RIVERSIDE LAWYER

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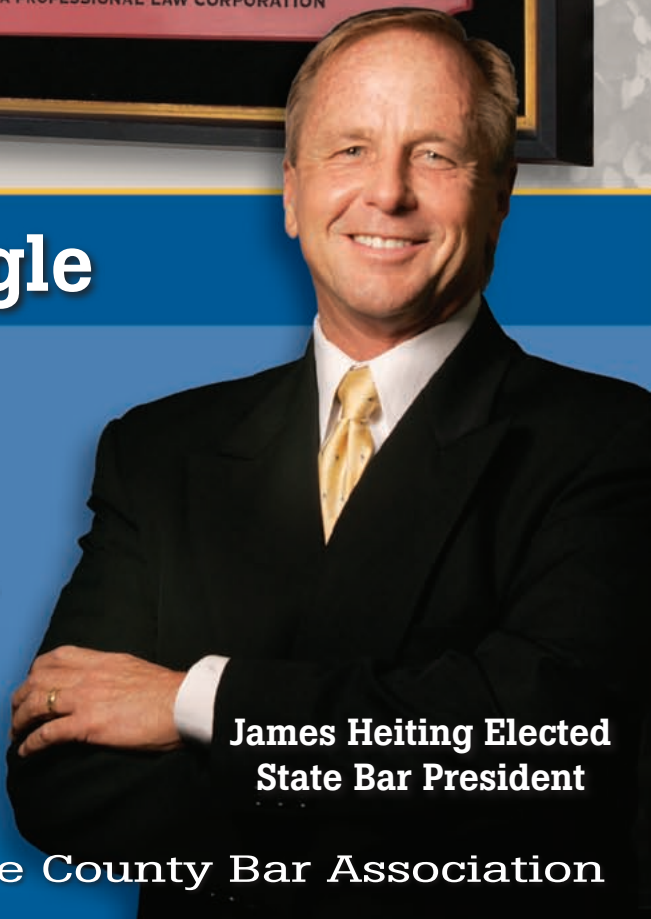
MAGAZINE

Putting Out Your Shingle

In This Issue:



James Heiting Elected State Bar President

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.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $25.00 and single copies are $3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

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

JUNE 2005

15 LRS Committee
RCBA – Noon

17 Joint RCBA/SBCBA General Membership Meeting
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MCLE

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"What's New with the Office of Child Support Services?"
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MCLE

22 EPPTL Section
"Saving Mom & Dad & You"
Speaker: Robert Cullen
RCBA Bldg., 3rd Floor – Noon
MCLE

25 Joint SBCBA/RCBA Bridging the Gap
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MCLE

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RCBA – Noon

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RCBA – Noon

President's Message

by Michelle Ouellette

It's that time of year again. Brand-new lawyers will be starting new jobs after surviving the bar exam. Law students will be starting summer clerkships after completing their first or second year of law school finals, looking for opportunities to gain some experience in the legal field and to make some money to help fund their education. Trying to find positions for both of these situations can be a stressful proposition, but what you do once you have the position can be just as tricky.

When I went to law school at USC in the mid-80s, it was very difficult to find a legal position as a first-year law student. I was lucky enough to obtain a position with Southern California Edison in their large in-house legal group and to focus specifically on environment issues. I had a wonderful summer, learned a lot and made some good friends.

My second law school summer was spent at my current firm, Best Best & Krieger. Although I discovered that a private firm's expectations of summer clerks were different from those at an in-house position, I had a good summer nonetheless. I spent my entire ten-week summer clerkship in constant fear, terrified that if I offended the likes of Bart Gaut or Dallas Holmes, I would never receive the job offer that I wanted from BB&K. I will never forget the grilling that I received from Justice Gaut concerning my motivations for abbreviating American Express as "Am Ex" in a memo. I was so distraught at my inarticulate answer that I was sure I would not get a job offer. I somehow managed to survive the summer in one piece, and accepted a job offer on the spot when it was offered on my last day of employment, fearful that someone would change their mind if I gave them time to do so. My first year of practice was also challenging, to say the least.

As I am about to begin my 16th year as an attorney, I have seen many summer clerks and new attorneys come and go, some more successful than others. I have prepared a list of dos and don'ts for these positions. Each of these tips is in fact based upon actual experience – I am just not clever enough to make this stuff up!

1. DON'T assume that women you meet in the halls are secretaries. Now, one would think that in the 21st century, everyone would be enlightened enough to realize that women do indeed become lawyers and, in fact, make up the majority of law school graduates. However, you would be surprised at the number of clerks who make the mistake of requesting that the woman in the hallway get them coffee or asking her, "What lawyer do you work for?" Please be assured that, if you make this mistake, the chances of getting a job offer/career advancement have severely plummeted. (And to really muck things up, go ahead and ask her out on a date! I dare you!)

2. DO dress for the job. We are, at the end of the day, stuffy attorneys. And our clients expect us to be stuffy attorneys. This is the image they see in the movies and on television and they largely expect us to dress the part. Even if you work in the most casual of workplaces, certain apparel and accoutrements are frowned upon. Check your workplace's guidelines, but appropriate lawyer attire generally does not include tank tops, midriff-baring shirts, pajama bottoms, flip-flops or metal studs through anything but the ear. Piercings, in particular, can be tough for some of our clients to take. For example, during a meeting, one client asked me what that clicking noise was – turned out to be the stud in the tongue of a summer clerk sitting in. I said it was merely a rattle in the air conditioning. On the other hand, for some clients, piercings could be a plus.

