



New Case Brief
Prepared by [Salinas Office](#)
By: Paula A. Montgomery, Esq

January 25, 2007

Sonoma County v. WCAB (Duckett)

S148635

Dana Miller of Mullen & Filippi (Santa Rosa office) persuaded the California Supreme Court to consider another case in the heated quest to determine the proper apportionment formula.

A sheriff's deputy for the County of Sonoma sustained a prior injury in June of 1990 and received a stipulated award of PD at 21.5% in March of 1992 worth \$10,920. He then returned to work for the county and never petitioned to reopen his previous award. He then sustained a second injury in October 2001 resulting in 54% PD. The judge apportioned per *Dykes* and deducted the \$10,920 paid under the original award from the value of his present PD of 54%. The First District denied a writ filed by the County.

The County argued that the *Welcher* formula, developed by the Third Appellate district was the correct formula, and further, that the 1st District was inconsistent in applying a different formula from the decision they rendered in the *Brodie* case that required the prior awarded dollars be adjusted to account for present-day value.

The Supreme Court granted review but indicated that they would first consider the *Welcher* and *Brodie* cases.

The defense is also disputing a home care award on the grounds that 1) the claimant never paid his mother for the care and 2) there was no contemporaneous doctor's prescription for when the in-home care was done; instead, it was an undated prescription generated 1 ½ to 2 years after the services had been allegedly provided!

Go Dana!