a B.A. from the University of California at Berkeley and a J.D. from Hastings College of Law.

In 1970, Roesch Graduated From The University Of California At Berkeley With A B.A. (“Judge Profile: Frank Roesch,” [Martindale](#), Accessed 8/24/21)

University Attended:

University of California at Berkeley, B.A., 1970

In 1973, Roesch Graduated From Hastings College Of Law With A J.D. (“Judge Profile: Frank Roesch,” [Martindale](#), Accessed 8/24/21)

Law School Attended:

Hastings College of the Law, J.D., 1973

In 1974, Roesch was admitted to the California State Bar.

Roesch Was Admitted To The Bar In 1974. (Attorney Search, [State Bar of California](#), Accessed 8/24/21)

Roesch, Frank Judge

59930

Oakland

June 1974

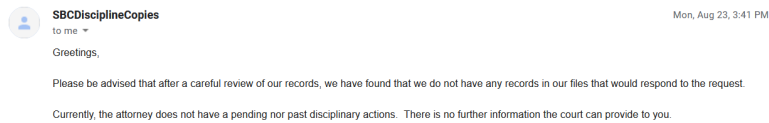
Roesch Is No Longer A Licensed Member Of The Bar Because He Is A Judge. (State Bar number: 59930, Attorney Profile, [State Bar of California](#), Accessed 8/24/21)

Attorney Profile

State Bar number: 59930

This person is currently serving as a Judge of a court of record and is not considered an licensee of the State Bar while in office. The only information provided for licensees currently serving as judges is: (1) name (2) city (3) State Bar number (4) date of admission to The State Bar of California. ([See Constitution of California, Article VI, Section 9](#))

According To The State Bar of California, There Are No Disciplinary Records Related To Roesch's Time As An Attorney. (Email, State Bar of California, 8/24/21)



After becoming a lawyer, Roesch worked in private practice and as a probate referee, and from 1982 to 1983, he served as president of a California affiliate of La Raza, the “largest and most well-known Latino advocacy group in the U.S.”

After Becoming Admitted To The California Bar, Roesch Worked As A Probate Referee And In Private Practice. “Roesch, 54, is a probate referee in addition to his private practice.” (“Davis Continues Flurry of Judicial Appointments With Four in North of State,” [Metropolitan News-Enterprise](#), 10/5/01)

From 1982 To 1983, Roesch Also Served As President Of The California Association Of La Raza Lawyers. (“Newsletter Page,” [The Chicano/Latino Bar Association of California](#), Accessed 8/24/21)

Past Presidents of California La Raza Lawyers
www.larazalawyers.net

Founders: Mario Obledo, Cruz Reynoso & Luis Garcia

1977-1978 Rodrigo Mayorga (Sacramento)

1977-1978 Carlos Ynostrosa (Alameda)

1978-1980 Fernando Zazueta (Santa Clara)

1980-1982 Jeanne Raya (Los Angeles)

1982-1983 Frank Roesch (Alameda)

- **The La Raza Lawyers Of California Is A Statewide Network For La Raza Lawyer Groups In The State.** “La Raza Lawyers of California is an independent unincorporated association of Lawyers organized in 1977 to support Chicano and Latino Lawyers in California and serve as a statewide network for local affiliate La Raza Lawyers Groups.” ([La Raza Lawyers of California](#), Accessed 8/24/21)
- **La Raza, Which In July 2017 Changed Its Name To UnidosUS, Is “The Largest And Most Well-Known Latino Advocacy Group In The U.S.”** “In an attempt to reach a

younger and more diverse audience, the largest and most well-known Latino advocacy group in the U.S., the National Council of La Raza, renamed itself this month. The new name, UnidosUS, was announced at the group's 2017 conference in Phoenix.” (Jessica Diaz-Hurtado, “The Largest U.S. Latino Advocacy Group Changes Its Name, Sparking Debate,” [NPR](#), 7/21/17)

A History of Biases and Incorrect Decisions

Repeated Disciplines

In 2011, Roesch was reprimanded by the California Commission on Judicial Performance after he repeatedly denigrated and insulted a plaintiff, even proclaiming the plaintiff asked “an idiotic question.”

In 2011, Roesch “Received An Advisory Letter” From The California Commission On Judicial Performance After “Making Discourteous Remarks” To A Plaintiff. “In 2011, he received an advisory letter for making discourteous remarks to a self-represented litigant, who told the judge he was an attorney in another state, but was a teacher in California.” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

- **The California Commission On Judicial Performance Is An Independent State Agency That Investigates “Judicial Misconduct And Judicial Incapacity,” And Disciplines Judges.** “The Commission on Judicial Performance, established in 1960, is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to article VI, section 18 of the California Constitution.” (“Home,” [California Commission on Judicial Performance](#), Accessed 8/24/21)
- **Advisory Letters Are Used To Advise “Caution” Or Express “Disapproval” After A Judge Commits “Improper Conduct.”** “If the commission determines that improper conduct occurred, but the misconduct was relatively minor, the commission may issue an advisory letter to the judge. In an advisory letter, the commission advises caution or expresses disapproval of the judge’s conduct.” (“Advisory Letters,” [California Commission on Judicial Performance](#), Accessed 8/24/21)

During The Hearing, Roesch Repeatedly Denigrated And Insulted The Plaintiff, Even Proclaiming The Plaintiff Asked “An Idiotic Question.” “During a colloquy about whether the litigant’s service of process was proper, Judge Roesch remarked, ‘Well, I can see why you don’t practice law. You don’t bother to read the law.’ When the litigant asked Judge Roesch if he needed to do anything else for the judge to read his motion, Judge Roesch responded, ‘Well, I don’t mean to be insulting, but that’s an idiotic question.’ When the litigant asked Judge Roesch for an explanation, he responded, ‘It’s not my job to explain something to somebody who says they are a lawyer.’ Judge Roesch also remarked, ‘I sure hope you teach elementary school better than you practice law.’” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

In October 2020, Roesch was unanimously admonished by the California Commission on Judicial Performance for his biased presiding of two separate cases, including one where he

willfully broke the law and denied a party their “fundamental” right to due process and another where he impugned a party over unfounded concerns about “cheating.”

In October 2020, The California Commission On Judicial Performance Unanimously Admonished Roesch, After He Took Sides In Two Separate Cases He Presided Over.

“California’s judicial disciplinary agency reprimanded Alameda County Superior Court Judge Frank Roesch on Thursday for taking sides and acting as an advocate in two cases in his court. In both cases, Roesch ‘displayed a lack of the dispassionate neutrality and the courtesy to others that is expected of judges,’ the Commission on Judicial Performance said in a 9-1 decision publicly admonishing the judge. The dissenter voted for a private admonishment.” (Bob Egelko, “Alameda County judge reprimanded for treatment of witness, lawyer,” [San Francisco Chronicle](#), 10/15/20)

In The First Case, Roesch Repeatedly Contravened The Law By Allowing A Witness To Improperly Assert “The Fifth Amendment Privilege Against Self-Incrimination.” “Judge Roesch then ordered that, when Finberg asserted the Fifth Amendment privilege against self-incrimination, she was to take the witness stand and do so in front of the jury. This was contrary to law. Requiring a witness to invoke the privilege in front of the jury invites the jury to draw an improper inference and violates Evidence Code section 913 (forbidding judges and attorneys from commenting on the assertion of the privilege, and forbidding juries from drawing any inference from it). (People v. Frierson (1991) 53 Cal.3d 730, 743; People v. Holloway (2004) 33 Cal.4th 96, 130; Victaulic, supra, 20 Cal.App.5th at p. 981.) Judge Roesch also permitted Finberg to assert a blanket claim of privilege against self-incrimination as to all questions that would be asked of her. This, too, was contrary to law.” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

NOTE: *Roesch’s decision in this case was later overturned by a California appeals court. See the section in this chapter on “Repeatedly Overruled By Higher Courts.”*

- **Roesch’s Misconduct Was Not Only A Violation Of Statutory Rights, But Also The “Fundamental” And Constitutional Right To Due Process.** “The insurers had a statutory right to cross-examine Finberg. (Evid. Code, § 776, subd. (b).) Cross-examination is also a due process right that is fundamental to a fair proceeding.” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)
- **During The Proceeding, Roesch Even Admitted He Was Willfully Disregarding The Law, But Did So Anyway.** “Judge Roesch admitted knowing that a witness cannot assert a blanket claim of the Fifth Amendment privilege and that each question and potential answer must implicate the witness in a criminal act in some way. Counsel for Victaulic brought to the judge’s attention his understanding that the Fifth Amendment needed to be evaluated on a question by question basis and that a blanket invocation was not proper. The insurers’ counsel moved for a mistrial on the ground that a blanket assertion of the privilege denied them a fair trial. Judge Roesch denied the motion. Despite knowing the law on this issue, the judge allowed Finberg to invoke the privilege on a blanket basis and declined to conduct the particularized inquiry required by law. He asserted that he did this because he believed he had ‘buy-in’ from counsel. Having attorneys agree to something the law does not permit does not obviate the judge’s duty to respect and comply with the law. The judge’s action in this regard constituted an intentional

disregard of the law.” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

The Commission Also Criticized Roesch For Attempting To Ensure A Certain Judicial Outcome, “Out Of A Misguided Perception Of” His Role As A Judge. “Judge Roesch’s conduct also reflected embroilment. According to the California Judicial Conduct Handbook (Rothman et al. (4th ed. 2017) § 2:1, p. 58), embroilment can manifest itself when a judge is ‘attempting to see to it that a certain result prevails out of a misguided perception of the judicial role.’ In Victaulic, Judge Roesch believed—erroneously—that Finberg had testified falsely, and he inserted himself into Victaulic’s examination of her in an effort to establish that for the jury. Rather than acting as an impartial jurist, he persisted in questioning her in an overly forceful manner, required her to assert the Fifth Amendment in front of the jury, and did not permit her to be questioned by the insurers, who repeatedly asked him for the opportunity to do so. Judge Roesch acknowledged that he overstepped his role as a trial judge and that his course of conduct related to Finberg’s testimony was misguided. His interaction with Finberg, and the issues that presented themselves in connection with her testimony, reflected a loss of neutrality that is the hallmark of embroilment.” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

In The Second Case, “Roesch Displayed Poor Demeanor” And Repeatedly Impugned One Of The Parties, Even Suggesting Their Conduct “Has The Effect Of Cheating Somebody.” “Judge Roesch displayed poor demeanor in the Westlake matter. His discourteous comments include: ‘What you’re telling me is that Ms. Blumberg did not pay the supplemental taxes and left the county begging’; ‘If [the] answer is if you had gotten the deed at the last hearing, the county would never get its money’; ‘Well, if you asked them to generate them last week, what do you expect?’; ‘Well, if you had given them notice when Regete Gruhn died[.] . . . All they knew was nobody was paying the taxes’; and ‘My concern is that it appears to me that you are seeking a qui[et] title judgment that has the effect of cheating somebody.’” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

NOTE: *Roesch’s decision in this case was later overturned by a California appeals court. See the section in this chapter on “Repeatedly Overruled By Higher Courts.”*

- **Roesch Not Only Improperly Involved Himself In The Second Case As A Biased Actor, But Did So Due To Concerns About “Cheating” That An Appeals Court Later Ruled Were Unfounded.** “Judge Roesch’s conduct in Westlake also reflected embroilment, which occurs when a judge ‘surrenders the role of impartial factfinder/decisionmaker.’ 27 (Rothman, Cal. Judicial Conduct Handbook, supra, § 2:1, p. 58.) Rather than remain neutral, the judge repeatedly engaged the parties and counsel in a manner that conveyed his concern that the parties were ‘cheating somebody.’ But the appellate court found that ‘the circumstances certainly do not evince an intent to cheat or negate [Cox’s] entitlement to an order confirming the trust’s ownership of the property.’” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

Refused To Recuse Himself Despite A Clear Conflict Of Interest

As a judge, Roesch presided over an asbestos case that awarded \$12 million in damages, even though he was biased by asbestos exposure in his own life, which forced Roesch to recuse himself from a similar case only a year later.