3. DON'T drink too much and curse in front of/at a partner's spouse. Similar to Tip No. 1 above, you would think that this would be pretty obvious. However, year after year, it appears that some clerks/new attorneys can become awfully comfortable with the attorneys they work with and, during certain heated events, such as softball and baseball games, their true personalities emerge. If you are a summer clerk with the propensity to curse or you naturally refer to everyone you meet as "dude," do not let your true personality emerge until: (a) you have a written job offer, and (b) you have signed it. For some, it may be preferable not to let your true personality emerge until you have actually taken and passed the bar exam. And for a select few, it would be

[1] Since a few of my previous articles have fostered healthy debate, I am including the following disclaimer. I am, after all, a lawyer. These tips reflect my personal opinion only; they do not in any way reflect the opinion of the hiring committee of any firm or other organization. Actually, feel free to completely ignore my advice. If you do, you'll probably make my summer more interesting anyway.

better to keep things under wraps until the partnership decisions are made seven or eight years down the road, but for some of us that is probably too much to ask.

4. DON'T, in most instances, order the lobster. You will be in all likelihood be taken to lunch or dinner by your potential/new employer at some point. It is simply not good form to order the most expensive thing on the menu, even if the person treating you has just ordered a bottle of Dom. You may feel that the $45 glass of cognac is due to you, since you just pulled an all-nighter working on the partner's brief, which could have been avoided if he/she had not let it sit on his/her desk for three weeks and then given to you only four hours before it was due, and you may in fact be correct. However, perception is everything – have the Budweiser or a Diet Coke.

5. DO at least appear to work hard. Many law firms, governmental agencies and in-house organizations are competing for a limited number of candidates; they put on their best behavior with regard to wooing the best and the brightest, leaving the latter free to enjoy the wining and dining. If that is the case for you, congratulations. That is not the case for most of us, and thus we need to at least pretend to work hard. This means coming in occasionally in the evening and/or on the weekends and at least turning your light on in your office. It is not an urban myth that certain senior lawyers patrol the halls after hours, and having them see a light on is a big plus. (Bonus points if you have a cot in your office.)

6. DO trot out your companion/significant other/spouse often if they are less objectionable than you. Many of us have companions/significant others/spouses who eclipse our own stilted attorney personalities and come across as charming, charismatic individuals whom you actually would like to spend time with and get to know better. If this is the case, by all means involve them in any firm functions where new/potential employers can meet them. Their panache may rub off on you, as in "Why on earth would she marry him? Maybe he's not all bad after all."

7. DON'T tell people how brilliant you are, even if you did Am.Jur. Con Law or are in the top 5%. First, do not build up expectations beyond the reality. Second, you need to remember that as a summer clerk or new attorney, your position in the pack structure falls somewhere beneath the parking attendant in the garage of your building. You have no clout and no one is particularly interested in your opinions. Summer clerks/new attorneys who have done well in law school somehow believe that lawyers will treat them as peers. This is simply not the case. In a large organization, 90% of the attorneys will not even know who you are, and if they happen to see you, they will probably think you work in the mail room. For the 10% who do know who you are, they do not want to be reminded of your brilliance, as they will assume that when you become a lawyer you will be gunning for their job.

8. DON'T ever, under any circumstances, cry. Lawyers are generally not the ogres that are portrayed in the media and in fact, most of the ones I know are kind, gentle, loving creatures who merely want to be loved and accepted like the rest of the population. However, the nature of our job often requires us to put on a stern exterior, and sometimes we lose our temper in stressful situations. In the event that things go poorly and you are somehow in the middle of it, do not show anger and especially do not cry. If you feel tears coming on, sprint to the bathroom, stairwell, or better yet, your car. In the event that anyone asks you why your eyes are red, state that you are having a severe allergy attack and have recently taken medication.

And finally, DO NOT show fear. Walk in to your first day on the job confident that you will do well. You got your position because you are bright, talented, and (to paraphrase those brilliant philosophers of late-night television) you are good enough, you are smart enough and, doggone it, people like you.

Michelle Ouellette, President of the Riverside County Bar Association, is a Partner and currently chair of the Natural Resources Practice Group of Best Best & Krieger LLP. Ms. Ouellette represents municipal, district and private clients in environmental issues arising under the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), the state and federal Endangered Species Acts, and wetlands regulations.

LITIGATION UPDATE

by Mark A. Mellor

Traffic on the Ventura Freeway may be bad, but it doesn't justify a change of venue.

A Los Angeles court did not err in denying a motion for change of venue on the ground of inconvenient forum to a Ventura resident who based his motion, in part, on the "hassle" of having to drive all the way from Ventura to Los Angeles. (*LLP Mortgage v. Bizar* (2005) 126 Cal.App.4th 773 [24 Cal.Rptr.3d 598] [Second Dist., Div. Four].)

Supreme Court mandates leniency for those who appeal from the wrong order.

