

FROM THE COURTS

Attorneys: Reject Trump's Challenge to ASA

by Jane Wester

Attorneys for the author E. Jean Carroll, who has accused former President Donald Trump of raping her in a New York City department store in the 1990s, urged a federal judge to allow her to move forward with the claim she brought against Trump under New York's Adult Survivors Act.

Trump on Dec. 21 filed a motion to dismiss the suit, arguing that the Adult Survivors Act, which in November opened a one-year look-back window in which people can file civil suits for sexual assault claims that would otherwise be time-barred, is unconstitutional.

Carroll's attorney Roberta Kaplan of Kaplan Hecker & Fink emphasized in Wednesday's filing that New York's Child Victims Act, a 2019 law that opened a similar look-back window for claims of sexual abuse suffered by children, has been upheld by the courts.

Kaplan urged the court to reject Trump's argument that the Adult Survivors Act lacks legal justification compared to the Child Victims Act.

"While Trump would have the Court blame adult survivors of sexual assault for not speaking up and filing claims sooner, there is no basis in law or fact for that position, and in all events that moral judgment is not his to make," Kaplan wrote.

In Wednesday's filing, Kaplan quoted an array of state legislators' comments about the timeline of processing trauma and how that can affect the timeliness with which a survivor comes forward.

"As the legislative record demonstrates, the ASA exists to remedy a serious injustice that was long ignored and misunderstood: specifically, the injustice of imposing an unduly short statute of limitations on survivors of sexual assault, many of whom were traumatized by the experience and its aftermath and



DAVID HANDSCHUH/ALM

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were thus unable to obtain redress or accountability within the limitations period," she wrote.

Kaplan also urged the court to reject Trump's motion to stay discovery in the case. Because Carroll previously sued Trump for defamation and the older case is set to go to trial in April, most of the discovery relevant to the new case has already been completed, Kaplan argued.

Kaplan argued that the remaining discovery presents "practically zero burden on Trump," because it involves the exchange of expert reports and another deposition for Carroll.

A representative for the Trump legal team did not immediately respond to a request for comment Wednesday. U.S. District Judge Lewis Kaplan of the Southern District of New York is presiding over the case.

Jane Wester is a litigation reporter for the New York Law Journal. Email her at jwester@alm.com or find her on Twitter @janewester.

Remote Juror Didn't Create Unfair Trial: 9th Circuit

by Avalon Zoppo

A federal appeals court, upholding a man's robbery conviction, dismissed the argument that the participation of a remote juror made the trial unfair.

The U.S. Court of Appeals for the Ninth Circuit rejected Edward Knight's argument that allowing a juror to participate in his criminal trial over Zoom deprived him of his right to a fair and impartial jury trial and his right to confront witnesses.

"[A]llowing remote juror participation does not impact the entire framework of the trial in ways that cannot be accurately measured on review. Rather, it merely creates room for the types of problems and errors identified by Knight, such as difficulties in seeing exhibits, hearing testimony, and/or viewing witnesses. But none of those errors will necessarily arise simply because a juror is participating remotely," the panel said.

While the court found no legal issue with the remote participation, other virtual trials during the pandemic have been plagued by problems. In May, the top court in Massachusetts ordered a re-do of a Zoom trial that was riddled with technical glitches.

But the Ninth Circuit, in a footnote of its opinion, noted advantages in remote

trials with observing witnesses and assessing body language.

The panel consisted of Judges Sidney Thomas and Mark Bennett and U.S. District Judge Robert Lasnik, sitting by designation.

During Knight's March 2021 trial, one juror watched virtually for the first two days because his wife was potentially sick with COVID-19. Knight consented to the juror taking part over Zoom when questioned by the presiding judge about waiving his right to their in-person participation.

On appeal, Knight said his Fifth and Sixth amendment rights were violated. He argued that the court didn't obtain a valid waiver.

"The district court repeatedly advised Knight that he could insist on in-person juror participation at any time, ensured that Knight spoke with his counsel about the waiver, and fully considered concerns raised by both parties. There can be no error if the rule on which the defendant relies has been effectively waived," Lasnik wrote.