In June 2019, A California State Jury Awarded \$12 Million In Damages To A Woman Who Alleged “She Contracted Mesothelioma From Asbestos Supposedly Present In Johnson & Johnson’s And Colgate-Palmolive’s Cosmetic Talc Products.” “Oakland, CA - A California state court jury awarded \$12 million on Wednesday to a woman alleging she contracted mesothelioma from asbestos supposedly present in Johnson & Johnson’s and Colgate-Palmolive’s cosmetic talc products, marking the end of the first talc powder trial involving the two companies.” (David Siegel, “California Jury Awards \$12M in 1st Joint Colgate, Johnson & Johnson Talc Powder Trial,” [Courtroom View Network](#), 6/12/19)

- **Roesch Presided Over The Case.** “The trial took place before Alameda County Superior Court Judge Frank Roesch, who denied requests from the defendants at the start of the trial to bar news cameras from covering the proceedings.” (David Siegel, “California Jury Awards \$12M in 1st Joint Colgate, Johnson & Johnson Talc Powder Trial,” [Courtroom View Network](#), 6/12/19)

In July 2020, Roesch Was Forced To Recuse Himself From Another Case Involving Asbestos And Mesothelioma, After Accidentally Admitting On Courtroom Video He Was Previously Exposed To Asbestos. “Audio mishaps have been a theme in the case. Before it was assigned to Judge Lee, the case was presided over by Alameda County Superior Court Judge Frank Roesch, who accidentally left his microphone on after the day's proceedings' concluded on July 16. Without realizing he was broadcasting to the attorneys, Judge Roesch had a conversation with his clerk about his own asbestos exposures, saying he had changed the brakes on his cars and did home repairs that ‘probably exposed [him] to asbestos’ before he was aware of its hazards. The admission came in an order he filed last week in another asbestos case.” (Daniel Siegal, “Juror Irregularities Mar Asbestos Zoom Trials, Defendants Say,” [Law360](#), 8/18/20)

- **Roesch Was Exposed To Asbestos “Twenty To Fifty Years Ago.”** (Recusal, *Ricardo Ocampo and Elvia Ocampo v. Honeywell Int’l Inc. et al.*, Case No. RG19-041182, [Alameda Superior Court](#), 7/17/20)

That conversation that he related to the court was not stated to be about the case, but rather, was a discussion between myself and the clerk that I have, in the past, been exposed to asbestos in variety of ways.

1

My exposure to asbestos fibers twenty to fifty years ago has, in fact, not caused me to be biased either for or against the defendant nor for or against the plaintiff.

- **The Case Roesch Recused Himself From Involved “A Former Custodian Who Claimed He Got Mesothelioma Due To” Asbestos Exposure From Brake Linings.** “In the nation’s first asbestos trial held entirely by video conference to reach a verdict, Honeywell International, Inc. received a defense verdict in a case filed by a former custodian who claimed he got mesothelioma due to exposure to the mineral in brake pads at auto dealerships where he worked. (Ocampo, et al. v. Honeywell International Inc., et al. Alameda County Superior Court Case No.: RG19041182.). Mr. Ocampo and his wife sued Honeywell after he was diagnosed with mesothelioma that he attributed to exposure to asbestos contained in Bendix Corporation brake linings when he worked at various car dealerships and other businesses. Honeywell had previously acquired Bendix. Honeywell challenged the connection between Mr. Ocampo’s exposure to the Bendix brake linings and him getting cancer.” (David Molinari, “One Verdict Does Not Make a Trend. Will Virtual Trials Take the Personal Out of the Personal Injury Jury Trial?” [Freeman, Mathis & Gary](#), 9/9/20)

Parties Repeatedly Demanded His Recusal Because Of Alleged Biases

In May 2012, Roesch was assigned off a case after one of the parties petitioned for his removal, claiming he was so “prejudiced” that “a fair and impartial trial or hearing” would not have been possible.

On May 12, 2012, Public Lands For The People, Petitioned To Have Roesch Recused From An Environmental Case He Was Presiding Over. (Peremptory Challenge to Hon. Frank Roesch, *Karuk Tribe et al. v. California Dep’t of Game and Fish*, Case No. RG05211597, [Superior Court of Alameda County](#), 5/21/12)

<p>ALAMEDA COUNTY CASE NO. RG05 211597 (Karuk Tribe)</p> <p>PEREMPTORY CHALLENGE TO HON. FRANK ROESCH (CCP Sec. 170.6)</p> <p>RE: SAN BERNADINO COUNTY CASE NO. CIVDS1203849 (<i>Public Lands for the People, Inc., et. al. v. California Department of Fish and Game, et al.</i>)</p>

- **In April 2012, A Coalition Of Groups Filed A Lawsuit Against Suction Dredging Regulations Released By The State Of California.** “Old dredging enthusiasts hoping for a light at the end of California’s moratorium tunnel may have yet another obstacle to overcome. On Tuesday, a coalition of organizations – including the Karuk Tribe, the Pacific Coast Federation of Fishermen’s Associations (PCFFA), the Center for Biological Diversity and Friends of the River – announced they have filed a new lawsuit against the California Department of Fish and Game (CDFG) over its newly approved and updated regulations for suction dredging. The updated regulations were adopted by the CDFG on March 16, though the Siskiyou County Board of Supervisors sent a letter to the agency requesting an extension of the original 15-day public comment period for the draft

regulations. The extension was not granted.” (John Bowman, “Group files new suction dredge lawsuit,” [Siskiyou Daily News](#), 4/4/12)

Public Lands For The People Alleged Roesch Was So “Prejudiced Against Petitioners/Plaintiffs” That It Would Have Prevented “A Fair And Impartial Trial Or Hearing.” (Peremptory Challenge to Hon. Frank Roesch, *Karuk Tribe et al. v. California Department of Game and Fish*, Case No. RG05211597, [Superior Court of Alameda County](#), 5/21/12)

13 The judge before whom the coordination in the aforesaid action is pending, the
14 Honorable Frank Roesch, is prejudiced against Petitioners/Plaintiffs and their interests, so that
15 declarant cannot, and believes that declarant and Petitioners/Plaintiffs cannot, have a fair and
16 impartial trial or hearing before such judge.

- **Roesch Was Also Accused Of Giving Past Preferential Rulings To An Opposing Party In The Case.** “The Center for Biological Diversity has filed motions to get the case moved from San Bernardino Superior Court to Alameda Superior Court where Judge Roesch has given them favorable rulings in the past. If the transfer is approved, PLP will seek to have the judge recused.” (Scott Harn, “Legislative and Regulatory Update,” [ICMJ's Prospecting and Mining Journal](#), June 2012)

On May 29, 2012, A New Judge Was Assigned To The Case. (Peremptory Challenge to Hon. Frank Roesch, *Karuk Tribe et al. v. California Dep't of Game and Fish*, Case No. RG05211597, [Superior Court of Alameda County](#), 5/29/12)

5/29/2012 Notice of Judicial Reassignment for All Purposes Issued

In March 2020, Roesch was assigned off a case the very same day one of the parties petitioned for his removal, claiming he was so “prejudiced” that “a fair and impartial hearing” would not have been possible.

On March 5, 2020, The City Of Livermore Motioned For Roesch To Be Recused From A Lawsuit He Was Assigned To, Which Involved The City. (Motion for Peremptory Challenge Under Code of Civil Procedure Section 170.6, *Friends of South Livermore v. City of Livermore*, Case No. RG20054362, [Superior Court of Alameda County](#), 3/5/20)

1 Pursuant to Code of Civil Procedure section 170.6, Respondent the City of Livermore (City)
2 respectfully moves this Court for a peremptory disqualification of Judge Frank Roesch, who has been
3 assigned to the above-captioned case for all purposes. This motion is based on the Declaration of
4 Sabrina V. Teller, attached hereto as Exhibit A.
5 In accordance with Code of Civil Procedure section 170.6, the City respectfully requests that the
6 Honorable Frank Roesch be disqualified from hearing or being assigned to any matters related to this
7 action, and that the matter be re-assigned to another judge for all purposes. This is the first and only
8 such motion by the City.

- **Livermore Alleged Roesch Was So “Prejudiced Against The City” That “A Fair And Impartial Hearing” Would Not Have Been Possible Under Him.** (Motion for

Peremptory Challenge Under Code of Civil Procedure Section 170.6, *Friends of South Livermore v. City of Livermore*, Case No. RG20054362, [Superior Court of Alameda County](#), 3/5/20)

8 | 3. The Honorable Frank Roesch was assigned to this case for all purposes on or about February
9 | 21, 2020, and the City received notice of the assignment of Judge Roesch dated February 21, 2020
10 | through a Notice of Hearing indicating that a Case Management Conference had been scheduled for
11 | May 15, 2020. It is my belief that Judge Roesch is prejudiced against the City or the interests of the
12 | City to such a degree that the City cannot have a fair and impartial hearing and/or trial before him.

- **In March 2020, A Group Of Livermore Residents Filed Suit To Stop A Development Project Approved By The City.** “A lawsuit has been filed by Friends of South Livermore seeking to overturn the Livermore City Council's January approval of the Livermore Wine Country Inn project and to halt any action on the development pending the court's decision.” (Gina Channell, “Lawsuit filed to stop, review Livermore Wine Country Inn project,” [Pleasanton Weekly](#), 3/17/20)

The Very Same Day, A New Judge Was Assigned To The Case. (Notice of Judicial Reassignment for All Purposes Issued, *Friends of South Livermore v. City of Livermore*, Case No. RG20054362, [Superior Court of Alameda County](#), 3/5/20)

3/5/2020	Notice of Judicial Reassignment for All Purposes Issued
3/5/2020	Petition Re: Peremptory Challenge as to Frank Roesch Granted
3/5/2020	Petition Re: Peremptory Challenge as to Frank Roesch Filed for City of Livermore

Repeatedly Overruled By Higher Courts

Misapplied California Election Law

In September 2009, a California appeals court overruled Roesch and reversed a prior decision from him, finding Roesch’s decision misapplied California election law and failed to realize primary elections definitionally cannot be “final elections.”