An order denying a new trial is not an appealable order. (*Rodriguez v. Barnett* (1959) 52 Cal.2d 154, 156 [338 P.2d 907].) But such an order may be reviewed in an appeal from the judgment. (Code Civ. Proc. § 906.) In *Walker v. Los Angeles Co. Metropolitan Transp. Authority* (2005) 35 Cal.4th 15 [23 Cal.Rptr.3d 490], after a defense verdict and an unsuccessful motion for a new trial, plaintiff filed a notice of appeal from the order denying the new trial. The Court of Appeal dismissed the appeal as being from a nonappealable order. The California Supreme Court reversed, holding that under California Rules of Court, rule 1(a)(2), which requires that notices of appeal be liberally construed, the appellate court should have treated the notice of appeal as being from the judgment.

Successive motions for summary judgment are prohibited absent new facts or law.

Although Code of Civil Procedure section 1008 purports to limit the courts' jurisdiction to reconsider their rulings, cases have consistently held that this limitation violates the separation of powers and that courts have the inherent power to correct their own mistakes. (See, e.g., *Scott Co. of California v. United States Fidelity & Guaranty Ins. Co.* (2003) 107 Cal. App.4th 197, 207 [132 Cal.Rptr.2d 89]; *Remsen v. Lavacot* (2001) 87 Cal.App.4th 421, 426-427 [104 Cal. Rptr.2d 612]. Some cases have limited this holding to situations where the court acts sua sponte and do not permit reconsideration on a party's motion unless the requirements of section 1008 are met. (See, e.g., *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368 [130 Cal.Rptr.2d 754].) At least one case has stated that this is a "distinction without a difference" and permitted reconsideration of a previously made motion at any time on the motion of a party. (*Wozniak v. Lucutz* (2002) 102 Cal.App.4th 1031, 1042 [126 Cal.Rptr.2d 310].)

The Court of Appeal for the Second District endorsed the latter view in *Schachter v. Citigroup, Inc.* (2005) 126 Cal. App.4th 726 [23 Cal.Rptr.3d 920] [Second Dist., Div. Seven]. But the case adopted a different rule for summary judgment motions. Subdivision (f)(2) of the summary judgment statute (Code Civ. Proc. § 437c) prohibits a "party" from renewing a motion for summary judgment absent new facts or new law. The statute does not prohibit a court from correcting its ruling on a motion for summary judgment at any time and therefore does not purport to limit the court's jurisdiction to correct its mistakes. Under the specific statute limiting a party's right to renew a motion for summary judgment, the court erred in granting such a motion where the prior motion, based on the same facts and law, had been denied.

Courts are split on whether Proposition 64 applies to pending cases; Supreme Court will now resolve conflict.

In our last newsletter we noted that under Proposition 64, adopted by the voters last November 2, private litigants may no longer bring an action under Business and Professions Code, section 17200 et seq., unless they have "suffered injury in fact and [have] lost money or property as a result of . . . unfair competition." (Bus. & Prof. Code, § 17204.) The amendment also requires that such a litigant "compl[y] with [Code of Civil Procedure] section 382 [the class action statute]." (Bus. & Prof. Code, § 17203.) Do these amendments apply to cases in which no final judgment had been entered by November 2, 2004?

When we prepared this edition, five cases had weighed in on the issue and reached differing conclusions. *Californians for Disability Rights v. Mervyn's, LLC* (2005) 126 Cal.App.4th 386 [24 Cal.Rptr.3d 301] [First Dist., Div. Four], concluded that pending cases are not subject to the new standing requirements. The other four cases reached the opposite result.

Branick v. Downey Sav. and Loan Assn. (2005) 126 Cal. App.4th 828 [24 Cal.Rptr.3d 406] [Second Dist., Div. Five], held that the amendment does apply to pending cases, and it

remanded the case to the trial court to permit plaintiffs, who did not qualify under the amendment, to substitute other plaintiffs who would qualify.

Benson v. Kwikset Corp. (2005) 126 Cal.App.4th 887 [24 Cal.Rptr.3d 683] [Fourth Dist., Div. Three] similarly concluded that the limitations of Proposition 64 apply to pending cases. It remanded the case to the trial court to permit plaintiff to seek an amendment to his complaint if he could demonstrate he was qualified to pursue the action under the amended statute. But *Benson* ruled that plaintiff could not cure the defect in standing by substituting another person or entity as plaintiff because the statute of limitations would have run on their claims.

Two other cases held that Proposition 64 applies to pending cases: *Bivens v. Corel Corp.* (2005) 126 Cal. App.4th 1392 [24 Cal.Rptr.3d 847] [Fourth Dist., Div. One] and *Lytwyn v. Fry's Electronics, Inc.* (2005) 126 Cal.App.4th 1455 [25 Cal.Rptr.3d 791] [Fourth Dist., Div. One].

As expected, the California Supreme Court has granted review in these cases. They may therefore no longer be cited. It may well be another year or so before we will know the answer to these questions raised by the passage of Proposition 64.

The lead case is *Californians for Disability Rights v. Mervyn's, LLC* (Case No. S131798). Briefing in the other cases was deferred until that case is decided, except that in *Branick v. Downey Sav. and Loan Assn.* (Case No. S132433), the court ordered briefing limited to the issue of whether new plaintiffs may be substituted if the present plaintiff is disqualified under Proposition 64.

When seeking credit information, you had better be very specific in your inquiry.

