

# RIVERSIDE LAWYER

December 2004 • Volume 54 Number 11

MAGAZINE

## THE ALPHA AND THE OMEGA OF DISCOVERY OUTLINES

COMPEL ANSWERS

INTERROGATORIES

BILL OF PARTICULARS

INSPECTION DEMAND

PROTECTIVE ORDER

PHYSICAL EXAM

MENTAL EXAM

REQUEST FOR  
ADMISSIONS

DEPOSITIONS



The official publication of the Riverside County Bar Association

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# RIVERSIDE LAWYER

MAGAZINE

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# MISSION STATEMENT

## Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

## RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

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*The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.*

# CALENDAR

## December 2004

**17 Joint RCBA/SBCBA Annual Meeting**  
SB Hilton on Hospitality Lane – Noon  
Speaker: State Bar President  
John Van de Kamp  
MCLE

**24 HOLIDAY**

**31 HOLIDAY**

## January 2005

**4 CLE Brown Bag Series**  
RCBA Bldg., 3rd Floor – Noon  
MCLE

**5 Bar Publications Committee**  
RCBA – Noon

**11 PSLC Board**  
RCBA – Noon

**12 Mock Trial Steering Committee**  
RCBA – Noon

### Barristers

Cask 'n Cleaver Restaurant – 6:00 p.m.  
1333 University Ave., Riverside  
MCLE

**14 CLE Brown Bag Series**  
RCBA Bldg., 3rd Floor – Noon  
MCLE

**15 Bridging the Gap**  
RCBA Bldg., 3rd Floor  
8:15 AM – 3:45 PM  
MCLE





by Michelle Ouellette

As the signs of the holiday season become more and more obvious, it seems appropriate to reflect upon the past year and to give thanks for what we have. Although Thanksgiving is now behind us, the holidays – whether Christmas, Chanukah, Kwanzaa, or New Year’s – are a time to gather with friends and family and to be grateful for our material abundance, good fortune, and (hopefully) good health. I, for one, do not take enough time during the year to remember how truly blessed I am for the opportunities that are given to me or to express my appreciation for the wonderful people who choose to be a part of my life. This holiday season I plan to change this.

This holiday season, our country as a whole is also reflecting on the events of the past year. The presidential election is now over and a politically divided nation is beginning to refocus on the things that unify us as Americans. I know that I remain deeply thankful for being an American and for living in a nation that allows me to express my beliefs through my vote. Winston Churchill supposedly once said that, “If you are not a liberal when you are young, then you have no heart; and if you are not a conservative when you are old, then you have no brain.” Although these words have amused me on several occasions, I have to disagree. I am a Democrat – there, I admit it. Not only am I a Democrat, but a bleeding-heart, liberal Democrat to boot. As an infant in a stroller, I went house-to-house with my parents ringing doorbells and supporting Democratic candidates. Although several of my clients have tried to convert me to the “right” party, I have remained steadfast. No matter what my age, being a Democrat is in my bones.

Although I confess disagreement with the results of this year’s presidential election, this does not mean that I am not a staunch supporter of the United States or that I fail to appreciate what makes this a great country. I assure you, I do. One of the things that I am most thankful for this holiday season is that I live in a nation that tolerates differences – differences in opinion and differences in culture. Our freedom of speech and our right to vote should be cherished as two of the greatest blessings that America enjoys. This has been particularly applicable in recent months as some have suggested that criticizing our government or opposing the war in Iraq is somehow un-American. This line of thought misses out on one of the key tenets of this country – we have the *right* to disagree with each other; we have the *right* to state our opinions; and we have the *right* to question and criticize our elected officials. Speech that is uncontroversial or complimentary needs no protection, rather it is speech that questions and speech that criticizes that must be guarded against censorship. At the RCBA lunch this past month, our distinguished speaker Florentino Garza said that “to remain mute is to forfeit our rights,” and I agree with him. Voicing our opposition to those things with which we disagree is *not* un-American; it is remaining silent and giving up our treasured rights as Americans that is the un-American act. As lawyers, we have the benefit of knowing more than most about the rights that Americans enjoy, and this benefit should be used by attorneys both to support those rights and also to vigilantly defend them.

Aside from our national rights, there are many things in our local community for which I, and I’m sure many of you, am grateful. Thanks to all of you who heeded last month’s suggestion and donated your time helping out in the community. Thanks also to Jay Orr and his committee for putting on the second annual RCBA Golf Tournament on November 8. Not only was the tournament terrific, but due to much hard work and the excellent turnout, the tournament raised over \$8,500 for important programs such as Mock Trial, Good Citizenship Awards and the Giving Back program. And somehow Jay and his group even managed to pull some strings and stop the rain for an eight-hour period!

Finally, I want to thank all who participated in the RCBA Elves program. This is a great program that Brian Pearcy started a few years ago, and it has been a great success.

I wish you all a very happy and safe holiday season, and I look forward to seeing you all again in the New Year.

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*Michelle Ouellette, president of the Riverside County Bar Association, is a partner at Best Best & Krieger, LLP in Riverside.*

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**RIVERSIDE COUNTY BAR ASSOCIATION ~ 2005 BUDGET**  
**(Budget to be approved at January 21, 2005, General Membership Meeting.)**

<b>REVENUE</b>	
MBNA ROYALTY	\$ 1,000.00
RCBA DUES	\$ 120,000.00
LRS PANEL DUES	\$ 12,500.00
BAR MAGAZINE ADVERTISING	\$ 20,000.00
FEE ARBITRATION	\$ 18,000.00
BRIDGING THE GAP	\$ 250.00
INSTALLATION	\$ 13,000.00
PUBLIC BAR, LAW DAY	\$ 3,500.00
MOCK TRIAL T-SHIRTS	\$ 1,800.00
GENERAL MEETINGS	\$ 12,000.00
COMMITTEE/SECTION MEETINGS	\$ 2,600.00
DRS REIMBURSEMENT	\$ 21,000.00
LRS ICF OTC	\$ 48,000.00
LRS ICF ATC	\$ 36,000.00
LRS PERCENTAGE FEES	\$ 150,000.00
LABELS & ROSTERS	\$ 1,500.00
MEMBERSHIP DIRECTORY/CD'S	\$ 5,000.00
INTEREST & DIVIDENDS	\$ 3,500.00
MISCELLANEOUS INCOME	\$ 500.00
LEASE INCOME	\$ 215,000.00
TENANT SIGNS	\$ 250.00
PARKING INCOME	\$ 5,000.00
ROOM USAGE CONFERENCE	\$ 700.00
<b>TOTAL REVENUE</b>	<b>\$691,100.00</b>
<b>EXPENSE</b>	
COMPUTERS	\$ 6,000.00
SALARIES	\$ 212,300.00
FEDERAL TAX DEPOSITS	\$ 10,000.00
EMPLOYEE BENEFITS/MEDICAL INS	\$ 14,000.00
EMPLOYEE IRA	\$ 6,400.00
EMPLOYER PAYROLL TAXES	\$ 18,000.00
ADP PAYROLL FEES	\$ 2,200.00
OUTSIDE SERV - ACCT. CPA/ AUDIT	\$ 12,000.00
COMPUTER/INTERNET/WEB SERVICES	\$ 6,000.00
OFFICE SUPPLIES	\$ 6,200.00
POSTAGE - METER	\$ 12,000.00
POSTAGE - BULK MAIL	\$ 3,600.00
POSTAGE - FED EX	\$ 100.00

PRINTING	\$ 2,800.00
TELEPHONE SERVICES	\$ 11,000.00
YELLOW PAGE ADVERTISING	\$ 40,000.00
INSURANCE - OFFICE/ E & O	\$ 3,000.00
INSURANCE FOR BLDG	\$ 4,500.00
INSURANCE - WORKERS COMP.	\$ 7,000.00
TAXES, LICENSE & DUES	\$ 300.00
BRIDGING THE GAP	\$ 400.00
INSTALLATION	\$ 13,000.00
PUB. BAR,GOOD CITIZEN/LAW DAY	\$ 1,000.00
MOCK TRIAL - STATE	\$ 500.00
MOCK TRIAL T-SHIRTS	\$ 1,500.00
LRS RECERTIFICATION	\$ 3,500.00
BAR LEADERS CONFERENCE/NABE	\$ 3,500.00
CONFERENCE OF DELEGATES	\$ 3,500.00
RCL MAGAZINE	\$ 45,000.00
REFRESHMENTS & UTENSILS	\$ 1,600.00
FLORIST/PHOTOS	\$ 800.00
MEMBERSHIP/SPECIALTY DIRECTORY	\$ 4000.00
CONF. LRS SEMINAR	\$ 2,000.00
GENERAL MEETINGS	\$ 9,500.00
COMMITTEE/SECTION MTGS (MEALS)	\$ 4,000.00
EXECUTIVE DIRECTOR FUND	\$ 100.00
EX. DIR - SEMINARS/MTGS	\$ 2,000.00
PRESIDENT'S FUND	\$ 300.00
EDU. PROGRAM MATERIALS	\$ 1,000.00
LEADERSHIP TRAIN / ED (BAR ED)	\$ 2,500.00
OFFICE EQUIP LEASE - OCE/PITNEY/TYPEWR.	\$ 7,000.00
MORTGAGE PAYMENT/interest/principal	\$ 72,000.00
UTILITIES ,ELECT,GAS,WATER,TRASH	\$ 45,000.00
REPAIRS / REPLACE EQUIP	\$ 10,000.00
BLDG / MAINT/ SUPPLIES/,LIGHTS ETC.	\$ 23,800.00
JANITORIAL SERVICE/BLDG.	\$ 35,000.00
PROPERTY TAXES	\$ 12,000.00
TEL-LAW SUPPORT	\$ 3,600.00
INT/FIN CHARGES/MC CHARGES	\$ 4,500.00
MISC. EXPENSE	\$ 500.00
INTERPETER SERVICES	\$ 600.00
<b>TOTAL EXPENSE</b>	<b>\$691,100.00</b>