In July 2008, The Chairman Of The Alameda County Republican Party Sued, Seeking To Overturn The Election Of Several Libertarians “To The County’s Republican Central Committee.” “An Alameda County judge has thrown out a lawsuit contesting the election to the county's Republican Central Committee of a handful of supporters of libertarian Ron Paul, a former presidential candidate. Alameda County Superior Court Judge Frank Roesch rejected a lawsuit by committee Chairman Paul Cummings of Oakland seeking to overturn the election to the committee of a group of Paul supporters and Minutemen. The opposition group won 12 of the committee's 30 elected seats in the June 3 election, and Cummings alleged that seven of them did not meet the party membership requirements for candidates.” (Charles Burress, “Judge throws out suit over GOP committee,” [SFGate](#), 11/27/08)

- **The Suit Was Filed In July 2008.** (Case Summary, *Cummings v. Stanley*, Case No. RG08400144, [Superior Court of Alameda County](#), Accessed 9/7/21)

Case Number:	RG08400144
Title:	Cummings VS Stanley
Case Type:	Civil
Complaint Type:	Other Petition (More than one party)
Case Subtype:	General Civil
Filing Date:	7/25/2008
Filing Location:	Rene C. Davidson Alameda County Courthouse

In November 2008, Roesch Threw Out The Lawsuit Entirely, Declaring It Was “Invalid.” “Rather than rule on the eligibility claim, Roesch in his decision dated Monday declared the lawsuit invalid, saying it was filed after the deadline for contesting the election.” (Charles Burress, “Judge throws out suit over GOP committee,” [SFGate](#), 11/27/08)

- **Roesch Found The Plaintiff Failed To File “Within The Statutory Five-Day Time Limit For Primary Election Contests.”** “The trial court dismissed the action on the ground that plaintiff failed to file the action within the statutory five-day time limit for primary election contests.” (Opinion, *Cummings v. Stanley*, Case No. A123743, [California Court of Appeal for the First District](#), 9/4/09)

Cummings Subsequently Appealed Roesch’s Decision. “Therefore, plaintiff’s action was dismissed as ‘untimely’ filed. This appeal followed.” (Opinion, *Cummings v. Stanley*, Case No. A123743, [California Court of Appeal for the First District](#), 9/4/09)

In September 2009, A California Court Of Appeals Overruled Roesch And Reversed His Decision. “Accordingly, the judgment is reversed and the case is remanded to the trial court to conduct further proceedings consistent with the views expressed herein. Costs on appeal are awarded to plaintiff.” (Opinion, *Cummings v. Stanley*, Case No. A123743, [California Court of Appeal for the First District](#), 9/4/09)

The Appeals Court Found Roesch’s Decision Miscategorized The GOP Committee Election As A “Primary Election,” Pointing Out Primary Elections Definitionally Cannot Be “Final Elections.” “In summary, a ‘primary election’ is defined in section 341 to include only nominations for office, not final elections. Defendants were elected as Committee members during the course of a ‘direct primary’ conducted pursuant to section 316, but the final election of defendants cannot be defined as a ‘primary election’ under section 341. The election of defendants as Committee members must be classified as other than a primary election, and therefore plaintiff was not required to file his contest within the five-day time limit of section 16421 applicable only to primary elections. Plaintiff’s election contest is governed by the requirements delineated in sections 16400 and 16401 for the filing of a contest to ‘any election,’ and his contest was timely filed within the 30-day time limit of section 16401, subdivision (d).” (Opinion, *Cummings v. Stanley*, Case No. A123743, [California Court of Appeal for the First District](#), 9/4/09)

Incorrectly Sided With Unions Over California’s Fiscal Health During A “Fiscal Crisis”

In March 2010, Roesch was overruled by a California appeals court and then the state's supreme court after he attempted to appease public sector unions by invalidating furlough powers passed by the state legislature during a "fiscal crisis."

In December 2009, Roesch Struck Down California Governor Arnold Schwarzenegger's Ability To Furlough State Workers, During A "Fiscal Crisis" In California. "A California judge on Thursday ruled that Gov. Arnold Schwarzenegger abused his discretion in ordering furloughs of state workers, dealing a blow to his administration's efforts to cope with California's fiscal crisis. The judge, Frank Roesch of Alameda County Superior Court, said the administration must halt the furloughs for workers represented by three unions, including Service Employees International Union Local 1000, which represents 95,000 state employees." ("Judge Blocks Furloughs in California," [Associated Press](#), 12/31/09)

- **Governor Schwarzenegger Had Ordered Hundreds Of Thousands Of State Workers Furloughed Amid A "Fiscal Crisis" In The State.** "California's first-ever furloughs began Friday with more than 200,000 state workers expected to stay home without pay amid the state's fiscal crisis. Among the offices forced to close Friday were the Department of Motor Vehicles and the Department of Consumer Affairs. The governor's Office of Emergency Services also was dark as part of the cash-saving move ordered by Gov. Arnold Schwarzenegger." ("Furlough Fridays begin for Calif. state workers," [Associated Press](#), 2/6/09)
- **In December 2008, Public Employee Unions Sued, Seeking To Block The Furloughs.** "Two public employee unions on Monday sued Gov. Arnold Schwarzenegger to block his effort to furlough state workers in a cost-cutting measure as California's treasury runs out of money. Last week, Schwarzenegger issued an executive order to require that all state employees take two unpaid days off each month starting in February. The governor said the measure is needed to conserve cash, with the state budget gap estimated to reach \$42 billion a year and a half from now." (Jordan Rau, "Unions sue to halt furloughs" [Los Angeles Times](#), 12/23/08)

In March 2010, A California Appeals Court Overruled Roesch, Temporarily Reinstating Governor Schwarzenegger's Furlough Powers. "A San Francisco appellate court applied the brakes Tuesday to a judge's order to end 'Furlough Fridays' for tens of thousands of state workers, keeping furloughs in place. The 1st District Court of Appeal's decision temporarily maintains Gov. Arnold Schwarzenegger's furlough policy for employees in about 70 state departments who were supposed to resume a regular work schedule this week." (Jon Ortiz, "Schwarzenegger gets his furloughs back," [Anchorage Daily News](#), 3/31/10)

In October 2010, California's Supreme Court Unanimously Overruled Roesch. "The California Supreme Court on Monday upheld Gov. Arnold Schwarzenegger's order to furlough state workers, providing a major victory for part of the governor's budgeting plans. In its unanimous ruling, the court concluded the state Legislature's 2009 budget bill 'validated the governor's furlough program.'" (Don Thompson and Paul Elias, "Calif. High Court Upholds Schwarzenegger Furloughs," [Associated Press](#), 10/4/10)

- **California’s Supreme Court Cited Budget Legislation The State Legislature Had Already Passed, And Which Explicitly “Authorized The Furloughs.”** “The budget legislation passed in 2009 authorized the furloughs through either collective bargaining or ‘existing administration authority.’ The state Supreme Court said those three words gave the governor his authority. ‘By enacting this provision, the Legislature, through the exercise of its own legislative prerogative, authorized the substantial reduction in the appropriations for employee compensation, mandated in the revised budget legislation, to be achieved through the two-day-a-month furlough plan,’ the court said.” (Don Thompson and Paul Elias, “Calif. High Court Upholds Schwarzenegger Furloughs,” [Associated Press](#), 10/4/10)

Incorrectly Ruled Against Oakland Hiring Critically Needed Police Officers

In December 2010, a California appeals court overruled Roesch, who tried to block the City of Oakland from using public safety funds to hire new police officers after the city’s homicide rate increased by more than 80 percent.

In April 2009, Roesch Ruled The City Of Oakland Misspent Public Safety Funds After Using Them To Hire New Police Officers. “The city illegally used millions of dollars in voter-approved money to recruit and train police officers who weren’t assigned to the problem-solving positions called for under the city’s 2004 public-safety ballot measure, Measure Y, a judge has ruled. Alameda County Superior Court Judge Frank Roesch issued a ruling roughly a year after Oakland resident Marleen Sacks sued the city over what she called a ‘generalized’ police recruiting drive in 2008 that violated the terms of Measure Y. Roesch agreed, saying the Police Department’s practice of training incoming patrol officers with Measure Y money was illegal. The lawsuit was filed after Mayor Ron Dellums’ push last year to use Measure Y dollars to fully staff the Police Department.” (Kelly Rayburn, “Judge: Measure Y funds used improperly,” [East Bay Times](#), 4/3/09)

- **In 2004, Oakland, CA Residents Voted For New Public Safety Measures After Violent Crime Increased Throughout The Early 2000s.** “Increases in violent crime in the early 2000s caused a great deal of concern among Oakland, California, residents and policymakers. In response, in November 2004, Oakland voters passed a ballot measure that created the Violence Prevention and Public Safety Act (also known as Measure Y), which provides \$19.9 million per year for violence-prevention programs, 63 new police officers focused on community and neighborhood policing services, and an independent evaluation of the measure.” (Jeremy M. Wilson and Amy G. Cox, “Community Policing and Crime,” [RAND](#), 2008)
- **Between 1999 And 2003, Oakland’s Homicide Rate Increased By 81 Percent.** “In the early 2000s, Oakland, which had long struggled with high levels of violent crime, experienced an 81% increase in homicides between 1999 and 2003.” (Mike McLively and Brittany Nieto, “A Case Study In Hope,” [Giffords Law Center](#), April 2019)

In December 2010, A California Appeals Court Reversed Roesch’s Ruling And Found Oakland’s Use Of The Funds To Hire New Officers Was Appropriate. “A state appeals court has sided squarely with the city in a lawsuit over its use of Measure Y funding, a 2004 voter-approved violence-prevention ordinance. The appellate panel ruled Friday that the city did not

violate the law by spending millions of Measure Y dollars on new police hires that would not be placed in the ‘problem-solving’ positions outlined in the ordinance. Oakland resident Marleen Sacks sued the city in 2008 and again this year, demanding that it repay \$15 million in funds that she said were misspent. In 2009, Alameda Superior Court Judge Frank Roesch ruled that the city had illegally used the funds in its 2008 recruiting drive — money that would have to be repaid from the general fund.” (Katy Murphy, “Appeals court: Oakland did not illegally spend Measure Y money,” [The Mercury News](#), 12/11/10)

Incorrectly Denied Financial Assistance To A Minor Child

In March 2011, a California appeals court reversed a decision from Roesch incorrectly denying financial aid to a minor child.