Several out-of-state cases have held that where financial institutions furnish erroneous credit information about depositors, they may be liable to inquirers who, in reliance on the information, extend credit to the depositors. (See, e.g., *Central States Stamping Co. v. Terminal Equipment Co., Inc.* (6th Cir. 1984) 727 F.2d 1405; *Berkline Corp. v. Bank of Mississippi* (Miss. 1984) 453 So.2d 699.)

But in *Lease and Rental Mgt. Corp. v. Arrowhead Central Credit Union* (2005) 126 Cal.App.4th 1052 [24 Cal.Rptr.3d 483] [Fourth Dist., Div. Two], the Court of Appeal distinguished these cases by noting that in all of them the banks were directly involved in the operations of the depositors. In affirming summary judgment for the credit union, the court also noted that "the inadequacy of the credit reference request forms used by [plaintiff] are the root of the problem." The forms were incomplete and likely to confuse the bank employees who were requested to fill them out.

While conducting a settlement conference, judge may not make factual findings or prepare a coercive order.

In *Travelers Casualty and Surety Co. v. Superior Court* (2005) 126 Cal.App.4th 1131 [24 Cal.Rptr.3d 751] [Second Dist., Div. Eight], the trial judge, while conducting a settlement conference, issued a written order (1) determining the good faith settlement value of the cases, (2) precluding plaintiffs from declaring a forfeiture of their policies if the insured settled without their consent, and (3) providing evidence of the insurers' bad faith "for future use." Invoking the provisions of the Evidence Code relating to mediation (Evid. Code, §§ 1115–1128), the Court of Appeal reversed these orders. The appellate court ruled that fact-finding and other coercive conduct by a mediator were prohibited.

Mark A. Mellor, Esq., is a partner of The Mellor Law Firm specializing in Real Estate and Business Litigation in the Inland Empire.

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Guidelines for Professional Courtesy and Civility

by James Otto Heiting

"Dealin' with some lawyers is like chewin' barbed wire stuck in a steak: you start out wantin' to chew the fat, and before you know what happened, you end up all bloody and still needin' to eat." Otto Von Schmotto

Civility among lawyers, promotion of justice, respect for each other and the law as an institution, have been eroding. In response, with the help of a committee made up of judges, private lawyers, and public lawyers, the "Guidelines of Professional Courtesy and Civility" were adopted by the Riverside County Bar Association and the courts, and supported by all bar associations whose practitioners make regular use of the courts of our county. The Guidelines [available online at www.riversidecountybar.com, under the Members' Resources section, or contact RCBA office] are intended as a guide to be used by all practitioners who enter and practice in our Riverside County courts and as an aid to rekindle the sparks of our heritage, our honor, and our self-respect. But this is just a step in the right direction. "Perfection is attained by slow degrees" (Voltaire).

In compiling information for the Guidelines, I attended many conferences, including the Joint Conference on Professionalism for the Twenty-First Century, held at Hastings, meetings of the National Conference of Bar Presidents, and nationwide, statewide and more localized meetings of bar associations and other committees. I have reviewed materials from the American Bar Association, the National Conference of Bar Presidents, the State Bar of California, federal associations, other state bars, and other organizations.

Six main elements of our lives need to be the focus for true growth in our practice: ethics and integrity (high moral ground/responsibility), independence (in advice, thinking, counseling within the law), legal education, civility (an attitude and a practice), competency, and professionalism (expertise, altruism, self-regulation, and the other categories herein).

The primary objectives in developing the Guidelines were to instill renewed (or in some cases new) ideals of professionalism and civility, to promote civility and professionalism among attorneys and between attorneys and the courts (with an eye to reducing bickering, requests for sanctions, the need to ask the court for assistance to resolve attorney-caused conflicts), and to reduce the costs of litigation and the costs to the courts of needless disputes. The goal, simply stated, is to promote justice and the common good through an ethical practice, with competence, civility, service to the public, and self-regulation.

We need at all times to remember that practicing law is a profession, a calling, with the ultimate purpose of being a problem-solver rather than a problem-creator. We, as lawyers, should be developing deliberate and sound arguments (evidencing practical wisdom, moderation, and preparation), developing solutions to human problems, contributing to society, promoting the public trust, and defining "winning." We should avoid and dissuade others from "Rambo tactics." Honesty and integrity are inherent in the practice of law, and in our roles as counselors, negotiators, advocates, and peacemakers, each attorney action adds or detracts from the profession.

In conclusion, ours is a noble profession; and we must differentiate between what we can do and what we should do. It is a profession that carries principles of honesty, integrity, public service, dispute resolution, problem-solving, counseling, negotiating, peace-making. But some of us have forgotten this – or we never learned it. I am hopeful that the Guidelines can serve in some small way to educate those of us who need to be educated, and to remind those of us who need to be reminded.

The Guidelines of Professional Courtesy and Civility can be downloaded from the RCBA website (riversidecountybar.com) or you may contact the RCBA office for a printed copy.

James O. Heiting, with the law firm of Heiting & Irwin, is the current District 6 representative to the State Bar Board of Governors and the incoming State Bar President. Mr. Heiting is a past president of the Riverside County Bar Association.

Becoming an Effective Advocacy

by Craig G. Riemer and Roger A. Luebs

All attorneys want to be effective advocates for their clients. The dictionary defines "effective" as "producing a desired result." Thus, an advocate is effective when he or she persuades the decision-maker to decide in favor of the advocate's client.

