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# NEWS RELEASE

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## **Summary of Cases Accepted During the Week of October 19, 2009**

*[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]*

**#09-65 *Conservatorship of Roy W.***, S175855. (A122896; nonpublished opinion; Sonoma County Superior Court; SPR061684.) Petition for review after the Court of Appeal affirmed an order denying attorney fees in a civil action. This case presents the following issue: May an award of attorney fees under the private attorney general statute (Code Civ. Proc., § 1021.5) be denied because the prevailing party had a significant non-pecuniary personal interest in the outcome of the litigation?

**#09-66 *People v. Indiana Lumbermens Mutual Ins. Co.***, S175907. (B208691; 175 Cal.App.4th 1426; Los Angeles County Superior Court; SJ0969.) Petition for review after the Court of Appeal reversed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case. This case presents the following issue: When a criminal defendant is surrendered into custody or arrested in another county within 180 days of the date of notice that the bail bond has been forfeited, does Penal Code section 1305 require the surety on the bond to file its motion to vacate the forfeiture and exonerate the bond within that period of 180 days in order to obtain relief?

**#09-67 *In re Jenkins***, S175242. (C059321; 175 Cal.App.4th 300; Lassen County Superior Court; CHW2321.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. This case presents the following issue: If a prisoner is not assigned to a prison work program due to reasons that are not his or her fault, such as a transfer between prisons or within the prison, is the

prisoner nonetheless entitled to the favorable classification points, which may reduce the prisoner's custody level, that can be earned for performance in such a program?

**#09-68 *People v. Martin***, S175356. (E046579; 175 Cal.App.4th 1252; San Bernardino County Superior Court; FSB803105.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Can factors underlying a charged criminal offense that is dismissed as part of a plea bargain be considered in setting conditions of probation if the plea agreement did not include a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754) permitting the dismissed count to be considered in determining the sentence to be imposed?

**#09-69 *People v. Rodriguez***, S172198. (B196535; nonpublished opinion; Los Angeles County Superior Court; YA062740.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Brookfield*, S147980 (#07-03) and *People v. Jones*, S148463 (#07-04), which include the following issue: Is a violation of Penal Code section 246 for shooting at an inhabited dwelling, which was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22(b)(4)(B), a "felony punishable by . . . imprisonment in the state prison for life" within the meaning of section 12022.53(a)(17), such that sentence can be enhanced under section 12022.53(b) or (c) for the personal use and intentional discharge of a firearm? [This matter should have been reported in the summary for the week of July 6, 2009.]

## STATUS

**#09-53 *People v. Hernandez***, S175615. In this case in which review was previously granted, the court ordered briefing deferred pending decision in *People v. Stevens*, S158852 (#08-31), which presents the following issue: Did the trial court abuse its discretion in requiring a uniformed, armed deputy sheriff to sit immediately beside the defendant during his testimony?

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