In October 2008, A California Mother Filed Suit In Alameda County, Seeking To Reverse An Administrative Decision Denying Financial Assistance To Her Son Due To Already Receiving Benefits From CalWORKs. “On October 20, 2008, Dajohn, through Zeno as his guardian ad litem, filed a petition for writ of mandate against Alameda County, the Alameda County Social Services Agency, and the agency's interim director, seeking reversal of the administrative decision (Code Civ. Proc., § 1094.5) and challenging the county's policy of denying GA to MFG children (Code Civ. Proc., § 1085). An amended petition filed on December 18, 2008, added petitioner Lifetime, a nonprofit California corporation that assists low-income parents in completing education and training programs, and clarified that the challenge was to denial of GA to MFG children who are members of assistance units in which no one receives cash aid from CalWORKs.” (Opinion, *McCormick v. Cty. of Alameda*, Case No. A126818, [California Court of Appeal for the First District](#), 3/2/11)

- **CalWORKs Is A Financial Assistance Program Provided “To Families With Minor Children.”** “California Work Opportunity and Responsibility to Kids, also known as CalWORKs, provides temporary financial assistance and employment-focused services to families with minor children whose income and property are below State maximum limits for their family size.” (“CalWORKs,” [Los Angeles County Department of Public Social Services](#), 9/10/21)
- **Until 2017, California’s “Maximum Family Grant” Rule Denied “Additional Welfare Payments For Families Who Have More Children While Receiving State Aid.”** “As of Jan. 1, California no longer prevents additional welfare payments for families who have more children while receiving state aid, removing a rule that called discriminatory and invasive. The 1994 rule known as the ‘maximum family grant’ was expressly promoted at the time as a way to discourage people on welfare from having more children.” (Ben Bradford, “New Law: Repeal Of ‘90s Welfare Rule Takes Effect,” [California Public Radio](#), 1/2/17)

In August 2009, Roesch Denied The Mother’s Petition. “The matter was heard on July 22, 2009, and on August 3, 2009, the court filed its order denying the petition.” (Opinion, *McCormick v. Cty. of Alameda*, Case No. A126818, [California Court of Appeal for the First District](#), 3/2/11)

In March 2011, A California Appeals Court Overruled Roesch, Reversing His Decision. “We conclude Dajohn was improperly denied eligibility for general assistance and reverse.” (Opinion, *McCormick v. Cty. of Alameda*, Case No. A126818, [California Court of Appeal for the First District](#), 3/2/11)

The Appeals Court Argued Alameda County Cannot Use The Maximum Family Grant Rule To Deny Assistance On The Basis Of Cash Assistance A Family Does Not Actually Receive. “To the extent it excludes from GA eligibility a CalWORKs MFG child whose family does not in fact receive any cash assistance from CalWORKs because the older eligible CalWORKs children no longer reside with the family, Alameda County General Assistance Regulations former section 9-2-0.1 is invalid.” (Opinion, *McCormick v. Cty. of Alameda*, Case No. A126818, [California Court of Appeal for the First District](#), 3/2/11)

- **As The Appeals Court Pointed Out, “Calworks Provided No Cash Aid At All To The Family.”** “Dajohn was denied GA because he was viewed as being supported by CalWORKs. Because of the operation of the MFG rule in his particular circumstances, rather than leaving the family to make do with its existing CalWORKs grant, CalWORKs provided no cash aid at all to the family.” (Opinion, *McCormick v. Cty. of Alameda*, Case No. A126818, [California Court of Appeal for the First District](#), 3/2/11)

Incorrectly Threatened A Man’s “Constitutionally Protected Speech”

In May 2012, a California appeals court overruled a prior decision from Roesch, finding his decision had threatened a man’s “constitutionally protected speech,”

In September 2010, Roesch Denied A Man’s Attempt To Toss Out A Defamation Lawsuit Against Him For Comments Posted Online. (Order Denying Motion to Strike, *Summit Bank v. Robert Rogers et al.*, [Superior Court of Alameda County](#), 9/10/10)

The motion of defendant Robert Rogers for a motion to strike Summit’s first amended complaint came on for regular hearing before the Honorable Frank Roesch. Defendant appeared by Kurt Wilson, Esq. Plaintiff appeared by Steven B. Piser, Esq.

The court, after reviewing the pleadings, and hearing the argument of counsel finds the motion to strike should be DENIED for the following ^{separate and independent} reasons:

1. Defendant has not sustained his burden to show that the conduct falls within the provisions of CCP section 425.16(b)(1) because the conduct did not arise from an act in furtherance of any protected constitutional activity.
2. Plaintiff has also demonstrated that it has established a probability that it will prevail on the claim.

- **In 2009, A California Bank Sued Its Former Vice President For Defamation After He Posted Unflattering Depictions Of The Bank Online.** “Robert Rogers, who was a vice president of Oakland-based Summit Bank and its chief credit administrator in 2007 and 2008, placed the remarks on the Internet site in June and July 2009. Among other

comments, he criticized the bank's chief executive, said state and federal regulators 'are looking at Summit Bank,' noted that the bank's Hayward branch had closed and urged, 'I would suggest that any one that banks at Summit Bank leave before they close.' The bank sued him for defamation in Alameda County Superior Court, claiming the comments were false and libelous. Rogers contended in pretrial proceedings that his posts were protected free speech." ("Court dismisses Oakland bank's libel suit over Craigslist rant," [East Bay Times](#), 5/30/12)

- **The Lawsuit Was Filed In August 2009.** (Case Summary, *Summit Bank v. Robert Rogers et al.*, [Superior Court of Alameda County](#), Accessed 8/23/21)

Case Number:	RG09468837
Title:	Summit Bank, a California Corporation VS 1
Case Type:	Civil
Complaint Type:	Defamation
Case Subtype:	General Civil
Filing Date:	8/17/2009
Filing Location:	Rene C. Davidson Alameda County Courthouse

In May 2012, A California Appeals Court Overruled Roesch And Awarded The Defendant "Attorney Fees And Costs." "The order denying the motion to strike is reversed. Upon remand, the trial court shall issue a new and different order striking the Bank's complaint and shall enter an order awarding Rogers his attorney fees and costs." (Opinion, *Summit Bank v. Robert Rogers*, [California Court of Appeal for the First District](#), 5/29/12)

- **The Higher Court Found Roesch's Ruling Threatened The Defendant's Right To "Constitutionally Protected Speech."** "For the foregoing reasons, we conclude the Bank has not presented uncontroverted and conclusive evidence establishing that anything Rogers posted on Craigslist was illegal as a matter of law under Financial Code section 1327. Instead, we find section 1327 cannot be reconciled with modern constitutional requirements. It is a criminal libel statute without a malice requirement, which is designed to prohibit speech based on its content. It fails to give persons of ordinary intelligence fair notice of what is forbidden. It sets no discernible limits on what types of speech can be criminalized, and, allowing such free range, it lends itself to arbitrary enforcement. Of greatest concern, it has the potential to inhibit persons from engaging in constitutionally protected speech about the financial soundness of our banking system by threatening those who express themselves with a less than optimistic view on this topic with criminal sanctions. Therefore, we conclude that Rogers's communications on Craigslist do not fall within the very narrow and extreme circumstances required by Flatley to exclude otherwise protected speech from the reach of the anti-SLAPP statute." (Opinion, *Summit Bank v. Robert Rogers*, [California Court of Appeal for the First District](#), 5/29/12)

The California appeals court also found Roesch's decision relied on a law that was unconstitutional, and the California Supreme Court later declined to hear the case.

In Its Decision Overruling Roesch, The California Appeals Court Also Struck Down As Unconstitutional A California Law Cited By Roesch In His Decision. “Specifically, the Bank claims Rogers’ posts on Craigslist were illegal under Financial Code section 1327, which imposes criminal liability when an untrue ‘statement or rumor’ is made that is ‘directly or by inference derogatory’ to a bank’s financial condition. We find that, even if Rogers’ speech violated the statute, it cannot be deemed ‘illegal as a matter of law’ because Financial Code section 1327 is an impermissible content-based restriction on speech protected by federal and state constitutional free speech guarantees.” (Opinion, *Summit Bank v. Robert Rogers*, [California Court of Appeal for the First District](#), 5/29/12)

In September 2012, The Supreme Court Of California Declined To Hear The Case. (Supreme Court order filed, *Summit Bank v. Robert Rogers*, [California Court of Appeal for the First District](#), 9/26/12)

09/26/2012	Supreme Court order filed re:	The request for an order directing depublication of the opinion in the above-entitled appeal is denied. The Court declines to review this matter on its own motion. The matter is now final.
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Repeatedly Denied A Man His Rightful Restitution

In June 2012, a California appeals court found Roesch improperly denied a man unemployment benefits and proclaimed Roesch contravened both evidence and law when he accused the man of “misconduct.”

In January 2010, A Service Technician In Hayward, CA Was Fired After Attempting To Use A Job Benefit To Gift Shoes To A Friend. “Robles, a naturalized U.S. citizen with two children, worked for four years as a service technician for Liquid Environmental Solutions in Hayward, removing grease and other hazardous wastes from restaurants. In January 2010, he took an injured friend who was not an employee of the company to a store in San Leandro where company employees bought work shoes with a \$150 annual allowance. He told the clerk he already had safety shoes and asked if she would measure his friend’s feet for a new pair. The clerk refused and the store contacted Robles’ employer, which promptly fired him for violating company policy.” (Bob Egelko, “State must pay benefits to fired worker who left country,” [SFGate](#), 5/6/15)

The Fired Technician Was Subsequently Denied Jobless Benefits By The California Employment Development Department, Which Argued “He Had Committed Serious Misconduct.” “The Employment Development Department then denied Robles jobless benefits, saying he had committed serious misconduct.” (Bob Egelko, “State must pay benefits to fired worker who left country,” [SFGate](#), 5/6/15)

In Response, The Fired Technician Filed Suit In Alameda County, Seeking To Overturn His Denial. “Finally, Robles petitioned for a writ of administrative mandate [(Petition)].” (Opinion, *Jose Robles v. Emp’t Dev. Dep’t*, Case No. A139774, [California Court of Appeal for the First District](#), 5/4/15)

In August 2011, Roesch Denied The Fired Technician’s Petition. “The trial court denied the petition, concluding that the administrative findings were supported by the weight of the evidence.” (Opinion, *Jose Robles v. Emp’t. Dev. Dep’t et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

- **Roesch’s Judgement Was Delivered In August 2011.** (Judgement, *Robles v. Emp’t Devp. Dep’t*, Case No. RG10553752, [Superior Court of Alameda County](#), 8/12/11)

8/12/2011

Notice of Entry of Judgment Filed

In Response, The Technician Appealed. “The trial court denied the petition, concluding that the administrative findings were supported by the weight of the evidence. Robles appealed.” (Opinion, *Jose Robles v. Emp’t. Dev. Dep’t et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

In June 2012, A California Appeals Court Reversed Roesch’s Decision And Awarded “Unemployment Insurance Benefits Withheld Plus Interest” To The Technician. “We reverse the judgment and direct the trial court to issue its writ of mandate ordering respondents the EDD and the Board to award Robles the unemployment insurance benefits withheld plus interest on those benefits under Civil Code section 3287, subdivision (a).” (Opinion, *Jose Robles v. Emp’t. Dev. Dep’t*, Case No. A139774, [California Court of Appeal for the First District](#), 6/22/12)

The Appeals Court Found Roesch’s Decision, Which Categorized The Technician’s Action As “Misconduct,” Contravened Both Evidence And Law. “Robles urges that the trial court erred in concluding that the administrative findings — namely that his actions constituted ‘misconduct’ under section 1256 — were supported by the weight of evidence. He urges that the findings are not supported by the evidence and are contrary to law. We agree.” (Opinion, *Jose Robles v. Emp’t. Dev. Dep’t*, Case No. A139774, [California Court of Appeal for the First District](#), 6/22/12)

Roesch then denied the technician hundreds of thousands of dollars in legal fees despite the technician’s years-long battle for justice, only to be overruled by a California appeals court who found Roesch failed to recognize the public significance of the case.