While that definition is self-evident, the means of achieving that goal are less obvious. Indeed, many experienced attorneys might describe many different paths to that goal. But however their advice might differ in particulars, the most consistently effective advocates are likely to have this trait in common: They look at the dispute from the perspective of the decision-maker and then tailor their advocacy to address the decision-maker's needs.

In the context of a hearing or trial in front of a judge, therefore, effective advocates seek to understand what the judge is trying to do, and then do what they can to help the judge do it.

So, what is a judge trying to do? What is a judge's motivation? A judge wants to make the right decision, i.e., a decision that not only complies with the law but promotes justice as well.

To accomplish that goal, the judge needs to understand four things: the legal issue that the judge must resolve; the law that governs the resolution of that issue; the facts that are material to the application of that law in this instance; and the most rational and fair application of that law to those facts. Unfortunately, there are a myriad of obstacles that impede the judge from achieving that goal of making the right decision. Principal among these are the lack of time and the proliferation of distractions.

Your job as an advocate is to satisfy the judge's needs by answering those four questions while either reducing the number or mitigating the effect of those obstacles.

To meet the judge's need for information, the effective advocate will try to answer each of those four questions whenever presenting a legal argument to the judge. Naturally, that is not possible in every instance. An appellate brief or a summary judgment motion is going to be far more complete than an evidentiary objection in the middle of trial. But, to the extent possible, the advocate should provide the judge with the four tools the judge needs to decide the issue at hand: the issue, the law, the facts, and the analysis.

Providing that information in a clear manner provides the judge with an easy path to the decision that you wish to be made. It also transforms the judge's perception of the advocate from a suspect partisan to a helpful resource. The enhanced credibility that arises from that change of perception is invaluable.

An effective advocate is also mindful, not only of the information that the judge needs, but of the time constraints under which the judge operates. Large judicial caseloads mean that it is unlikely that a judge will have more than very limited knowledge or recollection regarding the facts and procedural history of the case. The judge's time to prepare for a particular hearing is unfortunately very limited. This is not the way it should be, but it is the reality. As an effective advocate, you must recognize that the judge is dealing with hundreds of other cases in addition to yours.

What, then, should the advocate do to mitigate the effect of limited time? You can't lengthen the day or decrease the number of cases assigned to the judge. But you can make the most of every moment the judge spends on your case by taking pains to see that your argument is easily absorbed and understood. Toward that end, your presentation should be well organized. It should be clear. It should be succinct. It should be brief.

Lawyers frequently promise to be succinct – "Counsel, would you like to respond?"; "Just briefly, Your Honor" – but those promises are generally forgotten in practice. For instance, one cannot be concise while at the same time presenting every single argument that could possibly apply in a given situation. Evidentiary objections filed in opposition to a motion for summary judgment come to mind. Some attorneys operate under the belief that if one evidentiary objection to a particular statement is good, six must be even better. That not only wastes the judge's time, it also weakens the persuasive effect of your meritorious arguments by diluting them with marginal ones. The judge has time to absorb and act upon only a few arguments. Don't squander his or her limited time and attention. Pitch only your best arguments.

Another way in which the effective advocate helps the judge to reach the correct decision is to keep the judge's attention focused on the issue to be decided. That process starts with clearly identifying the issue. It is, after all, impossible to focus on a target that is hidden in the

underbrush. But merely identifying the issue is only the first step. The effective advocate makes sure that the judge's attention is not unnecessarily diverted before a decision is reached.

Imagine, for instance, a circumstance in which opposing counsel has filed a set of points and authorities that omits any mention of the leading case on the point at issue. In your opposition, in which you would most assuredly point out that omission, you might be tempted to assert that the omission was a deliberate attempt to mislead the court and was but another step in a long series of unethical conduct by your opponent in this action.

Such an aside might please your client, and might give you some personal satisfaction as well. But does it help the judge decide the case? Specifically, does it satisfy the judge's need to know the issue, the law, the facts, and the analysis? Of course not. To the contrary, having to wade through those irrelevant allegations merely delays the judge from discovering the information the judge needs to render a decision and distracts the judge from focusing on the precise issue to be decided.

A judge who is working hard to grasp the facts and apply the appropriate law is naturally going to be frustrated when forced to wade through petty, snide, or sarcastic advocacy. That frustration might be directed at the attorney who failed to cite the applicable authority. But it might also be directed at you, the attorney who included the irrelevant personal attacks. Before you decide to take a poke at opposing counsel in a brief or oral argument, you should consider if the personal satisfaction you hope to receive is worth the risk of an adverse impact on the judge.

In summary, it does not matter whether you are a brand new lawyer or one with a State Bar number of only five digits. It does not matter whether you are litigating a criminal or civil case, or practicing in the trial court or before an appellate tribunal, in a state or federal jurisdiction, across the street or across the country. In every circumstance, the judge before you is trying to reach the right decision. You will be an effective advocate if you help the judge reach that decision by providing the information that the judge needs, if you provide that information clearly and succinctly, and if you avoid the temptation to distract the judge from the issue at hand.

Craig G. Riemer and Roger A. Luebs are Judges of the Riverside Superior Court.