Avalon Zoppo is an appellate courts reporter for The National Law Journal, an ALM affiliate of the Daily Business Review. Contact her at azoppo@alm.com. On Twitter: @AvalonZoppo.

CITY OF DORAL
NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **January 25, 2023 beginning at 6:00 PM** to consider an amendment to the City's Land Development Code, Chapter 77, "Roads and Vehicular Use Areas," to update single-family residential driveway regulations. The City Council will consider this item for **SECOND READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

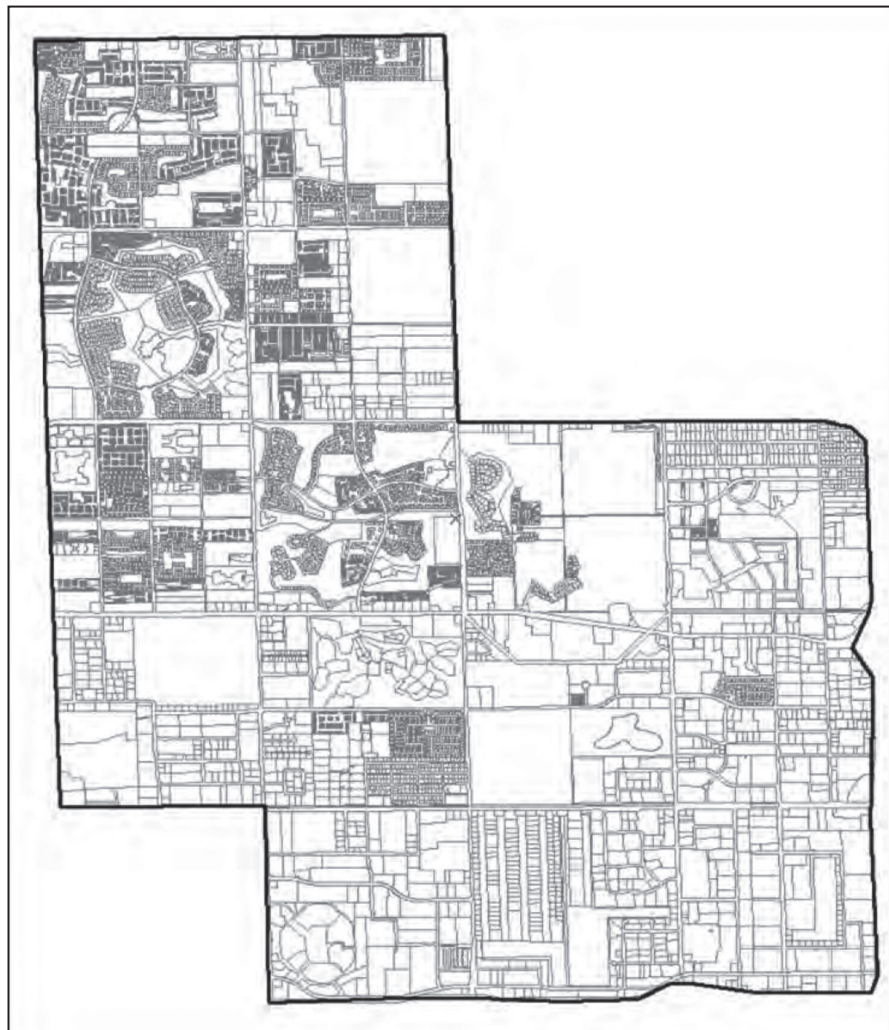
ORDINANCE No. 2022-21

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A TEXT AMENDMENT TO THE CITY OF DORAL LAND DEVELOPMENT CODE, CHAPTER 77, "ROADS AND VEHICULAR AREAS," ARTICLE III, "ACCESS CONTROL," DIVISION 1, "GENERALLY," SECTION 77-85, "SINGLE-FAMILY AND DUPLEX DRIVES," TO UPDATE SINGLE-FAMILY RESIDENTIAL DRIVEWAY REGULATIONS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 23-01-DOR-06

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve an amendment to the City's Land Development Code modifying Chapter 77, "Roads and Vehicular Use Areas," to update single-family residential driveway regulations.

Location Map

Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes if a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral