By James C. Martin and
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Reverse Course

CCP Section 128(a)(8) has succeeded in reversing the presumption in favor of stipulated reversals

A significant number of cases settle while on appeal. In fact, in order to reduce caseloads, both state and federal appellate courts have established settlement or mediation programs to encourage this result. Reaching a settlement at the appellate stage, however, is frequently complicated by the fate of the underlying judgment, which the losing party may insist be reversed, or at least vacated, as part of any settlement.

Litigants can accomplish this end by a stipulated reversal, a procedure by which the parties jointly ask a court to resolve an appeal by reversing the trial court's judgment. Typically, the reversal is a condition of the parties' settlement. The California Supreme Court endorsed this procedure in 1992 in *Neary* v. *Regents of University of California*[1] by creating a presumption that appellate courts should accept such stipulations in the absence of extraordinary circumstances. For the following eight years, *Neary*'s merits were widely debated, with the controversy resolved only when the state legislature enacted Code of Civil Procedure Section 128(a)(8) in 1999.[2] Section 128(a)(8) reverses *Neary*'s presumption in favor of accepting stipulated reversals and instead creates a presumption against stipulated reversals. The statute places the burden on the parties to convince the appellate court to reverse a judgment with the parties' consent.

As a result of this legislative action, eight years of precedent under *Neary* is slowly being replaced by precedent created under the new statute. Litigants seeking stipulated reversals on appeal accordingly need to be cognizant of the emerging authority and, specifically, its construction of the requirements of Section 128(a)(8).

The enactment of Section 128(a)(8) is only the most recent chapter in the changing history of stipulated reversals in California. Until 1992, California's appellate courts were divided on their propriety.

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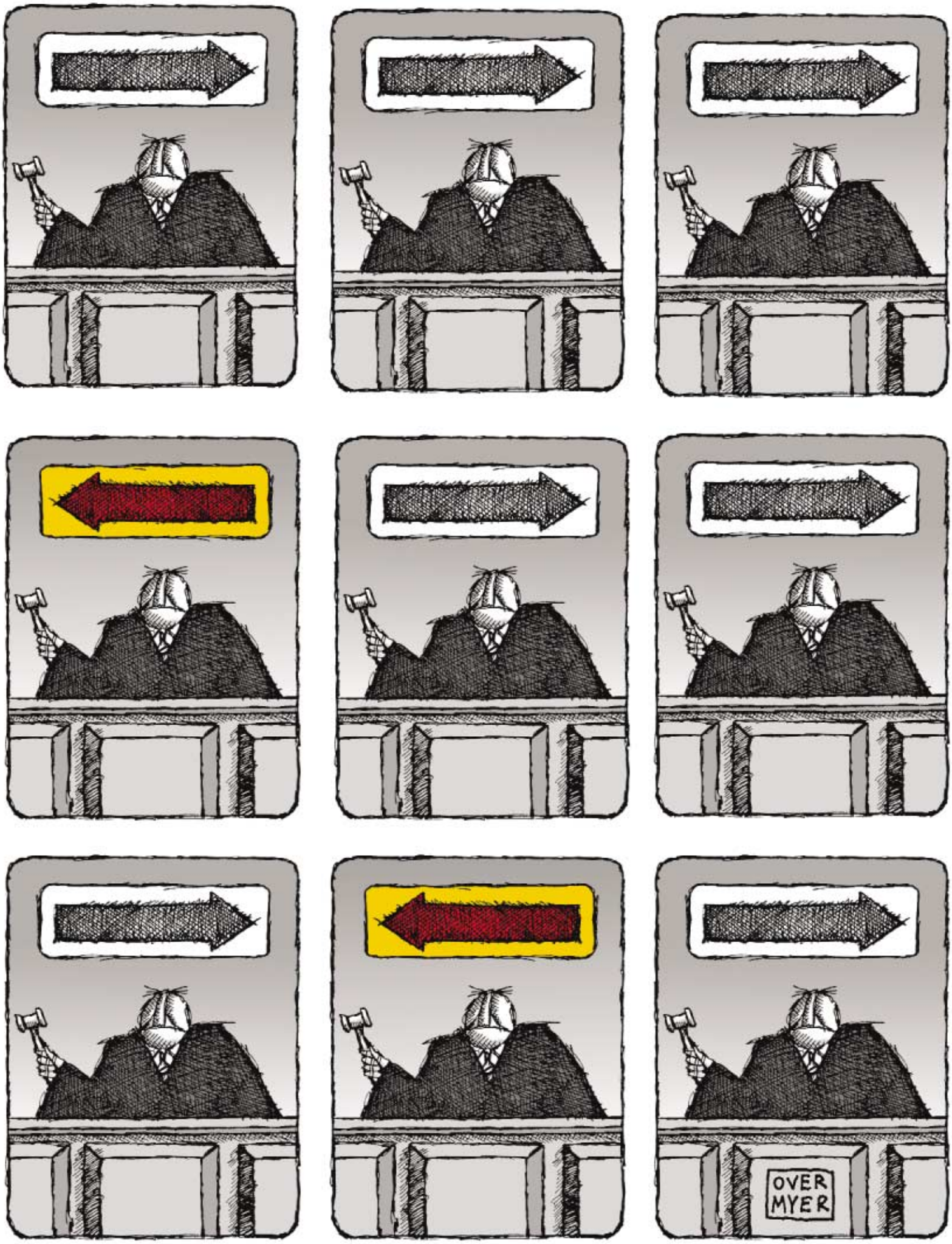
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Some courts believed that allowing parties to stipulate to a reversal demeaned the ajudicatory process. In one opinion, the court of appeal declined to approve a stipulated reversal, noting that it knew nothing about the merits of the appeal and thus had no reason to reverse a judgment "with which this court has no quarrel at this point."[3] Other courts viewed stipulated reversal as a proper device, no different from a stipulated judgment.[4] These courts reasoned that whatever the parties could agree on should be upheld, particularly if it furthered the ultimate resolution of the controversy.