NETWORKING

by Richard Brent Reed

While my classmates at California Southern Law School were nose-down in bar review courses, I began cultivating connections in the local legal community. I started by getting to know the excellent staff at our county law library, who taught me how to research even the most arcane of legal topics. Long before I graduated, I joined the Federal Bar Association. There, I met my mentors and future colleagues: attorneys like David Werner, Ted Stream, and Ken Stream, the honorable Judges Timlin and Larson, and others who would prove to be valuable resources. When I got my bar ticket, I joined the Riverside County Bar Association and, immediately, sought out the Publications Committee, where I rub shoulders with write-minded attorneys like myself on a monthly basis. Networking is valuable for any attorney, but it is essential for the solo practitioner who hangs out his or her own shingle.

The RCBA's "Bridging the Gap" program familiarizes new attorneys, not only with our local courts, but with a few of our local judges. Getting to know the judges has a great psychological benefit. When you walk into a courtroom, it is sometimes useful to know the temperament of the black-robed figure glowering down at you. And if the judge knows you, it frees you to focus on your arguments without worrying about having to establish your credibility with the judge.

Organizations like Barristers treat attorneys to discussions on a wide variety of legal issues. The Leo A. Deegan Inns of Court provides a monthly opportunity to see presentations dealing with current issues. At these dinner meetings, judges and lawyers weigh in on how to navigate the ethical minefields that confront us. The fact that our community wrestles with such questions in an open forum suggests that the bottom line is not always a dollar sign.

And, as a result of my jackdaw peregrinations about the legal community, I can pick up the phone, talk to a colleague, and get ready guidance through whatever novel situation presents itself. Perhaps most importantly, it is through association with colleagues that one comes to understand that Riverside County has a high standard of civility and collegiality not always found in other jurisdictions.

Law is not practiced in a vacuum. Law school teaches the theory. Rutter gives you the nuts and bolts. But the art of practicing law is developed by the legal community itself. When it comes to deportment, civility, and professionalism, it's not what you know but who you know that counts.

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

Opening a New Practice

by John W. Vineyard

Attorneys who enter the solo practice of law do so for a variety of reasons, at differing stages of their careers. Sometimes the decision to open a solo practice is voluntary, and sometimes it is dictated by circumstances.

In my particular case, after 15 years of being an associate and partner in several law firms, varying in size from 10 attorneys to 1,000, I made the choice to open a solo practice, but circumstances at my last law firm dictated the timing. I had been preparing to open my own office, collecting information and putting together a business plan, for almost a year, so when my timetable was accelerated by six months, I was in a better position than most to make the change quickly.

Now that I am entering my fifth month of solo practice, it has become clear that organization is the key to both starting and maintaining a successful practice. And although I have always considered myself well organized, the organizational requirements of a solo practice required me to take those skills to a new level.

The need for organization in the planning stages of opening a new practice should be obvious. Arranging for and coordinating office space, insurance, equipment, banking relationships, practice management, and all of the other details necessary to get a practice up and running can be overwhelming. In my case, I had the benefit of working closely with administrative staff in both of my previous law firms and having a general idea of how the administrative side of a practice worked. However, even with that background, I quickly learned that knowing how it worked and making it work were two very different things.

In the early stages of my planning, I learned that there are quite a few resources for those planning to open a solo practice. I highly recommend the book published by the A.B.A. On the other hand, as I read several of the books on the market, I cringed at the thought of new attorneys learning how to operate a law practice from those sources. As an experienced attorney, with some experience with the administrative side of the practice, I had the advantage of some background, as well as contacts and resources within the local legal community that I could go to for advice. I could not imagine starting a law practice and going through this process as a new attorney without that background, and I have a new respect for those who have successfully done it.

In this article, I am not going to try to give advice on all of the details of opening a solo practice; however, I will comment on the two issues that I found to be the most important. First was the location of my office. A solo attorney's office location will be greatly influenced by the attorney, his or her experience and area of practice, and the level of client contact. For some, a home office may work, while others will need a more business-like setting. For me, the most important question was whether I would feel comfortable meeting a typical client for the first time in my office. The answer to that question eliminated a number of the possibilities in Riverside and narrowed my choices to only a few.

On the administrative side of the practice, probably the most important choice I made was the selection of practice management software. For almost a year before I opened my practice I explored various options, obtained demonstration programs, talked to other attorneys and seriously considered several options. There are, of course, a number of well-known options such as Timeslips, Time Matters, and the program I ultimately chose, PCLaw. To a large extent, I believe the choice will be influenced by an attorney's practice area. In my case, I arrived at the decision by creating my office plan and organization and finding the software package that would allow me to most closely follow that plan.

Once in practice, the need for organization is even more critical. While for the experienced lawyer, the actual practice of law may not be much different in solo practice, the amount of time necessary for administrative issues, marketing, and other "distractions" will require some juggling. The first time I used my practice management software to issue a check to pay a bill, it took me three hours, but the second time, it took 15 minutes, and now I can do a month's worth of bills in five to ten minutes. Similarly, opening a new file, recording conflicts and setting up billing information on a new matter took hours the first time and is now becoming routine.

And though I intended to escape from the law firm bureaucracy, that bureaucracy did serve the purpose of imposing a framework of organization over my practice.

Now I am fully responsible for that organization, maintaining my calendar, establishing and meeting deadlines, and all of the other details that appear so easy and simple when your administrative staff is taking care of them.

My personal goal was to focus more on quality of the practice vs. quantity, limiting the amount of time I devoted to clients and legal matters rather than to family and community activities, while providing more personal and quality services to my clients. As each month of my solo practice ends, I am closer to my goals, and more certain that I made the right decision to open a solo practice. While I sometimes question that decision, especially when I am balancing the checkbook, the answer is almost always that I should have done it sooner.