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# Barristers

*by Robyn A. Beilin*

I am pleased to report that Barristers held its first meeting for the 2004/2005 season in October and we were so happy with the large turnout! Breaking with tradition, the executive board of Barristers opted to have a panel discussion, which was led by its members as well as several

other attorneys, to provide advice on “How to Avoid Rookie Mistakes.” In addition to being very entertaining when offering horror stories from other attorneys in their early years of practice, the discussion also yielded excellent tips that our newest members of the RCBA can use in their own practices. We were also pleased to see new members from locations such as Redlands and Hemet – we hope to see you all again at next month’s meeting!

In November, we were joined by Dave Moore of Reid & Hellyer, a legendary trial attorney. Mr. Moore was gracious and insightful in offering his thoughts on trial advocacy. A special thanks to him for taking time out of his busy schedule to speak to our Barristers members.

In the Barristers’ column for November, I failed to include our sincere thanks to Judge Cunnison for his efforts in swearing in this year’s Barristers’ Executive Board at the annual Installation Dinner, which was held in September. His participation in that ceremony was particularly fitting, as Judge Cunnison is a former President of Barristers himself. Thank you again to him!

For those of you who are still not attending our monthly meetings, I would urge you to stop by and see what we are all about. Barristers is a group designed for less experienced members of the Bar Association through which they can meet other similarly situated attorneys in the area and learn about topics relevant to the practice of law. At each meeting, a speaker leads a discussion on a certain area of the practice of law with the focus on educating less seasoned attorneys. These discussions are an invaluable source of information and provide an hour of MCLE credit. We meet the second Wednesday of each month at 6:00 p.m. at the Cask ‘n Cleaver restaurant on University Avenue in downtown Riverside. And for those of you who may not consider themselves to be “new attorneys,” or who think that Barristers is just for “young” attorneys, I would urge you to stop by – we would love to have you join us!

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*Robyn Beilin, Vice President of Barristers, is with the Law Offices of Harlan B. Kistler in Riverside.*

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*If you would like more information regarding Barristers or any of its upcoming events, please feel free to contact Robyn Beilin at (951) 686-8848 or via email at [beilinro@yahoo.com](mailto:beilinro@yahoo.com).*





# BARRISTERS' PROFILE: G. SPENCER MYNKO, M.D.

by Robyn A. Beilin



I am sure that you must have encounters with people during which it becomes clear that they are impressed with the fact that you are a lawyer. Maybe it is the fact that you are a professional while others are impressed that you passed the infamous Bar Exam. Personally, I am always asked how I was able to manage to get through law school, a conversation that always seems to leave the other person overwhelmed with the level of education that it takes to join the practice of law. Now imagine the awe that must greet G. Spencer Mynko of Heiting & Irwin when he tells people that he is not only a practicing attorney but also a practicing physician! I must say that I was incredibly impressed with his credentials. However, after spending some time with him, I must also say that I am equally impressed with his humility and unassuming nature. For Spencer, it seems that his passion for medicine and the law are happily married in his dual professions, and he is content with that result regardless of the prestige that such a grueling career may inspire.

Spencer, who originally hails from Youngstown, Ohio, first began his higher education career at the University of Akron, where he enrolled in the six-year accelerated Bachelor of Science/Medical Doctorate program. He had the distinct honor of being accepted to that program while still in high school. Spencer graduated from the University of Akron with a Bachelor of Science degree in Natural Science while he earned his Doctor of Medicine from Northeastern Ohio Universities College of Medicine.

After graduating from that accelerated program, Spencer went on to complete an internship in transitional medicine at the Kettering Medical Center, which is located in Dayton, Ohio. His residency training was completed in anesthesiology at the University of California at Irvine and at the Whitacre Department of Anesthesiology in Cleveland, Ohio. After his residency was completed in 1995, Spencer began to practice medicine in private practice, first in Illinois and then in California.

Later, in 1998, Spencer enrolled in law school at the University of San Diego while continuing to practice medicine on a part-time basis. He first became aware that the practice of medicine and law could be joined as a result of the famous Betty Broderick case in La Jolla, California. Betty Broderick was

convicted of murdering her former husband and his new wife, a story that soon became well-publicized. During the media blitz of coverage of that case, Spencer learned that Betty Broderick's husband had been a practicing physician before he entered into the practice of law as a medical malpractice attorney. Always interested in the law, Spencer was excited at the prospect of using his medical knowledge and expertise in the practice of law.

Before graduating from law school in 2002, Spencer won the Best Oral Advocate award. It was then that he realized that he wanted to focus his practice on trial work. He began to intern at Heiting & Irwin until he received his bar results.

After his admission to the California State Bar, Spencer joined the team at Heiting & Irwin, where he focuses primarily on medical malpractice claims and catastrophic personal injury claims. All the while, Spencer also maintains his California medical license and practices medicine on a part-time basis in addition to his demanding schedule as an attorney. As you can imagine, those credentials offer Spencer a distinct advantage in evaluating and litigating cases that involve complex medical issues.

Spencer seems to be faring well during his first year of practice. Like most newly admitted attorneys, he is struggling with the ups and downs of inexperience. However, I have no doubt that he is able to handle anything that comes his way and I am sure that we will be hearing much about this talented man in the years to come. Spencer resides in Lake Elsinore with his wife and their infant son.

Please come to our next Barristers meeting to meet Spencer and our other Barristers members – we look forward to meeting you!

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*Robyn Beilin, Vice President of Barristers, is with the Law Offices of Harlan B. Kistler.*

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# 2<sup>ND</sup> ANNUAL RCBA GOLF TOURNAMENT

The Riverside County Bar Association would like to acknowledge the following sponsors for making this golf event a success:

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PIP Printing  
Red Hawk Golf Club  
Simple Simon's  
Teaman, Ramirez & Smith, Inc., CPA  
Temeku Hills Golf and Country Club  
The Golf Mart / Roger Dunn  
Varner, Saleson & Brandt, LLP



**Congratulations to the following winning teams:**



*1st PLACE: Jamie Robinson, Craig Olsen, Bill Bratton, Fred Hoffman*



*2nd PLACE: Jim Heiting, David Giles, Steve Ryneal*



*3rd PLACE: John Higginbotham, Kyle Snow, John Nelson, Dave Hancock*



# JUDICIAL PROFILE: JUDGE ROBERT G. TAYLOR

by Rick Lantz



L: What is your idea of perfect happiness?

T: Where your loved ones are with you and you're doing something good for society.

L: Which historical figure do you most identify with?

T: I really admire Albert Einstein. He was an independent thinker, obviously very smart, creative, and thought outside the box. He was very strong in terms of following his principles, come what may. And he took the consequences, and so I really admire him.

L: Who or what is the greatest love of your life?

T: It would be my wife and my children, without hesitation.

L: When and where were you the happiest?

T: I get the most joy when I'm in my music studio at home and creating.

L: Which talent would you most like to have?

T: I wish I could sing.

L: Who are your favorite writers?

T: I just finished a book by Khaled Hosseini called *The Kite Runner* and I was so impressed. I believe it was his first novel.

L: Who is your favorite real life hero, living or dead?

T: I don't have heroes.

L: What is your favorite hobby or sport?

T: My favorite off-time endeavor is music composition and recording, and also I'm getting now into visual film-making, videography. My favorite sport? I'm an avid swimmer and I love to hike. My wife is a greater hiker, and she can hike the legs off of me, and we love to do backpacking in the summertime.

L: Why are you leaving the bench?