These conflicting views were brought to a head in 1992 in *Neary*. The California Supreme Court settled the conflict in judicial philosophies by not only allowing stipulated reversals but by creating a presumption in favor of accepting them. *Neary* involved an appeal and cross-appeal of a $7 million libel verdict in favor of Neary, a cattle rancher, against the University of California. While the appeals were pending, the parties reached a settlement. In return for $3 million, Neary would agree to vacate the judgment and dismiss his case. To effectuate this resolution, the parties asked the court of appeal to reverse the judgment and remand the case to the trial court for dismissal with prejudice. The court of appeal refused to do so, noting:

> [F]acilitation of settlement is not the overriding judicial object. The power judges exercise is not defined or conferred by private agreement....The duty of the judicial branch is not to satisfy the parties that appear before it, or even society at large, but to say what the law is and apply it in particular cases.[5]

The California Supreme Court granted review and began its analysis by confirming that a court of appeal has the authority to reverse or otherwise vacate a trial court's judgment when the parties stipulate to such action as a condition to a proposed settlement.[6] Having confirmed the power, the court went on to hold that "as a general rule, the parties should be entitled to a stipulated reversal to effectuate settlement absent a showing of extraordinary circumstances that warrant an exception to this general rule."[7] The court explained that public policy favors settlement as an efficient method of resolving disputes. Moreover, rejecting stipulated reversals could force a wasteful expenditure of resources by the parties and the courts: "The appellate courts have enough to do without deciding cases the parties no longer wish to litigate."[8]

The court also favored stipulated reversals as a matter of fairness to the parties. Neary and the university had been litigating for 13 years before reaching a settlement. The court reasoned that because the primary purposes of the judicial system is to resolve disputes, courts should assist parties in settling rather than subjecting them to "the prospect of further battering" in continued litigation.[9] The court then neatly summed up its reasoning in the pithy phrase: "The courts exist for litigants. Litigants do not exist for courts."[10]

Neary was not unanimous. Justice Mosk concurred in the result but opined that the majority went too far in creating a broad presumption in favor of allowing stipulated reversals.[11] Justice Kennard voiced much stronger objections, dissenting on the grounds that the practice undermines judicial efficiency by encouraging parties to try cases and erodes public confidence by fostering the perception that litigants with sufficient wealth can buy their way out of adverse adjudication. In her view, stipulated reversals should be allowed only if, after balancing public and institutional concerns, there is no reasonable possibility that reversal would adversely affect the interests of nonparties or the public.[12]

