

CLIENT NEWS BRIEF

Service Requirements Clarified for Non-Reelection of Second-Year Probationary Employees

In the recent decision of *Grace v. Beaumont Unified School District* (June 4, 2013 __ Cal.App.4th__ (2013 WL 2418320)), the California Court of Appeal has issued the latest in a series of appellate decisions that address the method of service required to effectuate the non-re-election of a probationary certificated school employee under the Education Code.

Pursuant to Section 44929.21(b) of the Education Code, a school district must give notice of non-re-election to a probationary certificated employee by March 15th of the employee's second complete consecutive year of employment. If a non-re-election notice has not been properly and timely served, the employee is deemed to be re-elected for the next year and must be afforded permanent status. Section 44929.21(b) does not specify the form or method of notice required for a non-re-election, however, and recent court decisions have clarified that, with limited exceptions, a written notice of non-re-election must be personally served to comply with Section 44929.21(b). The *Grace* decision further reinforces this interpretation of the statute.

The plaintiff, Del M. Grace, in *Grace* was a probationary school nurse who argued that the Beaumont Unified School District failed to comply with Section 44929.21(b) when the District sent the notice of non-re-election via certified mail prior to March 15th, and the notice was returned to the District unclaimed. Interestingly, the District served the written notice by certified mail upon Ms. Grace's request. The evidence showed that, when Ms. Grace was asked by an email to attend a meeting on March 11th for the purpose of giving notice that the District would not offer her a contract for the subsequent school year, Ms. Grace responded in an email that she would rather receive the notice by certified U.S. mail instead of in person. The trial court held that the email sent on March 11th adequately notified Ms. Grace of her non-re-election and, because Ms. Grace had actual notice of her non-re-election by March 15th, the District complied with Section 44929.21.

On appeal, the court examined the case of *Hoschler v. Sacramento City Unified School District* (2007) 149 Cal.App.4th 258, which confirmed the general principle that personal service is presumed to be required when a statute is silent as to the manner of serving a statutorily required notice. Finding that Section 44929.21(b) is such a statute, the *Hoschler* court concluded that section 44929.21 requires personal service or some other method equivalent to imparting actual notice. Subsequent courts have interpreted this language from *Hoschler* as permitting some other form of actual notice in limited circumstances when attempts at personal service have failed. In *Sullivan v. Centinela Valley Union High School District* (2011) 194 Cal.App.4th 69, for example, the court held that the district had complied with Section 44929.21(b) when an employee evaded personal service of his non-re-election notice by calling in sick on the days prior to March 15th. In the *Sullivan* case, the court found that the employee had received actual notice of his non-re-election prior to March 15th in a conversation with the district's Director of Human Resources.

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In the present case, the court found that Ms. Grace had received multiple forms of actual notice from the District prior to the March 15th deadline. For example, she attended a Board meeting prior to March 15th where the Board announced the non-reelected second year probationary employees by employee number. She also received an email from the District on March 11th which requested a meeting in order to personally notify her of her non-reelection. In response, the employee chose to have the District serve her non-reelection notice by certified mail. The *Grace* court held that the employee's request for service by certified mail constituted a waiver of the right to personal service under section 44929.21(b). Furthermore, the court held that the District provided sufficient notice under Section 44929.21(b) because Ms. Grace had received actual notice by March 15th when she attended the Board meeting where it voted to non-reelect her, and when the Director of Human Resources informed Ms. Grace in an email that she would not be offered a contract for the following year.

While the *Grace* decision (and the preceding cases) provides some alternatives to personal service of a non-reelection notice, we recommend that school districts continue to personally serve notices of non-reelection on probationary certificated employees prior to March 15th of the employee's second complete, consecutive year of service. The *Grace*, *Sullivan*, and *Hoschler* decisions provide examples of other actions that a district might consider taking prior to March 15th if the district's attempts at personal service are unsuccessful.

If you have any questions about issues related to the non-reelection of probationary certificated employees, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).