T: It's a number of factors. When I took the bench I truly felt a calling. I felt a calling to become a judge and do the things that judges do. And that was almost 13 years ago. I now feel I'm called elsewhere. It's time to move on. I think there's a little less enjoyment in the job than there used to be. When you were here this morning, this was supposed to be a short calendar and we went without a break until 11 o'clock. Everyone is tired. The staff is tired, I'm tired. We've had a lot of intellectual arguments on the calendar today and it takes a tremendous amount of preparation each day. And you can do that for so long and then after awhile you really, I suppose, start to get a little bit tired of it. So there's a little less joy in the job. By the time I'll retire, I'll be 54, and there are other things I want to do with my life. I

want to spend more time with my wife, more time hiking, more time pursuing my bliss, which would be music and film making, at my own level. But at the same time, it's going to be hard to totally cut the umbilical cord with the law. For 27 years, it's been my profession. I do plan to stay in the law, only to the extent of maintaining some sort of a mediation practice. I don't want to make it full-time, but I think that's an area that I have somewhat of a reputation for in terms of assisting people to settle cases, and I will provide that service as well.

L: What are the reactions of the fellow judges to you retiring?

T: The reactions have been a mixture of expressions of sadness, support, good for you, everyone has been extremely kind in terms of the comments that they've given me. Only one or two made the slightest effort to ask me to reconsider.

L: What is the quality that you most like in yourself?

T: I think it's my effort, my continued effort to do the right thing. And that requires preparation, it requires not shirking from the issues, being willing to work through difficult issues. I think it's important also, and this is another thing I try to do, is let people know they've been heard, that the judge is deciding the case on principles of law applied to fact, in other words, the judge is being impartial. People should leave the court, whether they win or lose, with a feeling that the judge understood the case, even if he or she disagreed with the litigant or the attorney, and decided the case in an impartial manner, and that's what I try to do.

L: What is the quality that you least like in yourself?

T: Second-guessing myself.

L: You can't let it go after you make a decision?

T: I'm much better than I used to be. And it's only on the more difficult rulings, but there will be the difficult times where you make a ruling and you say, a day or two after, was that the right ruling? And then, of course, you thank God for the appellate court.

L: If you could come back as a person or thing, what or who would it be?

---

T: A talented musician, great pianist. I admire a great pianist because I play keyboards but I play very rudimentary keyboards.

L: What's your biggest regret?

T: Not spending enough time with the children when they were young. I spent a fair amount of time, but when you're wedded to the practice and you have long hours and work on weekends, the kids grow up so quick and then you say to yourself, "Gee, I wish we had more time."

L: What's the major weakness or weaknesses of the lawyers coming before you?

T: I find most lawyers do a very good job, but where the lawyers tend to fall down is just not putting enough work into a case. A product of, perhaps, fuzzy thinking, not applying themselves to a thorough legal analysis of the case. It's a lack of preparation I'm most concerned about, where I do see lawyers falling down.

L: What's the major weakness or weaknesses of the judicial system?

T: Well, that's easy right now. Lack of resources. Lack of judicial resources. We need more judges. Our calendars are too heavy. And when the calendars get too heavy you find it very difficult to put the time in the cases that they deserve. It creates a lot more stress, because you're under a time restraint all the time to get a certain amount of volume completed in a finite period of time. And it's like ramping up the flow of water through a hose and you get this big bulge because it just can't accommodate it all. But the first thing is, we need more judges. When you take in family law, which is growing, civil, probate,

we have a tremendous amount of workload and we have not kept up with the judicial positions.

L: Any thoughts about going into politics?

T: No serious thoughts.

L: If you could give one bit of advice to your fellow judges, what would it be?

T: Hang in there, don't give up like I did. Just keep up the good fight.

L: Now that you're retiring, this is an open-ended question, is there anything you would like to say to your fellow judges or lawyers?

T: I would really like to say thanks for being such a great group of people. I tell you, my colleagues on the bench are wonderful, wonderful people. A real mix of personalities and viewpoints, and it's not that we don't have our disagreements. I was presiding judge for two years, so I certainly know what it means to deal with different personalities and viewpoints. But I would just say thanks for being such great people, and I'm just so pleased to have had the opportunity to work with my colleagues who I have the highest admiration for. As for attorneys, I have gone on record saying I have a character flaw, and that is I like attorneys. They can cause aggravation for a judge, but at the same time I look at the practice of law as a noble profession, because they're coping and helping people who couldn't help themselves. And the one thing I would say to attorneys is, keep that noble position in mind as you practice your profession and try not to let the business of the law override the profession of the practice. I was fortunate to be one of the founders of the local Inns of Court and I was their first president. The whole goal of the Inns of Court is to foster stability, competence and ethical practice. I would just say to the attorneys, keep your standards high.

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*Rick Lantz, a member of the Bar Publications Committee, is an attorney in La Quinta.*

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# LITIGATION UPDATE

by Mark A. Mellor

In our continuing effort to bring you the latest information concerning the practice of law in California and here in Riverside, we are launching a new column in this month's issue. We hope that you find it both helpful and informative in your practice here in Riverside. Please favor us with your thoughts and suggestions by writing the editor concerning our new addition to the *Riverside Lawyer*.

## When you tell the court you will be there, you had better show up.

If you are scheduled for argument before the California Supreme Court and your boss fires you days before the hearing, you may not assume that she or he will send someone else. In *In re Aguilar and Kent on Contempt* (Sept. 23, 2004) 34 Cal.4th 386 [18 Cal.Rptr.3d 874, 97 P.3d 815, 2004 DJDAR 11919], <http://www.courtinfo.ca.gov/opinions/documents/S099667A.PDF>. Aguilar and his associate Kent had advised the court that they would appear for oral argument. Neither showed up. Aguilar, who had fired Kent five days before the hearing, subsequently compounded his offense by lying to the court to explain his absence. All justices agreed in holding Aguilar in contempt, fining him \$1,000, and ordering him referred to the State Bar for disciplinary action. The majority also found Kent in contempt and fined him \$250, holding his duties to the court did not end when his boss fired him.

## Even winning does not entitle every "private attorney general" to fees.

Code of Civil Procedure § 1021.5 provides for an award of attorney fees to the successful plaintiff in cases resulting in "the enforcement of an important right affecting the public interest." (The statute is commonly referred to as the "private attorney general statute.") There has been much publicity about the misuse of this statute in actions under Business and Professions Code § 17200 (Unfair Trade Practices Act). In *Baxter v. Salutory Sportsclubs, Inc.* (Sept. 28, 2004) 122 Cal.App.4th 941 [2004 DJDAR 12115] [First Dist., Div. Three], <http://www.courtinfo.ca.gov/opinions/documents/A105005.PDF>, the successful litigant was denied fees because the court concluded that the public benefit derived from the successful litigation was too minuscule to constitute "an important right affecting the public interest." Although the plaintiff established that there were discrepancies between the defendant's form contract and the requirements of the Health Studio Contracts Law (Civ. Code, §§ 1812.80 et seq.), the contract form complied with "the spirit of the statute" and no one was damaged by the very minor deviations from the requirements of the statute.

## No rush to get your will witnessed.

In *Estate of Sauressig* (Sept. 29, 2004) 122 Cal.App.4th 1086 [19 Cal. Rptr.3d 262, 2004 DJDAR 12163] [Second Dist., Div. Four], <http://www.courtinfo.ca.gov/opinions/documents/B167907.PDF>, the court held that a witness to the signing of a will may attest to that fact by signing the will after the testator has died. Presumably the same rule does not apply to the testator.

## Court was called upon to define "is." (Although the case did not involve a former president.)

One defendant was quoted in a magazine article as having said "our dad's a pimp." Dad did not take kindly to this characterization. Nor did he appreciate the other defendant having stated that their father had "dabbled in the pimptorial arts." Dad sued and, although he did not deny that in his past he might have acted as a procurer, he argued that the statements were nevertheless libel because he had long ago forsaken this calling. The jury was less than sympathetic to dad's plight and absolved the sons of liability. Dad appealed. But the Court of Appeal was no more sympathetic to his cause and affirmed the judgment. It concluded that the two statements could reasonably be interpreted as describing dad's former profession rather than his present one. The court concluded that although one interpretation of the phrase "dad's" might be "dad is," it was just as reasonable to interpret it as "dad was." *Hughes v. Hughes* (Sept. 28, 2004) 122 Cal.App.4th 931 [19 Cal.Rptr.3d 247, 2004 DJDAR 12120] [Second Dist., Div. Five], <http://www.courtinfo.ca.gov/opinions/documents/B168913.PDF>.

## Contractual venue selection clauses are void.

As distinguished from forum selection clauses, which the courts generally enforce, parties cannot by their contracts designate a particular county for venue. *Arntz Builders v. Superior Court* (Sept. 30, 2004) 122 Cal.App.4th 1195 [2004 DJDAR 12211] [First Dist., Div. Three], <http://www.courtinfo.ca.gov/opinions/documents/A106242.PDF>.