The *Neary* Era

After *Neary*, some courts applied its rule, allowing stipulated reversals without discussion.[13] Continued criticism of the decision, however, led the California Legislature to attempt to restrict stipulated reversals.[14] In 1994, a proposed statutory amendment (SB 102) would have codified Justice Kennard's dissent by amending Code of Civil Procedure 128(a)(8) to prevent appellate courts from accepting stipulated reversals unless: 1) there was no reasonable possibility the public could be adversely affected, and 2) the parties could show there would be no erosion of public trust or reduction of incentive for pretrial settlement. The bill passed the legislature but did not make it past the governor's desk, and *Neary* remained the controlling law.[15]

While the legislative attempt to constrict *Neary* met with defeat, several efforts in the courts to expand the circumstances in which stipulated reversals could be obtained proved unsuccessful as well. In *State of California* v. *Superior Court (Lovelace)*, for example, the parties sought a stipulated reversal of an appellate decision after the California Supreme Court granted review. The supreme court noted that it could have granted the parties' motion, but declined to do so in favor of deciding an important legal issue of statewide importance.[16] And in *People* v. *Barraza*,[17] a district attorney and convicted defendant sought a stipulated reversal of a misdemeanor conviction. The court denied the motion, pointing out that the relief sought was not authorized by statute or *Neary*, and questioned whether *Neary* could apply in a criminal context at all.[18]

Neary's reach also received an indirect blow from the U.S. Supreme Court in *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*.[19] Just as the doctrine of stipulated reversal is available to California appellate courts, federal appellate courts have a parallel body of law that allows them to vacate judgments on appeal,[20] which in federal parlance is called a "stipulated vacatur." Before *U.S. Bancorp*, the federal circuits were split on the propriety of stipulated vacaturs, with many circuit courts opposed to the practice.[21]

U.S. Bancorp resolved this split of authority by directly addressing the question whether parties' voluntary settlements could justify the "extraordinary remedy" of vacatur by stipulation.[22] The Court concluded that the mere fact that parties agreed to vacatur in a settlement would not suffice. Instead, the Court held that parties seeking stipulated vacatur of a federal judgment must demonstrate "exceptional circumstances" for such "extraordinary relief."[23] The Court reasoned that judicial precedents are valuable to the legal community and are not merely the property of private litigants to erase at will. Thus, by creating a strong presumption against stipulated vacaturs, the federal courts adopted a position at odds with *Neary*.

Certain California courts also chafed under *Neary*. In *Norman I. Krug Real Estate Investment* v. *Praszker*,[24] the First District Court of Appeal reasoned that *Neary* imposed "an unusual and difficult responsibility" on appellate courts in ascertaining whether extraordinary circumstances existed to justify the rejection of a stipulated reversal. This was so, the court reasoned, because *Neary* "provides little guidance" in outlining what "extraordinary circumstances" overcome the presumption in favor of stipulated reversals. Also, because *Neary* did not require the parties themselves to come forward with evidence regarding the public's interest, it was difficult for a court operating in such a vacuum to know if it was doing the right thing in accepting a stipulated reversal.

In his concurring opinion in *Krug*, Presiding Justice Kline argued that the blanket presumption in favor of stipulated reversals was "destined to plague the appellate courts," and he encouraged the supreme court to "reconsider the propriety of stipulated reversal."[25] In his view, the stipulated reversal procedure "debases the judicial coin with the currency of a false expediency," wastes judicial resources, and undermines respect for judicial institutions.[26]

In *Krug*, the court of appeal asked the parties to submit letter briefs responding to a series of questions to help the court determine if extraordinary circumstances existed that would justify denying a stipulated rever-

sal. Ultimately the court allowed a stipulated reversal as to one party, but not another. The case involved a judgment against a real estate broker who acted unprofessionally and the broker's agency. The court refused to reverse the judgment against the broker because doing so would interfere with the state's disciplinary scheme under which the real estate commissioner could punish the errant broker. The court refused to allow a broker to essentially "purchase disciplinary immunity."[27] Thus, the court relied on the public interest exception carved out in *Neary*. The court did, however, allow a stipulated reversal as to the broker's agency, which had subsequently been sold to a third party who had nothing to do with the transaction underlying the judgment.

