

It is expected that, even after an attorney formally withdraws and the representation has ended, there will be activities the attorney must perform that are relevant to the former representation. However, these “winding down” activities, even if called for, do not constitute continued representation. *Kindle v. Morisset*, 217 F.3d 602 (8th Cir. 2000). In *Kindle*, the Court of Appeals applied precisely the same standard as California regarding the “continued representation” rule. The defendant attorneys in *Kindle* had obtained an order granting their motion to withdraw as the plaintiffs’ attorneys. Thereafter, “the law firm continued to do some work” over the next two weeks, which consisted of reporting to the plaintiffs that the case had been formally dismissed, and writing a letter to the plaintiffs summarizing the status of the case and advising them that they needed to retain other counsel to handle the appeal, and sent a

bill to the plaintiffs for the 1.3 hours it took to do the work. The Court of Appeal stated that the services performed “were not significant,” and “were in the nature of a winding-down of a relationship that had already been terminated” adding that, “even if the relationship could be characterized as “ongoing” in some minimal sense,” it was not “developing,” or “dependent.”

In summary, while the Substitution of Attorney or Notice of Withdrawal may strongly suggest the termination of a relationship, caution should be had with regard to the future contacts and/or involvement by the attorney with the former client or the attorneys successor, such that an argument cannot be created of some “continued representation” or “involvement” thereby preventing application of the statute of limitations.

## PARENTS WRANGLE AT THEIR OWN RISK

BY RONALD S. GRANBERG

### RONALD S. GRANBERG

Ronald S. Granberg received his B.A. in 1970 from the University of Michigan and his J.D. in 1978 from the Monterey College of Law. He is the author of “California Legal Research” and teaches legal research, computer-assisted legal research, and civil litigation at the Monterey College of Law. He has been a Certified Family Law Specialist since 1987.



**Court:** I call the case of Mom vs. Dad, on Mom’s motion that Dad be ordered to submit to a hair follicle drug test.

**Mom’s Lawyer (“ML”):** This case concerns the parties’ custody and visitation rights regarding their daughter Katie. Evidence Mom has presented indicates that Dad may be using cocaine, an allegation Dad denies. The court can determine the truth with a hair follicle drug test, a test that is neither expensive nor invasive. The truth will assist the court in furthering Katie’s best interests.

**Dad’s Lawyer (“DL”):** The court may not order Dad to submit to a drug test. Holding that Family Code section 3011 doesn’t empower a family court to order parental drug testing in a child custody dispute, *Wainwright v. Superior Court (Sinkler)* (2000) 84 Cal.App.4th 262, 267 states: “Interpreting section 3011, subdivision (d) to permit court-compelled drug testing in child custody disputes would present serious constitutional concerns. Governmentally compelled drug testing implicates the federal and state right to be free of unreasonable searches and seizures, and the state right of privacy.”

**ML:** The *Wainwright* court found parental constitutional rights where none exist. An investigative procedure which is minimally intrusive and which reveals only the presence or absence of contraband is not a search. Examples of procedures which aren’t Fourth Amendment “searches” include a dog sniff (*United States v. Place* (1983) 462 U.S. 696, 707), a field drug test (*U.S. v. Jacobsen* (1984) 466 U.S. 109, 125), and the hair follicle test the *Wainwright* court considered.

**ML:** The *Wainwright* court admitted in footnot 2 that its decision didn’t encompass Code of Civil Procedure section 2032, under which a court may order a physical examination, on noticed motion and for good cause shown, where a party’s physical condition is in controversy in the action.

**Court:** The 2032 issue isn’t before me.

**ML:** Even if the court can’t order Dad to take a drug test, the court can condition Dad’s right to visit Katie on his tak-

ing the test. Mom requests the court do so. If Dad were on criminal probation, for example, the court could condition his remaining out of jail on his completing the test.

**DL:** My client has committed no crime, and his Fourth Amendment rights remain intact.

**ML:** He fathered a child, Your Honor.

**DL:** Fathering Katie wasn’t a crime.

**ML:** But now Dad is wrangling with Mom over Katie’s best interests. Although the government has little power over an intact family, once the family collapses and a family member invokes court assistance, the government acquires great power over the family. The family court exercises that power.

**Court (to ML):** Your position is that Dad’s fathering Katie and his wrangling with Mom empower the court to condition his visitation upon his completion of a drug test?

**ML:** Those are two of the bases of the court’s power. The third basis is the court’s responsibility to Katie.

**DL:** It would be unfair to punish Dad for wrangling with Mom. The law can’t presume that the wrangling is Dad’s fault.