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## Preprinted workers' compensation release form does not release civil claims.

Plaintiffs who file actions for harassment, discrimination, and wrongful termination often file contemporaneous and related workers' compensation claims. When the latter are settled, the form used to stipulate to the compromise contains broad release language which arguably encompasses the civil claims as well as the workers' compensation claim. In *Claxton v. Waters* (Aug. 30, 2004) 34 Cal.4th 367 [18 Cal. Rptr.3d 246, 2004 DJDAR 10728], <http://www.courtinfo.ca.gov/opinions/documents/S106106.PDF>, our Supreme Court held that these forms are not to be interpreted as including a release of the civil claims and prohibited the introduction of extrinsic evidence to show that the parties intended to settle both sets of claims. If the settlement is intended to be global, the parties *must* do so by means of a *separate* waiver and release form. *Note:* The ruling in *Claxton* is prospective only. For releases signed before the court issued its opinion, the courts may use extrinsic evidence to determine the intent of the parties to the settlement agreement.

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## Five-year limitation period for bringing cases to trial is suspended when mediation occurs during last six months of the limitation period.

Before trial courts started to manage their cases under the Trial Court Delay Reduction Act, the statute providing for dismissal in cases not brought to trial within five years (Code Civ. Proc., § 583.310(a)) provided a rich source of appellate opinions. Now the statute is rarely invoked. But it is still with us. In *Gonzalez v. County of Los Angeles* (Sept. 30, 2004) 122 Cal.App.4th 1124 [2004 DJDAR 12228] [Second Dist., Div. One], <http://www.courtinfo.ca.gov/opinions/documents/B168867.PDF>, the Court of Appeal reminded us that the statute is tolled under Code of Civil Procedure § 1775.7(b) when court-ordered mediation occurs during the last six months of the limitation period.

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# STATE BAR OF CALIFORNIA'S NEW PRESIDENT: JOHN VAN DE KAMP

*by James Otto Heiting*



**T**he sun was causing a glow on the tall buildings across the way from John Van de Kamp's office as we talked on the 26th floor of his building atop Bunker Hill in Los Angeles.

We have been talking for a couple of hours, and I am not looking forward to fighting the traffic back to Riverside. As President of the State Bar, he is about to leave to go to one more bar association dinner – one of hundreds of bar associated meals that he will be attending this coming year.

I look around his office, and I see photographs of Bobby Kennedy, John Tunney, Jimmy Carter. I see him in a photograph with the staff of the first Federal Public Defender's office in Los Angeles, a post to which he was appointed in 1971. The picture with Carter was taken during his interview as one of the final candidates to fill the vacant post of Chief of the FBI in 1977. (He didn't get the job because, it is reported, he was "too young.") There is also a picture of him with Herbert Hoover taken at FBI headquarters. There are many other photographs around the somewhat spacious office, as well.

Even though we are in very handsome offices of a large firm in downtown Los Angeles, meeting in a well-appointed office with floor-to-ceiling glass and a great view, I find John Van de Kamp unassuming, friendly, generous and open. He doesn't park in the building (it costs too much); and on leaving his office, we walk together to an open lot down the street where we had both parked (my truck was too tall, at 6'6", to park in their structure).

When I talk to him, I see a rainbow of personality. It is easy to see the serious side and the dedication to the law and to his principles. But along with that, it is still easy to see the twinkle in his eye, the enjoyment of life that comes with a good sense of humor, the concerns for all people, his love for his family, and his love of horses (he has been involved with thoroughbred racing for years, was the President of the Thoroughbred Owners of California and had an office at Del Mar racetrack for several years; and he proudly announces that he and some friends just acquired "Blazing Bartok," fourth at Santa Anita in its first race). Sometimes, when the light is just right and he turns in a certain direction, when he laughs, he still has the smile and face of a little first-grade boy in his striped tee shirt, laughing innocently in the glow of the moment.

Although the list of accomplishments of John Van de Kamp can go on for pages and pages, I thought that I should mention his family. His wife and daughter are very accomplished as well. Married to John in 1978, Andrea has a consulting business. She was on the board of directors of Disney for a time; she was the Chair of the Music Center and also the spectacular, newly constructed Disney Hall during construction. If you visit Disney Hall, you will find a patio named in her honor. John's daughter Diana, 25, has a background and training in acting, but she currently manages three rock groups and is involved in an internet production project and video programs. It is a very busy and involved family.

Sometimes during that conversation, I found myself musing over how he got here. I wondered how he feels and why he wanted to be State Bar President. I found he has a great appreciation for what he says is his "good fortune."

When I asked him how it was that he became a lawyer and eventually the Los Angeles District Attorney and the California Attorney General, along with all of his other accomplishments, he told me that he "got lucky." He was not sure until his senior year in college that he wanted to be a lawyer. He had thought of broadcasting as a career for a time and had worked a summer at ABC. He also had the option of going into the family business; but he had heard a lawyer who talked to his high school class, and, during college, he would go to the courthouse and watch trials. He was fascinated. After he got out of the Army in April of 1960, he was steered to the U.S. Attorney's Office, which he feels is the best thing that ever happened to him. He was trying cases within two to three weeks as a young assistant in a small office and describes that period as a "very exciting, great time." It was through that office that he started working his way up in administration. In 1968, he was appointed to be the head of the Executive Office of U.S. Attorneys at the Justice Department in Washington, D.C. However, when Richard Nixon took the presidency, he was out of a job. He had opportunities to join a strike force

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against organized crime in New Jersey, work on developing a prosecutor's office in Colombia, or run for Congress.

The congressional seat vacancy was to be filled by a special election in the Valley in 1969. He was invited to come to a meeting where Democrats were going to select their candidate(s). After going to the wrong hotel, he got to the meeting and was interviewed, and he received the endorsement of the group. During that five-to-six-week whirlwind political campaign, he got his first real and thorough political education. Sixteen people ran in a very divided district that was tough for any Democrat to win. He got into the runoff with Barry Goldwater, Jr., but ultimately he lost the election.

After that congressional campaign and some political involvement on a national scale, he started moving through the positions referred to above that are more well-known and associated with him. When asked about his accomplishments, he humbly describes them as the results of the efforts and support of others, luck, "hitting the curve right," and similar descriptions. He uses those same descriptions when he proudly

recalls that, as Attorney General, California put into place the computerized fingerprint bank, the "CAL ID System," years ahead of the FBI. The office also started DNA typing in the mid-1980's. It was through the CAL ID System that "Night Stalker" Richard Ramirez was identified by checking some prints on a car visor in Mission Viejo. The identification resulted in his arrest three days later.

At the end of our talk, I asked him about his worst and best days as a lawyer. He describes his worst as the time of the decision of the Los Angeles District Attorney's Office (he was D.A.) to dismiss homicide counts against "Hillside Strangler" Angelo Buono. The deputy assigned to the case had suggested that they did not have enough evidence to charge the homicide counts. Then-Judge (now Chief Justice) Ronald George refused to dismiss the case, the case was referred to the Attorney General's Office, and a conviction was eventually had on the homicide counts. John's political career suffered as a result.

The best time of his legal career is described as "what I was able to do as Attorney General." He looks back with "some satisfaction" on innovations and processes that save lives, the California Drug Review Program that permits drug availability earlier than the federal government processes would permit, the DNA program and the CAL ID System. He is also proud of environmental wins, including protecting Lake Tahoe and stopping offshore drilling; and he is proud of being the "Father of Fast Track," an idea he says was "borrowed"

*(continued on page 19)*



# The Alpha and the Omega of Discovery Outlines

(Code Civ. Proc., §§ 2017 - 2034)

by Kathy Gallo  
*The following outline was published in the April/May 2004 issue of San Mateo County Bar Association's The Docket magazine. Reprinted with permission.*