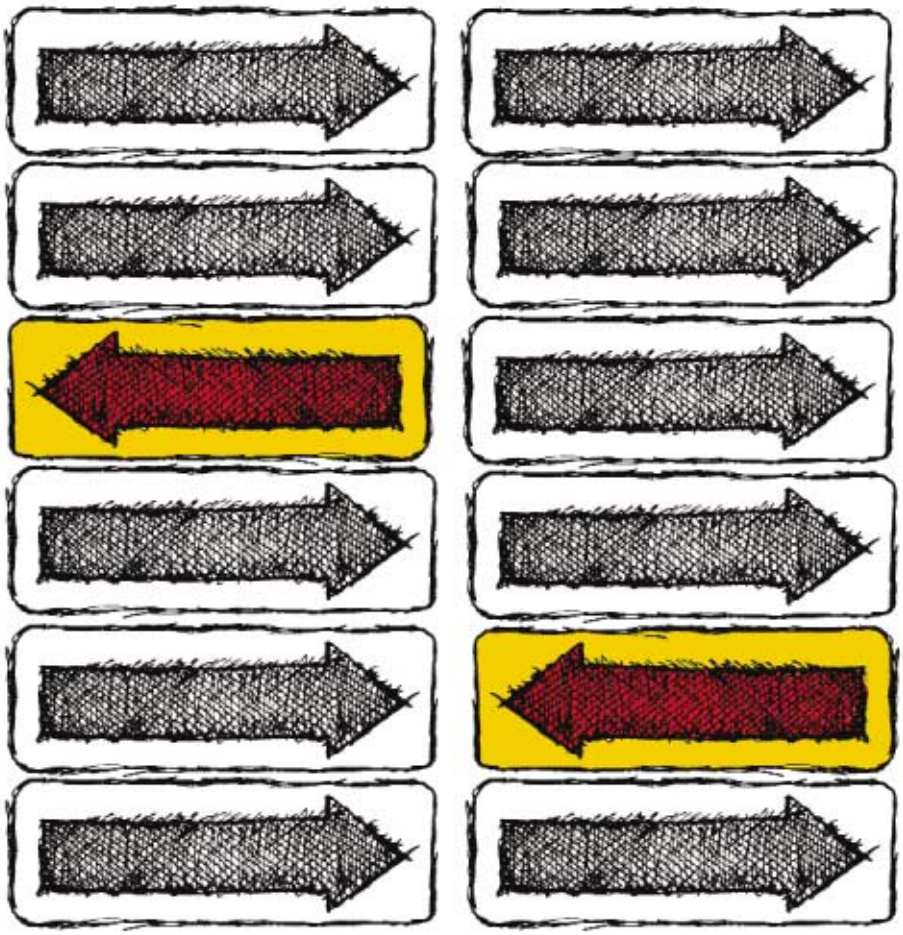
To address the "considerable handicap" in determining whether extraordinary circumstances existed, the First District adopted Local Rule 8 (effective January 1994; amended 2000). This rule required that motions for stipulated reversals be accompanied by 1) a copy of the judgment to be reversed and 2) declarations from counsel stating that the judgment did not involve important public rights or unfair, illegal, or corrupt practices or torts affecting a significant number of persons not parties to the litigation, and that a reversal would not prejudice any third parties.

But even the addition of this local rule proved insufficient to assuage *Neary*'s harshest critics. In *Morrow* v. *Hood Communications, Inc.*, the parties sought a stipulated reversal on appeal before the record on appeal had been filed and before the issues on appeal had been identified and briefed.[28] Given that the motion for stipulated reversal was accompanied by the declaration from counsel (required by local rule) stating that no third parties would be prejudiced, the majority allowed a stipulated reversal. The majority, however, made clear that it was following *Neary* only because stare decisis required it to do so, voiced agreement with the fundamental principles set forth in Justice Kline's concurring opinion in *Krug*, and encouraged the supreme court to reconsider and repudiate *Neary*.

Justice Kline himself dissented in *Morrow*, taking his criticism to a new level. Although Justice Kline acknowledged that *Neary* required that the stipulated reversal be granted, he wrote that "as a matter of conscience [he could not] apply the rule announced in *Neary*."[29]

Section 128(a)(8)

Although the supreme court declined the request of the *Morrow* court to reconsider *Neary*, the legislature took up the issue by reviving the bill that the governor had vetoed



in 1994 to make stipulated reversal a statutorily disfavored procedure. This time there was no veto,[30] and in 1999 the legislature enacted Code of Civil Procedure Section 128(a)(8), which became effective January 1, 2000. The statute modified the appellate court's power to accept stipulated reversals. Indeed, in enacting Section 128(a)(8), the legislature effectively disapproved the majority's holding in *Neary* and adopted Justice Kennard's dissenting analysis.

Section 128(a) sets forth enumerated powers of every California Court. Subdivision (8) provides that every court may "amend and control its process and orders so as to make them conform to law and justice" and goes on to provide that "[a]n appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless" two conditions are met. Thus, in contrast to *Neary's* presumption in favor of accepting stipulated reversals, the statutory rule is phrased as a presumption against granting stipulated reversals. The two conditions required for a stipulated reversal are:

> (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.
>
> (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

Section 128(a)(8) puts the burden on the parties seeking stipulated reversals to justify the relief sought, and, as expected, has resulted in denials of stipulated reversal requests. For example, in August 2000, a jury in a racial discrimination lawsuit in San Francisco awarded $132 million to employees of the nation's largest baking company, Interstate Brands Corporation (makers of Wonder Bread). The trial court later reduced the award to $27 million. While the matter was on appeal, the parties reached a settlement and asked the First District Court of Appeal to approve a stipulated reversal. In January 2002, the court of appeal denied the request of the parties.[31]

Nevertheless, on an appropriate showing, courts still will accept stipulated reversals.[32] For example, in *In re Rashad H.*,[33] the court applied Section 128(a)(8) and approved a stipulated reversal in a dependency matter. Interestingly, *Rashad H.* presented a variation on the typical theme. The request for a stipulated reversal was not based solely on the parties' desire to settle. Rather, the parties

agreed that the trial court had committed reversible error and that reversal was the proper substantive outcome regardless of their agreement to settle. The court of appeal concurred, finding that reversal was inevitable. As a result, the court found that the public's interest was advanced by allowing the judicial error to be corrected by the settlement agreement.

Despite its holding, *Rashad H.* did not state whether the parties' agreement that reversible error existed would become the new touchstone for approval of stipulated reversals.[34] This question was addressed in *Union Bank of California* v. *Braille Institute of America*,[35] which held that reversible error is not required. The *Union Bank* case arose from a series of judicial disputes between the trustees and beneficiaries of a trust. While the matter was on appeal, the parties reached a settlement in which they agreed to a stipulated reversal of two court orders.

In addressing the parties' stipulated reversal request, the court parsed Section 128(a)(8) into three statutory requirements: Stipulated reversal will be accepted if 1) there is no reasonable possibility nonparties or the public could be adversely affected, 2) the reasons for the request outweigh concerns about the erosion of public trust, and 3) there is no reduction in the incentive for pretrial settlement. The court found all requirements were satisfied. The court also explained that although *Union Bank* was unlike *Rashad H.* because the litigants did not demonstrate reversible error in the orders at issue, "the absence of reversible error is not a bar to the acceptance of a stipulated reversal so long as the appellate court makes the three findings" of Section 128(a)(8).

Recently the California Supreme Court seemed poised to write another chapter in stipulated reversal law when it granted review in *Whitmore Union Elementary School District* v. *Shasta County*.[36] In *Whitmore*, the parties reached a settlement sometime after oral argument in the appeal, and they notified the court by letter that they would be seeking a stipulated reversal.[37] Three days later, the court of appeal published its opinion. In a footnote, the court of appeal denied the parties' anticipated request for a stipulated reversal, citing Section 128(a)(8), but without any detailed analysis.[38]

The supreme court then granted review of two issues, one of which was whether the court of appeal had acted improperly in preemptively denying the parties' anticipated request for a stipulated reversal without any briefing on the propriety of a stipulated reversal under Section 128(a)(8).[39] Later, however, the court dismissed review as improvidently granted,[40] leaving undecided the question of whether parties seeking a stipulated reversal are entitled to briefing.

The Current State of Stipulated Reversal Law

Given the statutory presumption against stipulated reversal and the burden imposed on the parties to justify reversal, appellants should not routinely ask for stipulated reversals as part of appellate settlement. However, stipulated reversals remain obtainable, and as they are effective tools for posttrial settlement because erasure of a trial court verdict is a powerful bargaining chip, they should be pursued when appropriate.