**ML:** It doesn’t matter whose fault the wrangling is. The fact is that Katie’s parents no longer agree on her best interests, so now the law must determine those interests.

CONTINUED ON PAGE 22

# NEW MEMBERS • MEMBER CHANGES

Carol Delzer  
818 University Ave  
Sacramento, CA 95825  
916-649-0555 Fax: 916-649-4360  
delzerlaw.com  
www.delzerlaw.com  
Sacramento County

Michael Mattice  
1017 Tennessee St.  
Vallejo, CA 94590  
707-552-6283 Fax: 707-642-5113  
Solano County

Clark M. Dixon-Moses  
2820 Porter St  
Soquel, CA 95073  
Santa Cruz County

William M. Dubbin  
255 N Market St #210  
San Jose, CA 95110  
408-293-8626 Fax: 408-292-4100  
Santa Clara County

David A. Fink  
155 Montgomery St #1400  
San Francisco, CA 94104  
415-399-8380 Fax: 415-399-8390  
david@nachlisfink.com  
San Francisco County

Paul E. Gavin  
701 Palomar Airport Rd #260  
Carlsbad, CA 92009  
760-931-8830 Fax: 760-431-9441  
divmediator@aol.com  
San Diego County

Athea Lee Jordan  
407 Sherman Ave #C  
Palo Alto, CA 94306  
Santa Clara County

George M. Kornievsky  
5120 Birch St #150  
Newport Beach, CA 92660  
949-728-0888 Fax: 949-724-0889  
kornievsky@toughbutfair.com  
Orange County

Lisa Helfend Meyer  
10100 Santa Monica Blvd #430  
Los Angeles, CA 90067  
310-277-9747 Fax: 310-277-4847  
Los Angeles County

Robert H. Miller  
407 Sherman Ave #C  
Palo Alto, CA 94306  
Santa Clara County

Lorie Nachlis  
Nachlis & Fink  
155 Montgomery St #1400  
San Francisco, CA 94104  
415-399-8380 Fax: 415-399-8390  
lorie@nachlisfink.com  
San Francisco County

George B. Richardson  
2501 Park Blvd #200  
Palo Alto, CA 94306  
650-324-4801 Fax: 650-326-5430  
georger@cal-familylaw.com  
San Mateo County

Kate Rockas  
790 Mission Ave  
San Rafael, CA 94901  
415-485-2200 Fax: 415-455-4982  
krockas@dnai.com  
Marin County

M. Dee Samuels  
Samuels & Shawn  
770 Tamalpais Dr #306  
Corte Madera, CA 94925  
415-927-5320 Fax: 415-927-5324  
Marin County

Katherine E. Stoner  
Stoner Welsh & Schmidt  
413 Forest Ave  
Pacific Grove, CA 93950  
Monterey County

Cheryl L. Tomac  
California Divorce & Mediation Center  
630 Alta Vista Dr #103  
Vista, CA 92084  
760-941-9494 Fax: 760-941-9597  
San Diego County

Joseph R. Winn  
11335 Gold Express Dr #135  
Gold River, CA 95670  
916-631-8585 Fax: 916-631-0606  
joe@winn-winn.com  
www.winn-winn.com  
Sacramento County

## PARENTS WRANGLE AT THEIR OWN RISK

CONTINUED FROM PAGE 7

**DL:** It would be unfair for the law to impose “wrangling strict liability” on Dad. How can Dad be expected, at the time of conception, to have foreseen whether he and Mom would someday wrangle over Katie?

**ML:** Dad’s participation in procreation has consequences to him. Many of those consequences are unintended, but Dad remains responsible for them, intended or not. Drug testing will help the court protect Katie.

**DL:** But, Your Honor, what would happen to Dad’s Fourth Amendment rights?

**Court:** They will take a back seat here. I find Mom’s position reasonable, and rule in her favor. I don’t order Dad to submit to a hair follicle test. I do, however, order that he shall not see Katie until he has done so.

**DL:** On the issue of the degree of Dad’s responsibility, has the court recalled that Katie was conceived during a one-night stand?

**Court:** Maybe Dad should have remained standing. Next case.

## ACFLS MISSION STATEMENT

IT IS THE MISSION OF ACFLS TO PROMOTE AND PRESERVE THE FAMILY LAW SPECIALTY. TO THAT END, THE ASSOCIATION WILL SEEK TO:

1. Advance the knowledge of Family Law Specialties;
2. Monitor legislation and proposals affecting the field of family law;
3. Promote and encourage ethical practice among members of the bar and their clients; and
4. Promote the specialty to the public and the family law bar.