<b>I. DEPOSITIONS</b>	<b>Type</b>	<b>Commences</b>	<b>Closes</b>	<b>Time Limit</b>	<b>Requirements</b>	<b>MT/Conf.</b>	<b>Op.Part.Rem.</b>	<b>Sanctions</b>
	DEPOSITIONS (§§ 2025, 2020)	20 days after service of summons or defendant's appearance in action. Ct. can grant earlier depo with showing of good cause (§ 2025(b)(2))	30 days before trial 15 days before arbitration (§ 2024(a))		<ul style="list-style-type: none"> <li>1 depo per deponent (§ 2025(t))</li> <li>75 miles from residence or with county in which action is pending and within 150 miles of residence (§ 2025(e))</li> <li>Date, Time, Place (§ 2025(d)(1)(2)(3))</li> <li>Date, Time, Place (§ 2025(d)(1)(2)(3))</li> </ul>			
	<b>A. DISCOVERY</b>							
	<b>I. Parties</b>							
	a. Testimony Only			10-day notice (§ 2025(f))			Written objection due within 3 days (§ 2025(g))	
	b. Testimony and Consumer Documents			10-day notice (§ 2025(f))	Documents described with reasonable particularity (§ 2025(d)(4))		Written objection due within 3 days	
	<b>2. Nonparty Witnesses</b>			10-day notice (§ 2025(f))	Notice to state: <ul style="list-style-type: none"> <li>nature of deposition</li> <li>deponent's rights and duties; and penalties for disobedience</li> <li>subpoena, witness fee and mileage on or before deposition (§ 2020(h))</li> <li>upon showing good cause can conduct via phone if no prejudice shown (§ 2025(h)(3))</li> </ul>		Written objection due within 3 days	
	b. Business Records only (§ 2020(d))			15-day notice (§ 2020(d)(1))	Documents described with reasonable particularity		Written objection due within 3 days	
	c. Records and Testimony (§ 2020(c))			10-day notice (§ 2020(f))	<ul style="list-style-type: none"> <li>Copy of notice of deposition with subpoena, witness fee and mileage (§ 2020(e))</li> <li>Personal service</li> </ul>		Written objection due within 3 days	
	d. Records of Consumers			Reasonable time	Notice of Privacy Rights Service at least 10 days before the date set for production and at least 5 days before service on the custodian of records		Written objection due within 3 days	
	<b>3. Entity</b>			15-day notice (§ 1985.3(b))	Most Qualified Person (§ 2025(d))		Written objection due within 3 days	
	<b>4. Expert</b>		15 days before trial	10-day test only (§ 2020(f)) 20 days w/docs (§ 2020(f))	<ul style="list-style-type: none"> <li>Must make party named available for deposition</li> <li>Must serve notice and fee (§ 2034(h)(i)(j)(4))</li> </ul>		Written objection due within 3 days	
	<b>B. MOTIONS</b>							
	<b>I. Deposition without Documents</b>							
	a. For Protective Order (§§ 2019(c), 2025(i))			Promptly	<ul style="list-style-type: none"> <li>Good cause</li> <li>"Unwarranted, annoyance, embarrassment, oppression or undue burden and expense" (§ 2025(i))</li> </ul>	Yes (§ 2025(j))		
	b. To Quash (§ 2025(g))			Promptly	<ul style="list-style-type: none"> <li>Service problems/technical defects</li> <li>Written objections within 3 days</li> </ul>	Yes (§ 2025(g))		(§ 2025(g))
	c. To Compel Answers (§ 2025(o))		60 days after completion of record of deposition (§ 2025(o))		<ul style="list-style-type: none"> <li>Transcript lodged with court 5 days before hearing</li> <li>Separate statement of questions in dispute (CRC 335(a))</li> </ul>	Yes (§ 2025(c))		(§§ 2023, 2025(j),(o)) (§ 639(e) [referee])

d. To Suppress Depo (§ 2025(g)(1))			Promptly			Yes (§ 2025(g))		Awarded in favor of any party attending (§§ 2025(j)(2), 2023(a)(4))
e. To Compel Appearance (§ 2025(j))			None			No		Losing party (§ 2025(j)(3))
2. Deposition with Documents a. To Compel Documents				Good cause for document production (§ 2025(j)(3))		Yes (§ 2025(j)(3))		Losing party (§ 2025(j)(3))
3. Nonparty Depositions								
a. To Quash Subpoena (§§ 1985.3(g), 1987.1)			Anytime before depo date			Yes (§ 1987.2)		
b. For Protective Order (§ 1987.1)			Promptly	Good cause for document production (§ 2025(j)(3))		Yes (§ 2025(j)(3))		
c. To Compel Compliance (§ 1987.1)				No good cause required			Contempt (§§ 1204(a), 1991.1, 2020(h), 2023)	• Fine up to \$1,000 and/or 5 days in jail. (§ 1218) • No attorney fees.
4. Before Suit Filed								
a. Verified petition for discovery prior to action being filed					• Petition must explain: 1. expects to be a party to the lawsuit; 2. unable to cause the action to be filed; 3. involvement in expected action; 4. discovery methods seek to employ; 5. names and addresses of persons from whom discovery sought; 6. facts to be established; 7. reasons why it is necessary. (§ 2035(c)) • 20-day notice (§ 2035(d))		Awarded in favor of any party attending (§§ 2025(j)(2), 2023(a)(4))	Losing party (§ 2025(j)(3)) Issue Sanction (§§ 2025(j)(2); 2023(a)(4))

## II. INTERROGATORIES

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
INTERROGATORIES (§ 2030)	Plaintiff 10 days after service or defendant's appearance in action Defendant anytime. (§ 2030(b))	30 days before trial 15 days before arbitration (§ 2030(h))	30-day notice (§ 2019(e))	On any party (§ 2030(a))			
A. Discovery							
1. Official Form (§ 2033.5)						Written objections	
2. Specially prepared (§ 2030(c)(1))				More than 35 interrogatories with declaration (§ 2030(c)(2)(3)) 1. Complexity 2. Depos expensive 3. Expedience		Written objections	
3. Supplemental				Twice prior to initial trial setting conference and once after (§ 2030(c)(8))		Written objections	
B. Motions							
1. Protective Order (§§ 2030(e), 2019(b))			Promptly (§ 2030(e))	Undue burden and expense, unwarranted annoyance and embarrassment (§ 2030(e))	Yes (§ 2030(c))		(§§ 2030(e), 2023(b)(1))
2. Compel answers (§ 2030(k)(l))			None (§ 2030(k))	Statement of disputed interrogatories and responses (CRC, rule 33.5(a)(b))	Yes (§ 2030(l))		(§§ 2030(k), 2023(a)(4))
3. Compel further answers (§ 2030(l))			45 days after response or supplemental response (§ 2030(l))				(§§ 2030(l), 2023(a)(4))

## III. INSPECTION DEMAND

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
INSPECTION DEMAND (§ 2031)	Plaintiff 10 days after service of defendant's appearance in action Defendant anytime (§ 2031(b))	30 days before trial 15 days before arbitration (§ 2024(a))	30 days	On any party (§ 2031(a))			
A. Discovery							

1. Demands (§ 2031)					<ul style="list-style-type: none"> <li>No limit on number</li> <li>Time and place for inspection (§ 2031(c)(2)(3))</li> <li>Description by category with reasonable particularity (§ 2031(c)(1))</li> <li>Response due in 30 days (§ 2031(i)) and to comply with § 2031(g)(1),(2) and (3) in whole or in part with specific objections</li> </ul>				
<b>B. Motions</b>									
1. Protective Order (§ 2031(f))				Promptly (§ 2031(f))			Yes (§ 2031(f))		(§§ 2031(e), 2032(b)(1))
2. Compel answers (§ 2031(l))				None			None		(§§ 2031(l), 2032(b)(2-4))
3. Compel further answers (§ 2031(m))				45 days after response or supplemental response (§ 2031(m))			Yes (§ 2031(m))	Description of documents to be produced.	(§§ 2031(m), 2032(b)(1))
4. Compel compliance (§ 2031(n))				No time limit (§ 2031(m))			None		(§§ 2031(n)(3), 2032(b)(1))

**IV. PHYSICAL/MENTAL EXAM**

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
PHYSICAL/MENTAL EXAM (§ 2032)	After defendant has been served or appeared	30 day before trial 15 days before arbitration (§ 2024(a))	30-day notice (§ 2032(c)(3)) 20-day response (§ 2032(c)(5))				
<b>A. Discovery</b>							
1. Physical Exam (§ 2032(a))	After defendant has been served or appeared			<ul style="list-style-type: none"> <li>Condition in controversy (§ 2032(a))</li> <li>No painful or protracted intrusive test</li> <li>Licensed physician or other appropriate licensed health care practitioner (§ 2032(b))</li> <li>specification of scope and tests (§ 2032(d))</li> <li>Within 75 miles of residence (§ 2032(c)(2))</li> <li>Report due within 30 days after demand or within 15 days of trial, whichever is earlier (§ 2032(g)(1))</li> </ul>		Response in 20 days (§ 2032(c)(5))	
2. Mental Exam (§ 2032(d))				<ul style="list-style-type: none"> <li>Court order or stipulation</li> <li>Good Cause (relevancy and specific facts)</li> <li>In controversy</li> <li>specification of scope and tests (§ 2032(d))</li> <li>Physician or clinical psychologist (§ 2032(b))</li> <li>No observers (§ 2032(g)(2))</li> </ul>	Yes (§ 2032(d))	Plaintiff stipulation, no claim or psychological test (§ 2032(d))	(§ 2032(f))
<b>B. Motions</b>							
1. Protective Order (not required by allowed by § 2019(b))			20 days to file objection (§ 2032(c)(5))	No authority under § 2032; Maybe § 2019(b)	Yes (§ 2019(b))		
2. Compel Attendance (§ 2032(c)(6))			None		None		(§ 2032(c)(6))
3. Unsatisfactory Response (§ 2032(c)(7))			None		Yes (§ 2032(c)(7))		(§ 2032(c)(7))
4. Enforcing Delivery of Report (§ 2032(h))			None	Demand copy of report (§ 2032(h))	Yes (§ 2032(h))		(§ 2032(h))