Rather Than Comply With The Appeals Court’s Decision, The California Employment Development Department Sought To Deny The Technician Tens Of Thousands, Claiming He “Had Failed To Respond To Notices.” “Ordered to pay retroactive benefits, the department sent Robles \$12,240 for his first 26 weeks of unemployment but declined to pay an additional 73 weeks of federally mandated benefits, despite court orders that found him eligible. The department said Robles had failed to respond to notices sent to his Alameda address, starting in October 2012, telling him to submit forms promptly to verify his continued eligibility.” (Bob Egelko, “State must pay benefits to fired worker who left country,” [SFGate](#), 5/6/15)

In September 2013, Roesch Ordered The California Employment Development Department To Pay Its Remaining Debt Owed To The Technician. “On August 15, 2013, the trial court issued its order granting Robles’s motion to enforce the Writ (Enforcement Order). The trial court indicated that it was ‘not persuaded’ that this Court merely found Robles eligible for benefits in Robles I, such that his receipt of benefits could be ‘conditioned upon meeting the current eligibility requirements.’ In addition, it concluded that requiring Robles ‘to retroactively certify he satisfied ‘work search requirements’ during the time he was being denied such benefits, violates due process.” (Opinion, *Emp’t. Dev. Dep’t*, Case No. A139774, [California Court of Appeal for the First District](#), 5/4/15)

The California Employment Development Department Then Appealed Roesch's Second Decision In The Case. "Judgment was entered on September 20, 2013, and timely notice of appeal by EDD brought the matter before this court for a second time." (Opinion, *Jose Robles v. Emp't. Dev. Dep't*, Case No. A139774, [California Court of Appeal for the First District](#), 5/4/15)

In May 2015, A California Appeals Court Affirmed Roesch's Decision. "The judgment is affirmed, and this matter is remanded to the trial court for implementation of its Enforcement Order. Robles is entitled to his costs on appeal." (Opinion, *Jose Robles v. Emp't. Dev. Dep't*, Case No. A139774, [California Court of Appeal for the First District](#), 5/4/15)

In March 2016, Despite The Technician's Years-Long Battle To Earn His Just Restitution, Roesch Denied His Lawyer More Than \$600,000 In Legal Fees. "In November 2015, Garfinkle filed a motion in the trial court, seeking reasonable attorney fees pursuant to California's private attorney general statute, section 1021.5. The motion sought slightly over \$1,000,000 in fees for legal services from Garfinkle's first involvement in the case in 2010 to the present. The trial court issued an order in March 2016 awarding \$365,660.94 in fees, limiting recovery to legal services furnished in connection with the *Robles II* phase of the litigation." (Opinion, *Jose Robles v. Emp't. Dev. Dep't et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

The Technician's Lawyer Then Unsuccessfully Filed For "A Limited New Trial And/Or Modification Of The Fee Award," Claiming Roesch Made Several "Errors And Omissions." "Shortly thereafter, Garfinkle filed a motion seeking a limited new trial and/or modification of the fee award, citing to certain perceived errors and omissions in the award with respect to hours compensated, hourly rate, and the multiplier applied. The trial court denied this motion." (Opinion, *Jose Robles v. Emp't. Dev. Dep't et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

The Technician Subsequently Appealed Roesch's Repeated Denials Of His Legal Fees. "Robles appealed, bringing the matter before this court for the third time." (Opinion, *Jose Robles v. Emp't. Dev. Dep't et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

In July 2019, A California Appeals Court Ordered Roesch To Award Additional Legal Fees And Costs. "The trial court's fee order is reversed to the extent it declined to award attorney fees under section 1021.5 for work related to *Robles I*, and this matter is remanded for the trial court to make an additional award of attorney fees and costs that is consistent with the views set forth in this opinion. Robles is entitled to his costs on appeal. (Opinion, *Jose Robles v. Emp't. Dev. Dep't et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

The Appeals Court Found Roesch Failed To Realize The Technician's Case Satisfied "The Criteria For A Fee Award Under Section 1021.5" "In sum, as the *Robles I* litigation satisfies all the criteria for a fee award under section 1021.5, the trial court's conclusion to the contrary was error." (Opinion, *Jose Robles v. Emp't. Dev. Dep't et al.*, Case No. A148803, [California Court of Appeal for the First District](#), 7/31/19)

- **Section 1021.5 Of The California Code Of Civil Procedure Allows Judges To Award Legal Fees In Cases Whose "Action Resulted In The Enforcement Of An Important**

Public Right. “Under California Code of Civil Procedure section 1021.5, the private attorney general statute, the trial court has discretion to award attorneys’ fees to a successful party if, in part, its action resulted in the enforcement of an important public right and the general public received a significant benefit.” (Amanda Daams, “Court Grants Attorneys’ Fees Against City in Development Litigation,” [JD Supra](#), 4/14/21)

A Prejudicial Error And Misapplied Case Law

In November 2012, a California appeals court overruled Roesch and reversed a decision from him after finding he made a prejudicial error that ignored case law, and misapplied the two precedents he “principally relied” on in his decision.

In November 2007, A Former Employee Of Pleasanton, CA Petitioned To Have His “Monthly Retirement Allowance” Retroactively Increased. “The City of Pleasanton (Pleasanton) and a retired Pleasanton employee, James Linhart, petitioned for a writ of mandate to compel the California Public Employees’ Retirement System (PERS) and its Board of Administration (board) to retroactively increase Linhart’s monthly retirement allowance. Linhart contended the board erred in determining a portion of his compensation as a division chief for the Livermore–Pleasanton Fire Department was not pensionable.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

The Petition Was Submitted In November 2007. “After PERS affirmed its original position, Pleasanton initiated an administrative appeal on behalf of itself and several retired former employees in November 2007, asserting PERS was refusing to pay the concerned retirees ‘the retirement benefits to which they are entitled.’” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*

- , Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

In March 2010, The Board Of The California Public Employees’ Retirement System Sided Against The Former Employee’s Petition. “Roush was present at the PERS board meeting on March 17, 2010, when the board took up the ALJ’s proposed decision in Linhart’s case. He addressed the board to express concern that none of his correspondence concerning the due process issue had been made part of the agenda materials presented to the board, and to seek a continuance of the Linhart matter so board members would have a chance to read those letters before it decided the case. Following the advice of its chief legal counsel that the due process issue was not before the board, the board voted to adopt the ALJ’s proposed decision.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

In June 2010, The Former Employee Sued In Alameda County Court, Seeking To Have The Board’s Decision Overturned. “Linhart petitioned the trial court for a peremptory writ of administrative mandamus directing the board to set aside its decision and issue a new decision recalculating his future retirement benefits and awarding him a retroactive payment based on the inclusion of standby pay as part of his pensionable compensation.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

- **The Suit Was Filed In June 2010.** (Case Summary, *City of Pleasanton, City Hall v. Bd. of Admin. of*, Case No. VG10520768, [Superior Court of Alameda County](#), 6/17/10)

Case Number:	VG10520768
Title:	City of Pleasanton, City Hall VS Board of Administration of
Case Type:	Civil
Complaint Type:	Writ of Mandate
Case Subtype:	General Civil
Filing Date:	6/17/2010
Filing Location:	Rene C. Davidson Alameda County Courthouse

In June 2011, Roesch Reversed The Board’s Decision And Increased The Former Employee’s Pension. “The trial court agreed and entered a judgment directing PERS to increase Linhart's monthly pension allowance retroactively from the date of his retirement in 2006.” (*City of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

- **Roesch Delivered The Judgement In June 2011.** (Judgement Entered, *City of Pleasanton, City Hall v. Bd. of Admin. of*, Case No. VG10520768, [Superior Court of Alameda County](#), 6/8/11)

6/8/2011	Judgment Entered
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In November 2012, A California Appeals Court Overruled Roesch And Reversed His Judgement. “The judgment is reversed and the matter is remanded to the trial court with directions to enter a new judgment denying the petition for writ of mandate. Costs are awarded to appellant.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

The Court Of Appeals Found Roesch’s Not Only Erred In His Decision, But Did So In A Prejudicial Manner That Ignored Established Case Law. “For these reasons, we find the trial court erred in its determination Linhart's due process rights were violated, and in reviewing the administrative record de novo. Although the trial court was required in any event to exercise its independent judgment on the evidence, we nonetheless find the error was prejudicial. Even under independent judgment review, the court was required to grant a ‘strong presumption of correctness’ to the administrative findings, and to proceed on the basis that Linhart had the burden ‘of convincing the court that the administrative findings are contrary to the weight of the evidence.’ (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817, 85 Cal.Rptr.2d 696, 977 P.2d 693.) We see no indication the court reviewed the administrative record in that light.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

The Court Of Appeals Found Roesch “Misconstrued” One Of The Precedents He Relied On. “In our view, the trial court misconstrued ABC.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

- **The Appeals Court Also Found Roesch Misapplied Another Precedent.** “Nightlife, cited by the trial court, also does not support its due process ruling.” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.*, Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

- **Those Two Cases Were “Principally Relied” On By Roesch In His Decision.** “In holding it violated Linhart's due process rights for attorney Miles to serve as both PERS's ‘prosecutor’ at the hearing before the ALJ and as ‘the advising staff person’ from the agency to the board, the trial court principally relied on, *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, (2006) 40 Cal.4th 1, 50 Cal.Rptr.3d 585, 145 P.3d 462 (ABC) and *Nightlife Partners Ltd. v. City of Beverly Hills*, (2003) 108 Cal.App.4th 81, 133 Cal.Rptr.2d 234 (Nightlife).” (*City Of Pleasanton et al., v. Bd. of Admin. of the California Pub. Employees Ret. Sys.* Case No. A132586, [California Court of Appeal For The First District](#), 11/29/12)

Misapplied A Legal Concept Taught To First Year Law Students

In January 2013, a California appeals court unanimously overruled a prior decision from Roesch on almost every single claim, finding Roesch not only “erred” on matters of fact but even misapplied a legal concept taught to first year law students.