Parties seeking a stipulated reversal should carefully abide by Section 128(a)(8). Following the analysis of *Rashad H.*, litigants should fashion their motion for stipulated reversal around the three statutory factors contained in Section 128(a)(8)(A) and (B). Litigants in the First District must also follow Local Rule 8.[41] And, in light of *Whitmore*,[42] the parties should set forth their arguments under Section 128(a)(8) in their first letter or motion to the court on the issue, lest they be preemptively precluded from ever doing so.

First, the parties should frame the case as narrowly as possible to emphasize that the stipulated reversal will not affect the public, nonparties, or the precedential development of the law. Taking a cue from California Rule of Court 976(b) governing the publication of opinions, the parties could argue that their dispute does not involve an issue of public interest and that resolution of their dispute would not establish a new rule of law or resolve a conflict in the law. In effect, the argument is that accepting the stipulated reversal would not rob the public of a valuable precedent.

Second, parties should provide reasons to explain that the request will not erode public trust in the court process. Given that one of the primary criticisms of stipulated reversals is that the procedure allows wealthy, repeat litigants to buy their way out of an adverse ruling, it could help to show that both parties to the dispute are not frequent litigants or are at least of equal bargaining power. If warranted, parties may also argue that without a stipulated reversal in the case, there will be a delay in resolution and an inefficient waste of public and private resources. Further, when the parties reach their settlement through a court-ordered or operated settlement or mediation process, the parties may reasonably contend that accepting such a settlement does not erode public trust in the courts, given the court's assistance in reaching the settlement.

Third, the parties should emphasize how stipulated reversal will not reduce the incentive for pretrial settlement. One way to develop this point is to trace the history of settlement negotiations to show that the parties did not adopt a wait-and-see attitude about the results in the trial court. Describing new developments in the case that lead to a settlement breakthrough also may bolster the showing on this factor. The argument is further strengthened if the parties agree that the judgment at the trial level is legally flawed and would have to be reversed as a matter of law regardless of settlement—as in *Rashad H.*

Review of precedents governing approval of stipulated reversals is also helpful in determining appropriate circumstances for the procedure. Cases involving violations of professional duties—as in *Norman I. Krug*—or other public legal obligations with collateral consequences are not good candidates for a stipulated reversal because the court may believe the appellant is attempting to purchase immunity from public responsibilities. The court considered this in *Union Bank* and specifically noted that a stipulated reversal would not harm the public interest because the case did not involve "allegations of corruption or conduct which would be reportable to licensing and disciplinary agencies."[43]

Even so, stipulated reversals involving professional malpractice are still possible. In *Saraswati* v. *Wildes*, in which the plaintiff sued a New York law firm in an immigration matter, the court allowed the reversal because the case concerned "the legal representation of only one party and his private interests regarding his immigration status" and the appropriate New York disciplinary authorities already were investigating the matter.[44]

Conversely, matters involving discrete obligations between specific individuals in their individual capacities may be good candidates for stipulated reversals because the issues generally pertain to the parties only and do not implicate broader public concerns. For instance, the court in *Bryer* v. *Green-Venable*, noted that the public or nonparties would not be affected by a stipulated reversal because the case concerned "collection on a debt between private parties."[45] Similarly, in *Romo* v. *Boynton*, the court pointed out that the case involved no issue of public concern but was simply "a dispute over compensation resulting from a dog bite."[46] The stipulated reversal may also be available in family law matters, as in *Rashad H.* and *In re Lili P.*[47]

The tortuous legal history of stipulated reversals in California appears to have ended. Yet despite the statutory presumption against stipulated reversals, they remain a workable component of appellate settlement. Courts are becoming more comfortable with the guidelines of Section 128(a)(8) and when the factors militating against granting a stipulated reversal are not present, the statute's presumption can be overcome. In that fashion,

Section 128(a)(8) provides a balanced and workable resolution of the intense philosophical debate that ensued after *Neary* announced its rule. ■

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[1] Neary v. Regents of Univ. of Cal., 3 Cal. 4th 273 (1992).

[2] CODE CIV. PROC. §128(a)(8):

> Every court shall have the power…[t]o amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

[3] In re Marriage of Shapiro, 39 Cal. App. 3d 460, 464 (1974) (Kaus, P.J.).

[4] *E.g.*, Parker v. Parker, 135 Cal. App. 2d 782, 782-83 (1955).

[5] Neary, 3 Cal. 4th at 275-76; *see* Neary v. Regents of Univ. of Cal., 278 Cal. Rptr. 773, 777-78 (Ct. App. 1991), *rev'd*, 3 Cal. 4th 273 (1992).