**V. REQUEST FOR ADMISSION**

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
REQUEST FOR ADMISSION (§ 2033)	10 days after service or defendant's appearance (§ 2033(b))	30 days before trial 15 days before arbitration (§ 2024(a))	30-day notice	Another party in the action (§ 2033(a))			
<b>A. Discovery</b>							



1. Truth or Facts (§ 2033)					<ul style="list-style-type: none"> <li>• 35 limit; more with declaration of necessity</li> <li>• “complexity or the quality of the existing and potential issues” (§ 2033(c)(1)(G))</li> <li>• No limit</li> <li>• availability of originals (§ 2033(c)(I))</li> </ul>		Object in lieu of admitting or denying (§ 2033(f))	
2. Genuineness of Documents (§ 2033(a))							Object in lieu of admitting or denying (§ 2033(f))	
B. Motions								
1. Protective Order (§ 2033(o)(e))			Promptly (§ 2033(e))		<ul style="list-style-type: none"> <li>• Unwarranted annoyance, embarrassment, oppression or undue burden and expense (§ 2033(e))</li> </ul>	Yes (§ 2033(e))		(§ 2033(e))
2. Establishing Admissions (§ 2033(k))			None			No	Tardy response defeats motion; respondent must be substantially in compliance (§ 2033(k))	Mandatory (§ 2033(k))
3. Compel Further Answers (§ 2030(f))			45 days after response or supplemental response (§ 2033(f))		<ul style="list-style-type: none"> <li>• Statement of requests and response to RFA in dispute (CRC 335(a)(b))</li> </ul>	Yes		(§ 2033(l)) Deemed admitted if court order disobeyed

**VI. EXPERT WITNESSES**

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
EXPERT WITNESSES (§ 2034)							
A. Discovery							
1. Disclosure List (§ 2034(a))	70 days before trial OR 10 days after trial settlement conference, whichever is later (§ 2034(a))	50 days before trial OR 20 days after demand, whichever is later (§ 2034(c))		<ul style="list-style-type: none"> <li>• Simultaneous exchange of (1) expert lists, (2) declarations, and (3) reports of experts (§ 2034(a)(f)(g)(h))</li> <li>• Limited to adding experts in area opposing party named in initial exchange</li> </ul>			Exclusion of expert by motion in limine (§ 2034(j)(2))
2. Supplemental List (§ 2034(h))	20 days after exchange						
B. Motions							
1. Protective Order (§ 2034(e))			Promptly	<ul style="list-style-type: none"> <li>• Good cause (§ 2034(e))</li> <li>• Excuse</li> <li>• Information belatedly serve</li> <li>• Experts available for deposition</li> <li>• No prejudice</li> <li>• (§ 2034(j))</li> </ul>	Yes (§ 2034(f))		(§ 2034(e)) (§ 2034(f))
2. Allow belated submission (§ 2034(f))			Promptly, before 15-day cutoff	<ul style="list-style-type: none"> <li>• Excuse</li> <li>• Information belatedly serve</li> <li>• Experts available for deposition</li> <li>• No prejudice</li> <li>• Must show “exceptional circumstances” the later the motion</li> <li>• (§ 2034(k))</li> </ul>			Costs awarded to opposing counsel unless without substantial justice (§ 2034(k))
3. Augment List (§ 2034(k))			Promptly				

**VII. REQUEST FOR STATEMENT OF DAMAGES**

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
REQUEST FOR STATEMENT OF DAMAGES	Anytime. Due 60 days before trial even without request.		15-day compliance 15-day notice to compel	<ul style="list-style-type: none"> <li>• Personal injury or wrongful death</li> </ul>			None under Discovery Act if egregious then § 128.7

**VIII. BILL OF PARTICULARS**

Type	Commences	Closes	Time Limit	Requirements	MT/Conf.	Op.Part.Rem.	Sanctions
BILL OF PARTICULARS (§ 454)	Anytime		10-day compliance 15-day notice to compel	<ul style="list-style-type: none"> <li>• On account or quasi-contract</li> <li>• Open book accounts</li> <li>• Labor and materials under a contract</li> <li>• Monies loaned</li> <li>• Monies had and received</li> </ul>			May bar plaintiff from introducing evidence at trial

*by Gayle Webb*

## Thanks for Your Help!

**W**e would like to thank all of you who took the time to help us participate in the statewide, annual survey of the Council of California County Law Librarians. This short survey is intended to give county law libraries a snapshot of whom we are serving, what resources are being used, and whether we are fulfilling the community's needs.

Survey results are shared with trustees, legislators, the Administrative Office of the Courts and other potential funding sources. As you know, the mechanism for county law library funding is no longer adequate and badly in need of revision. A nine-member Judicial Council Task Force on County Law Libraries, established by A.B. 1095, has been charged with recommending alternative funding sources, as well as developing standards for county law library collections and facilities. With your help, we have been able to contribute important information towards these ends.

So, who are our patrons? In Riverside, 50% are attorneys, 5% are practicing paralegals and 7% are students in paralegal programs or law school; the other 38% are non-attorneys working on their own cases or doing other legal research. Indio patrons include 46% attorneys and 10% paralegals; 34% are non-attorneys and 10% won't admit to any category.

There has been an increase in the percentage of pro pers using Riverside, but generally, the proportion between the various groups is the same as two years ago in both locations.

The vast majority of people coming in to our libraries are seeking information to help with a case or with drafting a legal document, a form, or material they do not have in their own offices. The last reason has actually increased by 7%, indicating that private collections are getting smaller. This trend has likely been influenced by exorbitant costs and cancellations due to anticipated Internet sources.

People are definitely relying more on the Internet for their legal information (up from 23% two years ago

*(continued next page)*

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**John Van de Kamp . . .** *(continued from page 13)*

from the National Center on State Courts. When asked by his deputies why he was pushing that legislation as the Attorney General, he reminded them that waiting five years to get to trial in a civil case costs the people of California a lot of money; and the effective administration of justice is important to all litigants and participants.

From knowing John Van de Kamp, I know that he puts great stock in being fair. He listens to people and works hard. He cares about people. He loves and believes in the law and in accessibility of the law. He is honored to be State Bar President and takes the job very seriously. He wants to make the State Bar a better institution than he found it. I believe he will.

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*James Otto Heiting, a past president of the Riverside County Bar Association (1996), is a partner at Heiting & Irwin. Mr. Heiting is the District 6 Representative to the State Bar of California Board of Governors.*



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**Law Library** *(continued from page 18)*

to 30% today), but printed legal material still remains the service used most by library patrons (40-46%) followed by reference help (27-30%) and photocopying (21-24%). Use of the conference rooms has been a welcomed new service, particularly in Riverside. Patrons in both libraries expressed a desire for WestLaw or Lexis, circulation privileges, more MCLE tapes, a branch in Southwest Riverside, research seminars, longer hours and the exclusion of children!

While Indio's proportion of repeat customers is 60%, Riverside sees only 49% repeaters. An increased number of new patrons are referred to the library by other agencies, friends and relatives. New public outreach efforts can be credited with this trend. We are also grateful to find out that you feel our staff is extremely courteous, helpful and knowledgeable; that 97% of you find what you need; and that you view the libraries as a vital place for your research. We will work with your suggestions under our present financial situation and continue to provide you with the best service we can offer. Thanks again for your great support of us.

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*Gayle Webb is the Riverside County Law Library Director.*



# INTERESTIN' SPREADSHEETS

by Gary R. Ilmanen

**A**fter you win your lawsuit, you are left with the requirement of calculating the amount of money that the vanquished party owes your client. Many of us scratch our heads and start adding up daily interest. Okay, the amount owed times the legal rate, divided by 365, times how many days? Drudgery. However, it can be a simple, and fun, task if you employ a computer spreadsheet.

The first commercial computer spreadsheet product was called Multiplan®. The basic functions of that pioneer product are still present in the more modern versions in use today. The Microsoft product that is popular, and that I use, is Excel®.

A computer spreadsheet is simply a grid of individual cells, much like a sheet of ledger paper. However, while ledger paper typically is set up for 5, 7, 10, or 13 columns, I can put up to 256 columns in my spreadsheet. Ledger paper has about 20 rows per page. Spreadsheets have essentially no limit to the number of rows they can contain.