John W. Vineyard is a past president of the Riverside County Bar Association.

Putting Out Your Shingle

by Scott Grossman

During my career, I have worked for the government, as assigned counsel, and on my own. For any attorney considering going out on their own, the importance of the decision and its consequences can be enormous.

The first consideration for anyone considering hanging out their own shingle is whether it suits them. Some people prefer to work as part of an organization. If you have always thought of yourself as the "company man," then going solo may not be a good fit for you. Some people believe that working for themselves will cure all the shortcomings in their present position. It might, or it might just seem easier than confronting your present difficulties. Some people go solo because they don't have a better option. Going solo can be a good way to gain experience in your chosen field. At a later time, you may be able to join a firm.

Whatever it is you want out of hanging out your shingle, the first issue you will have to confront is money – the money you earn and the money you will spend. You need a plan to generate income from the first day you open your doors. No one is going to hire you just because you are a lawyer. If you have any form of network, then tap into it. Most people prefer to hire a lawyer based on a referral from someone they trust. That someone may be a business colleague, church member, team member, fellow hobbyist, etc. As a practical matter, if your client trusts the person who made the referral, then they start by trusting you.

You may not have your own network of potential referral sources, but there may be someone you know who does. If you practice real estate law, then it may be time to reacquaint yourself with the mortgage broker or banker who made your home loan and the real estate agent who sold it to you. If you can find one person who will introduce you or have you make a presentation to their office or professional group, then you are on your way to building your network. While you are doing this, always keep in mind the people who are helping you. Ask them about their present clients and the type of clients they want. Assuming you have affiliated yourself with other competent professionals, be certain to refer business to them. Attorneys are notorious for seeking referrals but never making any. You can set yourself apart by enhancing the business of people who help you to build yours.

Yes, it's true. You are part of a profession, and when you hang out your own shingle you are also in business. Like every other business, there will be any number of behind-the-scenes tasks that have to be performed. Office supplies do not magically appear, payroll checks do not spontaneously materialize, and the copier does not refill itself with toner. You need to know how you will manage or perform all the administrative tasks that come with running your own office.

When you are just starting out, items like bill payment and ordering office supplies may not be time-consuming tasks. If doing these things doesn't make you cringe, then take them on at the beginning. Chances are you have the time, and you can hold down expenses by doing these things yourself.

Payroll should be outsourced to your tax professional or a payroll processing service. Correctly calculating the correct tax withholding is beyond the reach of most lawyers, and the penalties for failing to withhold can be severe. Unless you have an accounting background, have someone else handle your payroll. The money you spend will come back to you many times over.

When you hang out your own shingle, you need to know how you will pay your bills. Your first month is not likely to be filled with new clients paying you large retainers. You need to have either some savings you can use to support your practice, a spouse or loved one who will support it, or immediate cash flow. If you are bringing clients with you from a previous job or have some contract work lined up, then this could work for you.

Plan on asking for advice from more experienced attorneys, attending MCLE classes, and getting whatever other education you need to do your work to the best of your abilities. Anyone hanging out their own shingle, whether fresh out of school or leaving a firm, will immediately notice there is no one else to ask for help – at least it seems that way. Most practice areas have groups you can join and list servers for the members. It's not the same as asking a close colleague to share ideas, but for a solo practitioner it can be a life saver.

If hanging out your own shingle is an opportunity to do more of what you love, then do not be surprised if doing it well means more education. Education can take any form that suits your needs. MCLE classes are often

a good place to start. If you need more knowledge, then don't be surprised if at some point you enroll in school. The author knows a very dedicated criminal defense attorney who enrolled in a host of biology and chemistry courses in order to better understand the science necessary to examine and cross-examine expert witnesses.

Finally, you must plan for your retirement. When you work for yourself, there is no pension waiting for you. There are any number of deferred compensation plans that can be set up, usually quite easily. Go to your financial planner – if you don't have a financial planner, then get one – and talk this through. Retirement may seem like the last thing you should consider. You can't afford that attitude, literally. Every year you put off planning, the tougher it is to reach your goals. Develop a plan at the beginning, and then fund it. You are going to work plenty hard. Make certain you have the option of stopping when you choose to do so.

Scott Grossman is the sole shareholder of the Grossman Law Firm, A.P.C. His practice focuses on tax and elder law. He can be reached at sgrossman@grossmanlaw.net.

James Heiting Elected State Bar President

by Diane Curtis

This news release was published on the State Bar of California's web site (www.calbar.ca.gov) on May 14, 2005. Reprinted with permission.

James O. Heiting, a Riverside lawyer who has been instrumental in expanding alcohol and drug rehabilitation programs for attorneys, was elected president of The State Bar of California on Saturday [May 14, 2005].

A partner at Heiting & Irwin, which specializes in medical malpractice and personal injury cases, Heiting, 56, will succeed former California Attorney General John Van de Kamp. Heiting's one-year term at the helm of the 200,000-member organization begins in September, when he will be sworn in at the bar's annual meeting.

"A lot has been given to me, and I feel like I have a lot to give," Heiting said of being elected the bar's 81st president. "I feel I can be effective in giving back to people. That's how I gauge things."