In June 2011, Roesch Dismissed A Lawsuit Filed By Former University Of California Employees. “A three-year legal battle by Lawrence Livermore Laboratory retirees over medical benefits has sustained a major setback, according to a spokesman for the plaintiffs. In a lawsuit against the regents of the University of California, four lab retirees argued that UC illegally transferred them into the health care plan of the entity that took over lab management from the university in 2007. But on May 27, an Oakland judge dismissed the lawsuit.” (Suzanne Bohan, “Judge dismisses Livermore lab retirees’ lawsuit,” [The Mercury News](#), 6/7/11)

- **Roesch Argued The Former Employees Had Not Provided Sufficient Evidence Of A Contract Or “Major Financial Injury.”** “Alameda County Superior Court Judge Frank Roesch disagreed. The plaintiffs didn’t deliver evidence of ‘a binding contract’ guaranteeing them health benefits ‘equal to those provided to other UC retirees,’ the judge wrote. Nor was their assertion of major financial injury upheld. Roesch wrote that the switch from one retiree health plan to another isn’t ‘an injury so severe’ as to require court intervention.” (Suzanne Bohan, “Judge dismisses Livermore lab retirees’ lawsuit,” [The Mercury News](#), 6/7/11)
- **In 2008, Former University Of California Lab Workers Sued The School System, Alleging It Had Reneged On Health Plan Commitments For Retirees.** “In 2008, the regents stopped providing medical benefits to former lab workers through the University of California, but retirees say they were assured LLNS would provide ‘substantially equivalent’ medical benefits. Just one year later, however, the retirees say the quality of their health plan deteriorated, requiring them to pay more money for inferior coverage. ‘When the change in insurance happened, it suddenly became clear that there were 9,000 people at risk who’d been cut adrift by a change the University made,’ said nuclear physicist Jay Davis, who began his career at the lab in 1971. The lawsuit, filed shortly after management of the lab changed hands, alleges LLNS stopped providing health benefits ‘substantially equivalent’ to what retirees previously received through the University of California, and instead provided benefits that met ‘industry standards.’” (Raj

Mathai, Michael Bott and Jeremy Carroll, “‘They’re Waiting for Us to Die’: 10-Year Battle Over Health Benefits for University of California Lab Retirees Heads to Trial,” [NBC Bay Area](#), 5/13/19)

In July 2011, The Plaintiffs Appealed Roesch’s Decision. “Judgment was entered on June 8, 2011, and Retirees filed a notice of appeal on July 29, 2011.” (Opinion, *Joe Requa et al. v. The Regents of the Univ. of California*, [California Court of Appeal for the First District](#), 12/31/12)

In January 2013, A California Court Of Appeals Overruled Roesch’s Decision. “A state appeals court has revived a lawsuit by retired employees of the University of California's Lawrence Livermore National Laboratory over UC's decision in 2008 to switch their health insurance to a private plan that covered less and cost more. The four retirees presented evidence that the university had promised them lifetime health coverage and can try to prove that the shift to a lesser plan was a breach of contract, the First District Court of San Francisco ruled Monday. The court reversed an Alameda County judge's decision to dismiss the suit.” (Bob Egelko, “Retirees can sue Livermore lab over health care,” [SF Gate](#), 1/2/13)

- **The Higher Court Unanimously Overruled Roesch’s Decision.** “A number of UC publications ‘contain language that could be read as implying a commitment to provide these benefits throughout retirement,’ said Presiding Justice Barbara Jones in the 3-0 ruling.” (Bob Egelko, “Retirees can sue Livermore lab over health care,” [SF Gate](#), 1/2/13)

The California Appeals Court Found Roesch Factually “Erred” By Finding “No Minutes, Formal Resolution Or Standing Order From The Regents” Conferred “Retirement Medical Benefits.” “They contend the lower court erred in finding Retirees had identified no minutes, formal resolution or standing order from the Regents conferring on Retirees retirement medical benefits in perpetuity. Having reviewed the allegations of the FAP and the matters properly subject to judicial notice, we conclude Retirees are correct.” (Opinion, *Joe Requa et al. v. The Regents of the Univ. of California*, [California Court of Appeal for the First District](#), 12/31/12)

The California Appeals Court Also Slammed The University Of California’s Arguments In The Case As “Unpersuasive” And “Based Almost Entirely On Matters Outside Of The Operative Pleading.” “IV. The Regents’ Arguments in Support of the Trial Court’s Order Are Unpersuasive. The Regents offer a number of arguments in support of the trial court’s ruling. For the most part, these arguments are not directed to the sufficiency of the allegations of the FAP, but rather are based almost entirely on matters outside of the operative pleading. As such, they have limited force given the procedural posture of this case, which requires us to accept the truth of Retirees’ allegations and restricts our review to those allegations and matters that are properly subject to judicial notice.” (Opinion, *Joe Requa et al. v. The Regents of the Univ. of California*, [California Court of Appeal for the First District](#), 12/31/12)

The California Appeals Court Even Found Roesch Misapplied The Legal Concept Of Promissory Estoppel. “The trial court sustained the Regents’ demurrer to Retirees’ cause of action for promissory estoppel because it concluded the doctrine cannot be applied against the government where doing so would nullify a policy adopted for the benefit of the public. The trial court did not, however, explain exactly what policy would be nullified. It also concluded Retirees could not allege that the interests of justice clearly require the application of promissory estoppel in this case, nor could they allege any exceptional, peculiar, and compelling

circumstances justifying application of the doctrine. We conclude the trial court erred.” (Opinion, Joe Requa et al. v. The Regents of the Univ. of California, [California Court of Appeal for the First District](#), 12/31/12)

- **Promissory Estoppel Is Taught In First Year Law School.** “American Contract Law I (along with its sister course Contracts II) provides a comprehensive overview of contract law in the United States. The course covers most of the key concepts found in a first year law school class. Each lecture is based on one or more common-law cases, integrating legal doctrines with policy discussions. The course also covers key sections from the Uniform Commercial Code (UCC), which governs the sale of goods. By the end of the course, the learner should be able to understand: Formation: how a valid and enforceable contract is created, including concepts such as offer, acceptance, consideration, and promissory estoppel.” (“American Contract Law I,” [Yale University](#), Accessed 8/23/21)

The California Appeals Court Concluded By Reversing Every Part Of Roesch’s Decision, Except For A Single Claim. “The judgment is affirmed to the extent it dismissed Retirees’ claim for impairment of express contract. In all other respects, the judgment is reversed. Retirees shall recover their costs on appeal.” (Opinion, *Joe Requa et al. v. The Regents of the Univ. of California*, [California Court of Appeal for the First District](#), 12/31/12)

Ignored “Extensive” Evidence And “Abused” His Discretion

In February 2015, a California appeals court overruled Roesch, finding he had “abused” his discretion by deciding a case without holding a single evidentiary hearing.

In 2009, Former Employees Of Pacific Bell Sued AIG, Alleging Their Retirement Benefits Were Mismanaged. “Philip Ashburn and four other previous employees of Pacific Bell (‘Ashburn’) retired prematurely and elected the option of receiving a lump sum benefits payment. Ashburn allowed Sharon Kearney, who had made presentations at Pacific Bell, to manage the resulting funds. Kearney worked with SunAmerica Securities, Inc. (‘SAS’), with whom Ashburn signed a client agreement. SAS was later attained by AIG Financial Advisors, Inc. (‘AIGFA’). Ashburn was dissatisfied with Kearney’s investment choices and sued her and AIGFA for damages.” (“Semi-Annual Case Law Update,” Stone Dean LLP, [Winter 2015](#))

- **The Suit Was Filed In October 2009.** (Case Summary, *Ashburn v. AIG Advisor Grp., Inc.*, Case No. HG09482316, [Superior Court of Alameda County](#), Accessed 9/7/21)

Case Number:	HG09482316
Title:	Ashburn VS AIG Advisor Group, Inc.
Case Type:	Civil
Complaint Type:	Securities Litigation
Case Subtype:	General Civil
Filing Date:	10/30/2009
Filing Location:	Rene C. Davidson Alameda County Courthouse

In January 2010, Roesch Sided With AIG And Compelled The Defendants Into Arbitration Before Holding A Single Evidentiary Hearing. “AIGFA filed a petition to compel arbitration,

supported in part by a declaration of Kearney. Appellants filed vigorous opposition, which included direct contradiction of many of Kearney's factual representations. Without holding an evidentiary hearing, the trial court granted the petition, ordering appellants' claims to arbitration." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

- **The Plaintiffs Lost In Arbitration.** "That arbitration occurred, with the arbitrators ultimately issuing an award rejecting appellants' claims." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)
- **Roesch Granted The Motion In January 2010.** (Petition To Compel Arbitration, *Ashburn v. AIG Advisor Grp., Inc.*, Case No. HG09482316, [Superior Court of Alameda County](#), 1/22/10)

1/22/2010 Petition to Compel Arbitration (Motion) Granted

Following Their Loss In Arbitration, The Plaintiffs Appealed. "After judgment was entered on the award, appellants appealed, arguing their claims should not have been ordered to arbitration, contending among other things that the trial court erred in not holding an evidentiary hearing." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

In February 2015, A California Appeals Court Reversed Roesch's Decision And Awarded Costs To The Appellants. "The judgment is reversed, and the matter is remanded for further proceedings consistent with this opinion. Appellants are awarded their costs on appeal." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

The California Appeals Court Found Roesch Erred By Not Holding An Evidentiary Hearing In The Case. "After judgment was entered on the award, appellants appealed, arguing their claims should not have been ordered to arbitration, contending among other things that the trial court erred in not holding an evidentiary hearing. We agree such hearing was required in the circumstances here, and we reverse." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

In Fact, The Appeals Court Found Roesch "Abused" His Discretion By Not Holding Such A Hearing. "But even if the record could be read to show that the trial court exercised its discretion, we would hold that discretion was abused, in light of the significant factual issues presented here." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

The California appeals court found Roesch not only sided against the appellants despite their "extensive" evidence, but even though the defendants did not even try to introduce "contrary" evidence.

AIG's Motion To Compel Arbitration Contained A Less Than Five Page Declaration From Their Sole Witness With "Firsthand Knowledge." "On December 2, 2009, AIGFA filed a petition to compel arbitration(petition). It was accompanied by a memorandum of points and

authorities, and five declarations, those of Kearney, Marie Meier, Noah Sorkin, Vitucci, and attorney Mark Hancock. Kearney was the only declarant who could testify to any firsthand knowledge of the involvement with any of the appellants, as only she interacted with them. Kearney's declaration (exclusive of exhibits) was four and a half pages, and provided in pertinent part as follows:" (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

Inversely, The Appeals Court Found The Appellants Submitted "Extensive" Evidence Opposing Arbitration. "On December 23, 2009, appellants filed their opposition to the petition. It was a 25-page memorandum of points and authorities, whose first argument was that "The Purported Arbitration Agreements Are Void For Fraud in the Execution." The eight-page argument that followed urged that Kearney was a fiduciary to appellants, an argument supported by extensive—and we do mean extensive—testimony from the various appellants, all of whom testified in great detail about their dealings with Kearney." (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

The Appeals Court Also Found AIG Did Not Even Try To Introduce "Evidence Contrary To That Introduced By Appellants." "Interestingly, despite that AIGFA provided no evidence contrary to that introduced by appellants, AIGFA's reply memorandum states, however conclusorily, that appellants' 'argument that they were never provided with copies of the arbitration provisions is both false and irrelevant.'" (Opinion, *PHILIP ASHBURN et al. v. AIG FINANCIAL ADVISORS, INC. et al.*, Case No. A138620, [California Court of Appeal for the First District](#), 2/6/15)

A Major Decision Reversed Due To "Misconduct And Multiple Errors"

In February 2018, a California appeals court "sharply criticized" Roesch and reversed a more than \$55 million jury verdict he presided over due to his "misconduct and multiple errors," including having "openly mocked" a witness."

In August 2015, Roesch Presided Over "The Largest Verdict" In His Jurisdiction In Nearly A Decade, After A Jury Awarded More Than \$55 Million In Damages To Pipe Company. "An Alameda County, Calif., jury has awarded Pennsylvania-based Victaulic Co., \$55.3 in damages against three AIG companies. The trial in *Victaulic Co. v. Am. Home Assurance Co. et al.*, in Alameda County Superior Court spanned six weeks before Judge Frank Roesch. The verdict, which includes \$9.3 million in compensation for breach of contract and bad faith and \$46 million in punitive damages, is reportedly the largest verdict in the Superior Court of California, County of Alameda in nearly the last 10 years. Victaulic was represented by Pillsbury Winthrop Shaw Pittman LLP. The trial attorneys were insurance recovery and advisory partners Joseph D. Jean and Colin T. Kemp and counsel Jeffrey A. Kiburtz. The case concerns more than 10 years of commercial general liability insurance the three AIG companies — American Home Assurance Co., National Union Fire Insurance Co. and Insurance Company of the State of Pennsylvania — issued to Victaulic from 2001 to 2012. Victaulic is a large producer of mechanical pipe-joining solutions and grooved pipe-joining systems." ("California Court Hands Down \$55M in Decision Against Three AIG Companies," [Insurance Journal](#), 8/17/15)

NOTE: *Roesch was later publicly admonished by the California Commission on Judicial Performance over this case. See the section in this chapter on "Repeated Disciplines."*

- **The Pipe Company Had Sued Its Insurance Provider Over Liability For “Cracked Pipes And Water Damage In Several Suits.”** “Even though AIG no longer insures Victaulic, the win was important because the statute of limitations can be very long, Diamond explained, adding that in California the statute of limitations for some defects can be 10 years. So even though AIG last provided insurance coverage for the company in 2012, they potentially could cover claims until 2022. Victaulic had been facing claims of cracked pipes and water damage in several suits brought by condominiums, a hospital and the Massachusetts Water Resources Authority, and anticipated more than a dozen more suits. But the insurers — National Union Fire Insurance Co. of Pittsburgh, the Insurance Co. of the State of Pennsylvania and American Home Assurance Co. — denied coverage of those claims, and AIG sued Victaulic for declaratory judgment in Pennsylvania court in 2012. That suit was dismissed, and Victaulic filed a suit of its own in California, calling the insurers’ conduct ‘despicable’ and ‘oppression.’” (Liz Kellar, “NC attorney wins \$55M verdict against insurance companies,” [The Union](#), 8/25/15)

In February 2018, A California Appeals Court Overturned Roesch’s Decision, Finding Roesch’s Repeated Errors Were “Prejudicial.” “The insurers appeal, asserting six separate claims of error why the verdict cannot stand. We agree with the insurers there was error, beginning with the court’s allowance of the use of the RFA responses, compounded by the court’s intensive questioning of Finberg, and compounded further by several errors in how the court handled Finberg’s invocation of the Fifth Amendment privilege. We conclude such error was prejudicial, and thus reverse on that ground, without the need to address the insurers’ other arguments.” (Opinion, *Victaulic Co. v. Am. Home Ins. Co. et al.*, Case No. A146617, [California Court of Appeals for the First District](#), 2/26/18)

- **The Appeals Court Unanimously And “Sharply Criticized” Roesch For His Repeat Errors.** “In axing the massive jury award — which encompassed breach-of-contract, bad faith and punitive damages — a three-judge appellate panel in San Francisco sharply criticized a number of decisions by the trial judge, Alameda County Superior Court Judge Frank Roesch.” (Jeff Sistrunk, “Calif. Court Nixes Pipe Co.’s \$55M Jury Award Against AIG,” [Law360](#), 2/27/18)
- **The Appeals Court Also Found Roesch Acted As An Advocate For One Of The Parties By “Openly Mock[ing]” A Witness.** “Furthermore, the panel found, Judge Roesch committed a series of prejudicial errors in how he handled Finberg’s testimony. The trial transcript supports the AIG insurers’ contention that the judge ‘openly mocked Finberg on the stand, acting as an advocate for Victaulic,’ it said. According to the opinion, the trial judge interrupted several times as Victaulic’s counsel was probing the disparity between the insurers’ RFA responses and Finberg’s prior coverage stance. Finberg explained that she had signed off on the RFA replies because the insurance companies had taken the ‘legal position’ that the underlying claims against Victaulic weren’t covered, the opinion says.” (Jeff Sistrunk, “Calif. Court Nixes Pipe Co.’s \$55M Jury Award Against AIG,” [Law360](#), 2/27/18)

In October 2020, The California Commission On Judicial Performance Summarized The Case, Stating Roesch’s Decision Was Reversed Due To “Misconduct And Multiple Errors.”

“The Court of Appeal reversed the judgment due to Judge Roesch’s misconduct and multiple errors during the trial. (*Victaulic Co. v. Am. Home Assurance Co.* (2018) 20 Cal.App.5th 948.)” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

Delayed By Years A Man’s Lawful Ownership Of A Property

Roesch delayed by years a plaintiff’s ownership of a property he legally bought due to unfounded suspicions of “cheating,” forcing a California appeals court to overrule him in April 2018.

In July 2017, Roesch “Refused” To Confirm A Plaintiff’s Ownership Of A Property They Had Legally Purchased. “Plaintiff Alvin Cox, as trustee of the Westlake Trust, in an unopposed appeal challenges the denial of his application to quiet title to a parcel of improved real property in Oakland. Plaintiff purchased the property from the person who several years before had acquired it from a decedent whose estate had not been probated. Although no objection was raised by any party with a conceivable interest in the property, the trial court refused to quiet title apparently on the grounds that title should have been transferred in probate proceedings and that the county would be unable to enforce an anticipated supplemental assessment against the property if title were quieted in plaintiff.” (Opinion, *Cox v. Blumberg*, Case No. A152198, [California Court of Appeals for the First District](#), 4/16/18)

NOTE: *Roesch was later publicly admonished by the California Commission on Judicial Performance over this case. See the section in this chapter on “Repeated Disciplines.”*

- **A Quiet Title Action Confirms Ownership Of A Property.** “A quiet title action, also known as an action of quiet title, is a circuit court action—or lawsuit—that is filed with the intended purpose to establish or settle the title to a property.” (“Quiet Title Action,” [Investopedia](#), 4/19/21)
- **The Case Was Filed In June 2016.** (Case Summary, *Westlake Trust v. The Testate and Intestate Successors of R*, Case No. RG16820169, [Superior Court of Alameda County](#), Accessed 8/23/21)

Case Number:	RG16820169
Title:	Westlake Trust VS The Testate and Intestate Successors of R
Case Type:	Civil
Complaint Type:	Other Real Property
Case Subtype:	General Civil
Filing Date:	6/20/2016
Filing Location:	George E. McDonald Hall of Justice

- **Roesch Presided Over The Case In July 2017.** “In July 2017, Judge Roesch presided over a hearing in *Westlake Trust v. Testate and Intestate Successors of Regete Gruhn* (RG16820169).” (“In The Matter Concerning Judge Frank Roesch,” [California Commission on Judicial Performance](#), 10/15/20)

In April 2018, A California Appeals Court Overruled Roesch And Ordered Him To Confirm The Plaintiff’s Ownership Of The Property. “The judgment is reversed and the matter is remanded for entry of an order quieting title to the Oakland property in plaintiff subject

to the obligation to pay any supplemental real property tax that may be assessed.” (Opinion, *Cox v. Blumberg*, Case No. A152198, [California Court of Appeals for the First District](#), 4/16/18)

- **Roesch Suggested He Did Not Want To Grant Ownership Because Of Concerns About “Cheating,” But As The Appeals Court Pointed Out, Roesch’s Suspicions Were Unfounded.** “At one point, the court commented, ‘My concern is that it appears to me that you are seeking a quiet title judgment that has the effect of cheating somebody.’ The evidence, however, showed that plaintiff had paid all delinquent property taxes and had attempted to pay the supplemental taxes but had been unable to do so because the supplemental tax bill had not yet been generated.” (Opinion, *Cox v. Blumberg*, Case No. A152198, [California Court of Appeals for the First District](#), 4/16/18)

On August 20, 2019, Roesch Finally Confirmed The Plaintiff’s Ownership Of The Property. (Judgement Quieting Title, *Westlake Trust v. The Testate and Interstate Successors of Regete Gruhn*, [Superior Court of Alameda County](#), 8/20/19)

IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

Plaintiff Alvin Cox, Trustee of the Westlake Trust, is the sole owner,
excepting the lien of Bank of America, N.A., in fee simple of the real property
commonly known as #308, 155 Pearl St., Oakland, Alameda County, California
94611 and legally described as follows:

Overruled By An Appeals Court And Then Assigned Off The Case

In October 2020, a California appeals court called for a new trial in a case after finding Roesch erred, only for the plaintiffs to successfully motion for Roesch to be reassigned due to alleged bias.