Spreadsheet columns are designated by letters A, B, C, etc., and rows are designated 1, 2, 3, and so on. You are free to place text, a number, a date, a formula, or a function in any cell.

For example, you might want to create a spreadsheet that reflects your checking account activity. You would probably want to keep track of these pieces of data:

DATE	CHECK #	TO	FOR	AMOUNT	BALANCE
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Each column of the spreadsheet usually contains information as per the headings that you place in the first row's columns.

Therefore, a row of information put into the spreadsheet might look like this:

3/07/04	5150	RCBA	LRS Payment	\$123.45	\$6789.10
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When you put in the next check's variables, the spreadsheet reads:

A	B	C	D	E	F	
1	DATE	CHECK #	TO	FOR	AMOUNT	BALANCE
2	3/07/04	5150	RCBA	LRS Payment	\$123.45	\$6789.10
3	3/12/04		Fedex	Shipping	\$13.50	

What about the Check # and Balance? It is easy to make the computer calculate them for you, and that is the power

of the spreadsheet . . . using a formula or function with relative cell values.

Huh? Let me back up. We could put the next check number in Column C, Row 3 (referred to as C3), but why not say, "Take the value in the cell above. Add 1 to it, and place the result in Column 3, Row 3." Sound complicated? Yes, but once you have done it a few times, it is exceedingly simple. Just place this in C3:

+C2+1

In practice, you don't even need to type it all in. Place your cursor in C3 and enter "+", then click in cell C2, then enter "+1" and hit your Return key. As if by magic, 5151 appears in C3.

Too much work? Consider this: if you copy C3 to C4 through C10, the following check numbers are calculated and filled in.

Let's do the same for Balance. F3 should take the previous balance from F2, above, and subtract the amount of the check in E3, the cell to the left:

+F2-E3

A	B	C	D	E	F	
1	DATE	CHECK #	TO	FOR	AMOUNT	BALANCE
2	3/07/04	5150	RCBA	LRS Payment	\$123.45	\$6789.10
3	3/12/04	(+C2+1)	Fedex	Shipping	\$13.50	(+F2-E3)

After entering the B3 and F3 functions, Row 3 is calculated to be:

3	3/12/04	5151	Fedex	Shipping	\$13.50	\$6775.60
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Copying the formula into the cells below it sets the spreadsheet up continue to track your data. As you enter the amount of the next check in Row 4, the balance in Column F updates automatically.

How can we use this automatic calculation function in our profession? Let us take the situation where we need to calculate how much pre-judgment interest the defendant owes on his debt. Assume the amount owed on January 1, 2002 was \$10,000. On November 1, 2004, we get our judgment. The legal rate is 10% per annum, so we get \$1000 for 2002, \$1000 for 2003, and 10/12 of \$1000, i.e. \$833.33, for ten months of 2004. Total interest is therefore \$2833.33, right?

Wrong! We should at add the interest accrued to the total amount owed each year. Let's use some ledger paper.



Date	Principal	10% Interest	Balance Owed
1/1/02	\$10000.00		\$10000.00
1/1/03		\$1000.00	\$11000.00
1/1/04		\$1100.00	\$12100.00
11/1/04		\$1083.33	\$13108.33

Total interest is not \$2833.33, but \$3108.33. By compounding annually, we have shown liability for an additional \$275.00 in interest.

But wait! Since this was for monthly rent arrears, interest should be compounded monthly, not yearly. Too much work for ledger paper! Let's use a spreadsheet. It is a simple job to set up our spreadsheet to calculate the interest, compounded monthly:

First, enter the date of the debt in A1; enter the date one month later in A2. Select A1 through A2 and copy them down 40 or 50 rows. The computer will fill in dates one month apart. This is very similar to what we did with the check numbers in the first example.

Next, put a function in cell B3 that takes the value from C2, multiplies it by .10 (ten percent), and divides it by 12, since this is for just one month. Put a totaling function in C3 to add the interest to the total owed.

Select B2 and C3, and copy down through 40 or 50 rows, or as many rows as you like. (The date of interest is 34 months out.)

	A	B	C
1	Date	Interest	Total Owed
2	1/1/2002		\$10000.00
3	2/1/2002	(+C2*.10)	(+C2+B3)
4	3/1/2002	(+C3*.10)	(+C3+B4)
5	4/1/2002	(+C4*.10*)	(+C4+B5)

After the computer calculates the values, your spreadsheet will look like this:

	A	B	C
1	Date	Interest	Total Owed
2	1/1/2002		\$10000.00
3	2/1/2002	\$83.33	\$10083.33
4	3/1/2002	\$84.02	\$10167.36
5	4/1/2002	\$84.72	\$10252.09
(Rows 6-35 are not shown here for brevity)			
36	11/1/2004	\$109.58	\$13259.90

So we see that compounding monthly sets the total owed at \$13259.90. By compounding monthly, we have shown liability for an additional \$426.57 in interest.

Do we want to get prejudgment interest for our client in the amount of \$2833.33, \$3108.33 or \$3259.90? The court will allow any amount that you can properly justify.

I suspect that the client would prefer the higher amount. I know the contingency lawyers also prefer the higher amount. If we are handling the case on an hourly basis, we will have a happier client and avoid malpractice by maximizing his recovery.

This example is relatively straightforward, and the functions are limited to add, subtract, multiply and divide. But consider this case history . . .

I had a client who had an award for both spousal and child support, payable twice a month. There were three children of different ages, who were awarded different amounts of support, and each of whose support stopped when they reached age 19. The amount of spousal support was constant. The ex-spouse made irregular payments over six years, in amounts that also varied. Court rules provided that payments first be applied to accrued interest, with the remainder going toward back support, and if anything was left over, it went to current support. Is that a mess, or what?

My spreadsheet organized all the data, calculated how much of the payment is applied to interest, back support, or current support, applied it, and determined how much the ex owed as of the current date, while satisfying all the rules. The spreadsheet was printed out and used to justify the client's claim. I have no idea how long it would have taken without a spreadsheet, but it took me about an hour or so to set it up.

Functions are not limited to interest calculations. Other built-in functions perform more powerful calculations. For example, the PMT function calculates loan payments based on an interest rate, the length of the loan, and the principal amount of the loan. Another of the financial functions is NPV, which calculates the net present value of an income stream or future sum.

With math and trigonometry functions, you can perform simple calculations, such as rounding off a number, or complex calculations, such as calculating the total value for a range of cells that meet a condition in another range of cells.

I hope that I have convinced you of the power and value of using a computer spreadsheet. As you practice and become more familiar with spreadsheets and their built-in functions, you will find more and more areas in which you can use them. If you get stuck, just hit the "help" button!

*Gary R. Imanen, a member of the Bar Publications Committee, is a sole practitioner in Riverside.*



by Richard Brent Reed, Esq.

## Designer Districts

**T**he election is over. The Organization for Security and Cooperation sent here by the United Nations to monitor the 2004 election has given it a stamp of approval. The red and blue states are now expected to blend into a pastel of political uniformity. Despite that rosy outlook, the question on everyone's mind is: What is the significance of the narrow margin that returned President Bush to the White House, accompanied by an enlarged Republican majority in both houses of Congress? Is there a mandate? A mandate to do – what? That question must be worked out in the back rooms of Washington, D.C., just as it has ever since the election of 1800. But here in California, there is a mandate: a Gerrymandate.

Despite an enormous voter turnout, not one California legislative or congressional incumbent lost. In short, despite the temporary recess called a general election, all of our legislators returned to their assigned seats. "Incumbency" in this state is just a euphemism for "job security." This is due to the practice known as "gerrymandering."

According to my 1960 Encyclopaedia Britannica, "gerrymander" is an "American expression which has taken root in the English language, meaning to arrange election districts so as to give an unfair advantage to the party in power by means of a redistribution act, or to manipulate constituencies generally."

The term has its origin in Elbridge Gerry, governor of Massachusetts in 1812. His party redistricted the state so as to concentrate its strength (packing) and dissipate the strength of its opponents (dilution). The result was a patchwork of unlikely shapes, carving up Massachusetts

like a jigsaw puzzle. One electoral district serpented into the shape of a salamander. It was depicted in political cartoons of the time as a winged monstrosity called a "Gerrymander." Despite this cartographic monster's negative press, the practice took off, wings and all.

Some states require their districts to be compact and contiguous. Such plans have been approved by the U.S. Supreme Court to avoid, among other things, gerrymandering. See *West Virginia Civil Liberties Union v. Rockefeller*, 336 F. Supp. 395 (1972). In the past, the court has been very concerned with the dilution of racial minority voting power through gerrymandering, but has had less to say about the continuing evil of packing: the deliberate concentration of voting power through gerrymandering.