[6] Neary, 3 Cal. 4th at 277.

[7] *Id.*

[8] *Id.* at 278.

[9] *Id.* at 281.

[10] *Id.* at 280.

[11] *Id.* at 286.

[12] *Id.* at 294-95.

[13] Donnellan v. City of Novato, 86 Cal. App. 4th 1097, 1101 (1999); Wicker v. Oosten, 43 Cal. Rptr. 2d 556, 563 (1995) (ordered not published); Henry v. Monaghan, 40 Cal. Rptr. 2d 655, 655-56 (1995) (ordered not published) (court accepts stipulated reversal, finding no extraordinary circumstances to deny motion); Lara v. Cadag, 13 Cal. App. 4th 1061, 1065 (1993) (court complies with *Neary* in dismissing settled case); *see* Steven R. Harmon, *Unsettling Settlements: Should Stipulated Reversals Be Allowed to Trump Judgments' Collateral Estoppel Effects under* Neary*?* 85 CAL. L. REV. 479, 540 n.303 (Mar. 1997) (citing seven unpublished 1995 cases in which the court of appeal granted stipulated reversal motions).

[14] Stephen R. Barnett, *Judgments for Sale*, L.A. DAILY J., Aug. 26, 1992 (criticizing *Neary*); David M. Shacter, *Whose Lawsuit Is It, Anyway?* 26 BEV. HILLS B.A.J. 187 (Fall 1992) (questioning *Neary*); Barnett, *Making Decisions Disappear: Depublication and Stipulated Reversal in the California Supreme Court*, 26 LOY. L.A. L. REV. 1033 (1993) (arguing that *Neary* is "disquieting" because it is "one-sided and poorly reasoned" and "exaggerates the benefits of stipulated reversal and belittles the costs"); Judith Resnik, *Whose Judgment? Vacating Judgments, Preferences for Settlement, and the Role of Adjudication at the Close of the Twentieth Century*, 41 UCLA L. REV. 1471 (1994) (noting *Neary* "sparked considerable controversy"); Daniel Purcell, *The Public Right to Precedent: A Theory and Rejection of Vacatur*, 85 CAL. L. REV. 867 (1997) (criticizing *Neary*).

[15] The governor's veto message stated that "[t]he presumption in favor of settlement should be retained," and that Senate Bill 102 would "discourage and in most cases prevent postjudgment settlements, forcing the parties to continue to pursue an appeal even though both sides wish to settle and terminate any further litigation." The veto message is *available at* http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0101-0150/sb

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[16] State of California v. Superior Court (Lovelace), 11 Cal. 4th 50, 60-62 (1995).

[17] People v. Barraza, 30 Cal. App. 4th 114 (1994).

[18] *Neary*'s reasoning also was found inapposite in a case in which a party sought a dismissal of appeal and a retraction or depublication of a published court of appeal decision based on a settlement reched after oral argument. Lucich v. City of Oakland, 19 Cal. App. 4th 494, 501-03 (1993). *See* Paul D. Fogel & Kay Long-Martin, *Settlement Squelch—Appellate Court Rejection of Stipulated Dismissals Discourages Resolution*, L.A. DAILY J., Feb. 8, 1999.

[19] U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship, 513 U.S. 18, 29 (1994).

[20] *See* 28 U.S.C. §2106.

[21] Scott D. Makar, *Vanishing Precedents: Settlements Vacatur on Appeal*, 68 FLA. B.J. 18, 21 (Nov. 1994) (outlining the split); Howard Slavitt, *Selling the Integrity of the System of Precedent: Selective Publication, Depublication, and Vacatur*, 30 HARV. C.R.-C.L. L. REV. 109, 134-35 (1995) (same).

[22] U.S. Bancorp Mortgage Co., 513 U.S. at 27.

[23] *U.S. Bancorp* did not define "exceptional circumstances," and few decisions have interpreted this standard. *See* Major League Baseball Props., Inc. v. Pacific Trading Cards Inc., 150 F. 3d 149 (2d Cir. 1998) (finding exceptional circumstances); In re GMC, 1995 WL 940063 (4th Cir. 1995) (unpublished) (same); Motta v. INS, 61 F. 3d 117, 118 (1st Cir. 1995) (same); Nahrebeski v. Cincinnati Milacron Marketing Co., 41 F. 3d 1221, 1222 (8th Cir. 1994) (finding no exceptional circumstances).

This does not mean, however, that parties who lack "extraordinary circumstances" but nonetheless wish to obtain a stipulated vacatur have no options. Federal Rule of Civil Procedure 60(b) arguably supplies a narrow means to circumvent the *Bancorp* rule in some circuits. This involves filing a Rule 60(b) motion in the district court, asking the district court to vacate its judgment, despite the pending appeal. The district court does not have the power to grant this motion, but it could issue a short memorandum indicating that its inclination to do so, which, in turn, might induce the court of appeals to remand the case. *See* Scott B. Smith, *Settling Federal Cases on Appeal: A Trap for the Unwary*, 61 ALA. LAW. 396 (Nov. 2000) (outlining this procedure and providing case citations); Purcell, *supra* note 14, at 873-74 (noting that "[t]his largely undefined exception may swallow the Supreme Court's new rule"). Note, however, that this approach would not work in the Ninth Circuit, which follows different Rule 60(b) procedures.

[24] Norman I. Krug Real Estate Inv. v. Praszker, 22 Cal. App. 4th 1814, 1819 (1994).

[25] *Id.* at 1826, 1828.

[26] *Id.* at 1831.

[27] *Id.* at 1822.

[28] Morrow v. Hood Communications, Inc., 59 Cal. App. 4th 924, 925 (1997).

[29] *Id.* at 927.

[30] The governor both in 1994, when the bill limiting stipulated reversals was first vetoed, and in 1999, when a nearly identical bill (AB 1676) was passed, was the same man, Pete Wilson.

[31] *See Stipulated Reversal Is Rejected*, S.F. DAILY J., Jan. 22, 2002 (discussing Carroll v. Interstate Brands Corp., 1st Dist. Court of Appeal No. A093281 (Div. 5), noting that the parties would not disclose the terms of their settlement). Although the court's order denying a stipulated reversal was without prejudice and noted that the parties could resubmit the request if they set forth more particularized reasons to support it, the parties never did so.

[32] Bryer v. Green-Venable, 2002 WL 31186640 (2002) (noting need to resolve longstanding litigation between private parties that would not affect the public); Romo v. Boynton, 2002 WL 3833009 (2002) (noting judicial error occurred below); Saraswati v. Wildes, 2002 WL 90452 (2002); In re Lili P., 2002 WL 432441 (2002); Imai v. Deignan, 2002 WL 415701 (2002); Prudential Props. of Big Bear v. Dwyer, 2002 WL 194262 (2002); Maranto v. Hautman, 2001 WL 1480635 (2001); Scientific Res. Surveys v. Dixon, 2001 WL 1203435 (2001).

[33] In re Rashad H., 78 Cal. App. 4th 376, 280-82 (2000).

[34] *See* Purcell, *supra* note 14, (arguing that stipulated reversal should be allowed only for legally defective judgments).

[35] Union Bank of Calif. v. Braille Inst. of Am., 92 Cal. App. 4th 1324 (2001).

[36] Whitmore Union Elementary Sch. Dist. v. Shasta County, 107 Cal. Rptr. 2d 616 (Cal. 2001).

[37] Whitmore Union Elementary Sch. Dist. v. Shasta County, 104 Cal. Rptr. 2d 227, 239 n.56 (Cal. App. 2001).

[38] *Id.*

[39] *See Supreme Court Action*, 12:5 CAL. TORT RPTR. 193 (June 2001).

[40] *See* Supreme Court Order, Case S096088 (July 10, 2002).

[41] FIRST APP. DIST. L. R. 8.

[42] Whitmore, 104 Cal. Rptr. 2d at 239 n.56.

[43] Union Bank of Calif. v. Braille Inst. of Am., 92 Cal. App. 4th 1324, 1329 (2001).

[44] Saraswati v. Wildes, 2002 WL 90452 at *1 (4th Dist. Div. 1 2002).

[45] Bryer v. Green-Venable, 2002 WL 31186640 at *1 (4th Dist. Div. 1 2002).

[46] Romo v. Boynton, 2002 WL 383009 at *2 (2d Dist. Div. 5 2002).

[47] In re Lili P., 2002 WL 432441 (4th Dist. Div. 3 2002).