In March 2014, Premier Automotive Imports, A California Automobile Retailer, Fired An Employee For Not Disclosing “A Dismissed Conviction For Misdemeanor Grand Theft.”
“Tracey Molina was hired by Premier Automotive Imports of CA, LLC (Premier), an automobile retailer, in January 2014. On her job application, Molina did not disclose a dismissed conviction for misdemeanor grand theft. The application asked if the applicant had ever pleaded guilty, or been convicted of, a misdemeanor or felony. But it also instructed that ‘the question should be answered in the negative as to any conviction for which probation has been successfully completed . . . and the case has been dismissed.’ After passing a background check indicating that she had not sustained any felony or misdemeanor convictions in the past seven years, Molina began working at Premier in February 2014. However, after four weeks with the company, the Department of Motor Vehicles (DMV) mistakenly reported to Premier that Molina had an active criminal conviction for grand theft. Molina’s conviction was officially dismissed in November 2013, but the Department of Justice did not enter the dismissal in its database until March 25, 2014. Premier double-checked its background report, which indicated that Molina did not have any convictions. But Premier did not investigate the discrepancy between its background report and the DMV’s report, nor did it contact the DMV for more information. Premier terminated Molina for falsification of her job application, despite Molina’s several explanations that her conviction had been judicially dismissed. When the DMV issued Premier a corrected notice

three weeks later, Premier did not rehire Molina.” (“Labor and Employment Litigation Update,” [League of California Cities](#), 4/30/21)

The Former Employee Filed A Retaliation Complaint With California’s Labor Commission, Who Determined The Firing Was Unlawful And Ordered The Former Employee Reinstated With Backpay. “Molina filed a retaliation complaint with the Labor Commission in April 2014. In December 2016, the Labor Commissioner determined that Premier had unlawfully discharged Molina and ordered Premier to reinstate her with back pay.” (“Labor and Employment Litigation Update,” [League of California Cities](#), 4/30/21)

In August 2017, California’s Labor Commission Sued Premier, Seeking To Enforce The Order. “Premier refused to comply with the order. The Labor Commissioner then filed an enforcement action on Molina’s behalf for violations of Labor Code Sections 98.6 and 432.7.” (“Labor and Employment Litigation Update,” [League of California Cities](#), 4/30/21)

- **The Suit Was Filed In August 2017.** (Case Summary, *Su v. Premier Auto. Imports of CA, LLC*, Case No. RG17872734, [Superior Court of Alameda County](#), Accessed 9/8/21)

Case Number:	RG17872374
Title:	Su VS Premier Automotive Imports of CA, LLC
Case Type:	Civil
Complaint Type:	Wrongful Termination
Case Subtype:	General Civil
Filing Date:	8/18/2017
Filing Location:	Rene C. Davidson Alameda County Courthouse

In February 2019, Roesch Sided With Premier, Finding “There Was No Evidence” The Company Knew The Conviction Had Already Been Dismissed When They Fired The Former Employee. “The trial court found in favor of Premier on the grounds that there was no evidence Premier was aware at the time it terminated Molina that her conviction had been judicially dismissed.” (“Labor and Employment Litigation Update,” [League of California Cities](#), 4/30/21)

- **Roesch Submitted His Judgement In February 2019.** (Judgement Entered, *Su v. Premier Auto. Imports of CA, LLC*, Case No. RG17872734, [Superior Court of Alameda County](#), 2/13/19)

2/13/2019

Judgment Entered

In October 2020, A California Appeals Court Overruled Roesch And Reversed His Judgement. “The judgment is reversed. The matter is remanded to the superior court for a new trial.” (Opinion, *Lilia Garcia-Brower v. Premier Auto. Imports of CA, LLC*, Case No. A156985, [California Court of Appeals for the First District](#), 10/15/20)

In Its Opinion, The California Appeals Court Stated Roesch Erred By Finding No Evidence The Company “Was Aware That The Conviction Had Been Expunged” Until After Firing The Former Employee. “The trial court reluctantly found that there was no firm evidence upon which a jury could determine that Premier was aware that the conviction had been expunged until after it made its decision to fire Molina. This was error.” (Opinion, *Lilia Garcia-*

Brower v. Premier Auto. Imports of CA, LLC, Case No. A156985, [California Court of Appeals for the First District](#), 10/15/20)

On January 25, 2021, The California Labor Commission Motioned To Have Roesch Recused From The Case's New Trial, Alleging "A Fair And Impartial Trial Or Hearing" Was Not Possible Before Roesch. (Declaration of Nicholas Patrick Seitz, ESQ, In Support of Plaintiff Lilia Garcia-Brower's Peremptory Challenge Under Code of Civil Procedure Section 170.6, *Su v. Premier Auto. Imports of CA, LLC*, Case No. RG17872374, [Superior Court of Alameda County](#), 1/25/21)

3	(4) I have personal knowledge of the facts stated herein, which are known by me to be
4	true and correct, and if called as a witnesses I could and would testify competently thereto.
5	(5) The above-captioned action has been assigned to the Honorable Frank Roesch.
6	(6) Judge Roesch is prejudiced against the Labor Commissioner and/or its attorneys
7	and/or the Labor Commissioner's interests, such that I believe the Labor Commissioner cannot have
8	a fair and impartial trial or hearing before Judge Roesch.
9	(7) This is the Labor Commissioner's first peremptory challenge in this action.
10	(8) The challenge is made under section 170.6 and is timely because the Labor
11	Commissioner received the Notice of Reassignment of Judgment for All Purposes on January 11,
12	2021 after the filing of the remittitur.

A Week Later, Roesch Was Assigned Off The Case. (Notice of Judicial Reassignment For All Purposes Issued, *Su v. Premier Auto. Imports of CA, LLC*, Case No. RG17872374, [Superior Court of Alameda County](#), 2/1/21)

2/1/2021	Notice of Judicial Reassignment for All Purposes Issued
2/1/2021	Request Re: Peremptory Challenge as to Frank Roesch Granted

Sided With NIMBY Anti-Development Sentiments Over The California Legislature's Authority

In April 2021, a California appeals court thwarted Roesch's efforts to weaken SB35, a California law enacted to facilitate development and address the state's lack of housing.

In 2018, A California Developer Sought Approval For A Large Development Project In Berkeley, CA Under SB35. "After the Project ran into snags during the CEQA review process relating to potential significant impacts to the Shellmound, Applicants asked the City to suspend their application and submitted a new application in March 2018 for a redesigned Project in the same location. The redesigned Project contained 260 dwelling units (50 percent affordable) and 27,500 square feet of retail space and parking. The application was intended to take advantage of SB 35 and sought ministerial approval of the Project." (Rebecca Williams and David H. Blackwell, "Developers Prevail in Dispute Regarding Key Housing Legislation," [The National Law Review](#), 5/3/21)

- **SB35, Which Was Passed Into Law In 2017, Sought To Make It Easier To Build Housing In California By Creating A More Streamlined Approvals Process For Certain Development Projects.** "Enacted in 2017 and effective January 1, 2018, SB 35 is one of a number of bills passed in recent years which seek to address the ongoing housing crisis in California and penalize local governments that fail to meet their

obligations to increase statewide housing supply. SB 35 provides a streamlined, ministerial approval process for certain residential projects in localities that fail to satisfy their share of the regional housing needs assessment (RHNA) under State Housing Element Law.” (Rebecca Williams and David H. Blackwell, “Developers Prevail in Dispute Regarding Key Housing Legislation,” [The National Law Review](#), 5/3/21)

Rather Than Comply With State Law, The City Of Berkeley Denied The Project And Proclaimed SB35 Was Unconstitutional “Because It Interfered With The City's Right, As A Charter City.” “Facing public opposition, the City ultimately refused to grant the Project ministerial review under SB 35. In its denial letter, the City claimed that SB 35 could not constitutionally be applied to the Project because it interfered with the City's right, as a charter city, to govern its own municipal affairs.” (Rebecca Williams and David H. Blackwell, “Developers Prevail in Dispute Regarding Key Housing Legislation,” [The National Law Review](#), 5/3/21)

In November 2018, The Developers Filed Suit In Alameda County, Seeking To Overturn Berkeley’s Denial Of Their Project. “Applicants filed a petition for writ of mandate challenging the City's denial of the Project.” (Rebecca Williams and David H. Blackwell, “Developers Prevail in Dispute Regarding Key Housing Legislation,” [The National Law Review](#), 5/3/21)

- **The Developer Filed Suit In November 2018.** (Case Summary, *Ruegg & Ellsworth v. City of Berkeley*, Case No. RG18930003, [Superior Court of Alameda County](#), Accessed 9/10/11)

Case Number:	RG18930003
Title:	Ruegg & Ellsworth VS City of Berkeley
Case Type:	Civil
Complaint Type:	Writ of Mandate
Case Subtype:	General Civil
Filing Date:	11/28/2018
Filing Location:	Rene C. Davidson Alameda County Courthouse

In October 2019, Roesch Denied The Developer’s Petition. “After a hearing in September 2019, the court filed its order denying the petition on October 21, 2019.” (Opinion, *Ruegg & Ellsworth v. City of Berkeley*, Case No. A159218, [California Court of Appeal for the First District](#), 4/20/21)

In April 2021, A California Appeals Court Reversed Roesch’s Decision. “For the reasons explained herein, we will reverse the judgment and remand with directions for the trial court to grant the writ petition.” (Opinion, *Ruegg & Ellsworth v. City of Berkeley*, Case No. A159218, [California Court of Appeal for the First District](#), 4/20/21)

The Appeals Court Found Roesch Erred By Not Granting Relief Under SB35. “We conclude the trial court erred in denying appellants’ petition pursuant to section 65913.4, subdivision (a)(7)(C).” (Opinion, *Ruegg & Ellsworth v. City of Berkeley*, Case No. A159218, [California Court of Appeal for the First District](#), 4/20/21)

- **As The Appeals Court Pointed Out, SB35 Was Enacted Precisely To Address A Statewide Concern Over Inadequate Housing.** “Section 65913.4 addresses the crisis level statewide lack of affordable housing by eliminating local discretion to deny approval where specified objective planning criteria are met, consistent with the

legislative statement of intent, in the contemporaneous amendments to the HAA, to ‘significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters,’ which intent had "not been fulfilled" despite prior versions of the HAA. (§ 65589.5, subd. (a)(2)(K).) It is difficult to think of any way the subject and purpose of this statute could be seen as anything other than a matter of statewide concern.” (Opinion, *Ruegg & Ellsworth v. City of Berkeley*, Case No. A159218, [California Court of Appeal for the First District](#), 4/20/21)

- **The Appeals Court Also Argued Berkeley’s Use of “Historical Preservation” To Deny The Development Project “Is Precisely The Kind Of Subjective Discretionary Land Use Decision” Municipalities Have Historically Used To Thwart Development.** “Respondents’ position, in essence, is that the Legislature has overreached because its interest in increasing affordable housing can be accomplished without interfering with local authority over historical preservation. But historical preservation is precisely the kind of subjective discretionary land use decision the Legislature sought to prevent local government from using to defeat affordable housing development.” (Opinion, *Ruegg & Ellsworth v. City of Berkeley*, Case No. A159218, [California Court of Appeal for the First District](#), 4/20/21)