The founders of this country, no doubt, contemplated that congressional districts would be roughly rectangular. The creative artists who have drawn the districts in California have had, evidently, little exposure to geometry. This freehand approach to redistricting means that our representatives may tailor their districts to snake down alleyways and slither through neighborhoods whose political compositions are favorable to their reelection. With the electoral deck thus neatly stacked, the house, in California, wins. The process loses. Legislators have little incentive to do their jobs when the voters have been sorted and their constituencies repackaged for them.

Did the election of 2004 give us a mandate? Yes. Get out the straight edge and the square and redraw California's voting districts.

*Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside.*



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*by Michael J. Cappelli*

## The Silence of the Hams

**Y**ou've probably figured out that this column is rather inexpensive therapy for me. Some of you may think my scribble is written at your "expense." Perish the thought! To the contrary, it is the quite selfish motive of maintaining my sanity that causes me to regularly sort out my life through these articles.

And you know, it's really not as odd as it seems. Haven't you discovered how easy it is to express your innermost thoughts to complete strangers? Then, when it comes to dealing with your closest and most intimate relationships – spouses, parents, children, friends, partners – your jaws tighten like vise grips as you strain to choke out an intelligible sentence. That's probably why all of those funky "you pay for" hotlines and websites continue to thrive. Dudes can have their fortunes told by their future Russian wives who were

chosen specifically for them by the gods of the universe. They even get an advance photograph to show to their friends, all of whom, not coincidentally, have the same photo in their wallets.

Though men are indeed pigs, I've got to believe that many of you women hit the phones or the net in search of someone to talk to. Perhaps you are prompted by the thrill of a virtual romance or the prospect of meeting your soul mate. Maybe you just like playing games and chatting with several hundred (or even thousand) of your closest anonymous friends.

I'm sure you've had the experience of playing the role of lawyer/shrink to clients who barely cross the threshold of your office door before



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spilling their guts out about the most sacred aspects of their personal and business lives. In my office, I've heard the most explosive and impassioned soliloquies from clients who, when sworn in as witnesses, are suddenly thunderstruck – mumbling, fumbling and stumbling through their testimony in monosyllabic bursts. Of course, my clients are not alone, as I have often stopped in mid-sentence to question what the hell it is I'm trying to say! Sting would be proud at the eloquence of my very own “goo goo goos and gaa gaa gaas.”

There must be some sort of chemical stimulus that is triggered in our bodies by the feeling of being liberated to commune from a distance with whomever, whenever, about whatever, while not being confined by those insufferable knots tied in our tongues. When speaking to the unidentified masses, or those with encrypted names and avatar faces, no subject is taboo; no imbroglia is spared.

The way I look at it, the “self-realizations” I've come to in these columns would make a swami proud. Although, in a way, it's like having a conversation with myself, I choose to describe this effect as a healthy form of schizophrenia. To be sure, I'd certainly languish in a silent world of hurt if I was personally confronted by you over the nonsense that bleeds from my pen. Thank you for leaving me alone, and praise the Lord for the ever-expanding definition of “tolerance.” I guess you're just stuck with me.

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*Michael J. Cappelli is a partner in the law firm of Babcock & Cappelli and a member of the Bar Publications Committee.*





## Attention Attorneys: MCLE Compliance Group 3 (Last Names N-Z) — Deadline of February 1, 2005

If you are members of Group 3 and not part of an exempt group, you must complete 25 hours of continuing education courses by the deadline, including 4 hours of Legal Ethics, 1 hour of Elimination of Bias and 1 hour of Substance Abuse Prevention.

Compliance information is available on the State Bar's website, [www.calbar.ca.gov](http://www.calbar.ca.gov) >Attorney Resources >MCLE.

### RCBA

*The following CLE Brown Bag series listed below are held at the RCBA Building, 3rd Floor. RCBA is a State Bar of California approved MCLE provider. Please RSVP to the RCBA office, (951) 682-1015 or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com). Cost for RCBA members is free and non-members is \$25.00. (Bring your own lunch.)*

Tuesday, January 4, 2005 • 12 PM – 1:15 PM

#### **“Sexual Harassment Bias in the Workplace”**

Speaker: Vincent Nolan, Esq. and Richard Roth, Esq.

MCLE: 1.0 hour Elimination of Bias

RSVP: by December 31

Friday, January 14, 2005 • 12 PM – 1:15 PM

#### **“Legal Ethics and Professional Conduct”**

Speaker: The Honorable Bernard Kaufman, Retired

MCLE: 1.0 hour Legal Ethics

RSVP: by January 13

Wednesday, January 19, 2005 • 12 PM – 1:15 PM

#### **“New Civil Developments”**

Speakers: The Honorable Gloria Connor Trask and other Judicial Officers of the Riv. Superior Court

MCLE: 1.0 hour General

RSVP: by January 18

### UCR

*Each quarter, the University of California, Riverside Extension offers over 40 courses for MCLE credit for attorneys and paralegals. Below is a partial listing. Classes are held at the UCR Extension Center, 1200 University Avenue, Riverside, unless otherwise indicated. To register or request a catalog, call (951) 827-4105 or (800) 442-4990, e-mail [register@ucx.ucr.edu](mailto:register@ucx.ucr.edu), or visit our website at [www.ucrextension.net/law](http://www.ucrextension.net/law).*

#### **Juvenile Law Institute, 2005: Dependency.**

Friday, January 7, 2005. 8:45 am-4:30 pm.

MCLE: 6 hours. \$165. Reg# 43F98.

#### **Juvenile Law Institute, 2005: Delinquency.**

Saturday, January 8, 2005. 8:45 am-4:30 pm.

MCLE: 6 hours. \$165. Reg# 43F99.

#### **Juvenile Law Institute, 2005: Dependency/Delinquency.**

Friday & Saturday, January 7&8, 2005. 8:45 am-4:30 pm.

MCLE: 12 hours. \$250. Reg# 43F97.

#### **Employment Law.**

Tuesdays, January 11-February 22, 2005.

6:00-9:00 pm, 7 meetings.

MCLE: 19 hours. \$275. Reg# 43F34.

#### **Mediation I.**

Wednesdays, January 12-March 16, 2005.

6:00-9:00 pm, 10 meetings.

MCLE: 30 hours. \$395. Reg# 43F11.

#### **Legal Issues in Human Resources:**

Rights of Domestic Partners.

Wednesday, January 12, 2005. 9:00 am-12:15 pm.

MCLE: 3 hours. \$95. Reg# 43F75.

#### **Legal, Medical and Ratings Aspects of Industrial Injuries: Part I.**

Thursdays, January 13-February 17, 2005.

6:00-9:30 pm, 6 meetings.

MCLE: 19.5 hours. \$275. Reg# 43F18.

#### **Negotiations and Dispute Resolution.**

Thursdays, January 13-March 17, 2005.

6:00-9:00 pm, 10 meetings.

MCLE: 30 hours. \$395. Reg# 43F24.

#### **9th Annual MCLE Madness.**

Saturday, January 22, 2005. 9:00 am-4:30 pm.

MCLE: 6 hours (includes 1 hour of bias, 1 hour of substance abuse and 4 hours of legal ethics). \$130. Reg# 43F32.

#### **9th Annual MCLE Madness.**

Saturday Morning Program, January 22, 2005.

9:00 am-12:15 pm. MCLE: 3 hours (includes 1 hour cash of bias, substance abuse and legal ethics).

\$75. Reg# 43F30.

#### **9th Annual MCLE Madness.**

Saturday Afternoon Program, January 22, 2005.

1:15-4:30 pm. MCLE: 3 hours (includes 3 hours of legal ethics). \$75. Reg# 43F31.



## CLASSIFIED ADS

### **Litigation Associates - Inland Empire**

2 to 7 year associates needed for small but growing litigation practice. Competitive salary and benefits. Ground floor opportunity. Fax resume to (951) 509-1378.

### **Office for Rent – Full Service**

Inns of Court Law Building, 3877 Twelfth Street, Riverside, CA 92501. One block from Court House. Call Lorena at (951) 788-1747.

### **Conference Rooms Available**

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance by contacting Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.

### **Office Space Available**

The RCBA building has office space available for rent. Contact Sue Burns, (951) 682-1015 or sue@riversidecountybar.com.



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective December 31, 2004.

**Jenna L. Acuff –**

Reid & Hellyer, Riverside

**Richard De La Sota –**

Retired Attorney, Corona

**Raquel L. Esquivel-Wessler –**

Sole Practitioner, Orange

**Allan Grant –**

The Walker Law Firm, Newport Beach

**Susan Jones –**

Creason & Aarvig, Riverside

**Richard A. Milligan –**

Office of the City Attorney, Riverside

**Mark E. Petersen –**

Office of the Public Defender, Riverside

**Harvey W. Wimer, III –**

Graves & King LLP, Riverside

**Shirley Yamarino –**

Stutz Artiano Shinoff & Holtz,  
Temecula