In two rounds of balloting by members of the board of governors, the president-elect, who is well known among board members and bar staff for his preference of hugs over handshakes, bested two other candidates, Rod McLeod of San Francisco and Joel S. Miliband of Irvine.

In his pre-election speech, Heiting said he was committed to increasing diversity "from the ground up" and promoting pipeline projects to get minority students as young as middle-school age interested in the law. Access to justice for the indigent and the Lawyer Assistance Program (LAP), which provides support and programs for lawyers with alcohol, substance abuse or mental health issues, are also top priorities. Ultimately, the LAP program, which saves careers and lives, saves the bar money in fewer discipline cases, Heiting said.

Considering that the State Bar is heading for a multi-million-dollar deficit by 2008, Heiting said a dues increase was necessary. "I don't think there's any question we need a dues increase," he said. He said dues should be set according to the needs of the members and the State Bar "and not the other way around," but that such services as the ethics hotline, in which attorneys can get answers from State Bar experts, requires more staff. He also said he favored partnerships with local bar associations and wanted to head further toward a "paperless system."

The father of three grown sons with his wife of 33 years, Cindy, Heiting received both his undergraduate and law school degrees from Western State University in Fullerton.

During his tenure on the board of governors, he has chaired the Planning, Program Development and Budget Committee and was instrumental in creating the bar's long-term strategic plan. As a vice president of the bar this past year, he also serves on the Committee on Board Operations.

Heiting was admitted to the practice of law in California in 1976. From 1998-2003, he was on the board of directors of The Other Bar, a network of volunteer California lawyers and judges who offer confidential support to lawyers trying to cope with alcohol or chemical dependency.

He served as its president and chairman from 1991-1993. The Other Bar serves as a bridge to established recovery programs.

[James Heiting was president of the Riverside County Bar Association in 1996-1997.]

Diane Curtis can be contacted at 415-538-2283 or diane.curtis@calbar.ca.gov.

CURRENT AFFAIRS

by Richard Brent Reed

What's In YOUR Chili?

On March 22, 2005, 39-year-old Anna Ayala of Las Vegas confronted the management of a Wendy's restaurant in San Jose with a bowl of Wendy's chili that had a well-manicured human finger in it. (At upscale restaurants, the finger bowl comes at the end of the meal.) Police launched an investigation, examining the appendages of everyone who had had a hand in preparing the chili, all the way up the Wendy's food chain. All fingers were present and accounted for. Then they inspected the offending dish: the chili was cooked; the finger was not.

The evidence pointed to one suspect: Anna had doctored the chili herself. She put the finger in the chili and the chili put the finger on her. She was arrested and charged with grand larceny, a charge carrying a maximum of seven years, subject to being digitally enhanced.

To overcome public squeamishness, Wendy's could serve a vegetarian chili, perhaps replacing the finger with a well-manicured, human tofu. In the meantime, however, as a result of the unappetizing publicity, Wendy's has lost over $2.5 million in chili sales and nearly half a million dollars in finger sales.

Pet Dressing

A California legislator has introduced a bill in the state legislature to make pet clothing illegal. You heard me: pet clothing. Your initial incredulous reaction may be summarized as follows: "This state is teetering on the brink of insolvency, Californians face power outages this summer, gasoline costs $2.50 a gallon, abundant rains have produced tinder for a record fire season, the borders are as effective as screen doors on submarines, every job not involving a leaf blower has been out-sourced overseas, and the bottleneck at the 91/60 interchange is about to end civilization as we know it, and yet our state legislature is about to debate the merits of pet clothing. Nero, tune up your violin!"

Let us admit, however, that the proposed legislation attempts to address a serious health problem: you can't put clothing on a pet without making people sick. Who wants to see spandex on a poodle? No one wants to look at boxers on boxers. As for Chihuahuas sporting sweaters with matching head gear… Yes, there should be a law against that. People who accessorize their pets should be subject to criminal penalties for public indecency and civil liability for intentional infliction of emotional distress. As for the mental state of the pet-obsessed owners, anyone who would wrap a lavender chiffon frill around the neck of their Boston terrier needs immediate and radical intervention, to say nothing of the psychological damage that such humiliating fashions inflict upon the pets themselves.

And, let's face it, we're talking about dog owners. Cat owners, while also prone to sartorial neurosis, tend to be closet sociopaths when it comes to pet dressing. Dog owners flaunt it; they televise these obscenities at dog shows. They put their pathologies on a leash and parade them down the street for all to view. These horrendous images burn their way into our psyches, destroy our tranquility, disrupt our sleep, and cause pandemic indigestion. It is these doting, dog-decorating, pet-preening prima donnas who are daily disturbing the peace with impunity.

This legislation comes none too soon. Dressing pets will lead, inevitably, to the most inhumane animal experimentation. It is only a matter of time before some hapless Beverly Hills borzoi is given silicone implants by her cruel, Giorgio-soaked owner who will justify this needless surgery on cosmetic grounds: it makes the clothes hang better.

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

24th Annual RCBA Good Citizenship Awards

As a part of its celebration of Law Day 2005, the Riverside County Bar Association once again sponsored the Good Citizenship Award Program for high school students in Riverside County. The award is presented to those high school juniors in the county who have been designated by their respective principals as exhibiting the characteristics of a good citizen – leadership, problem solving and involvement on campus.

The recipients receive $100 cash stipends from the RCBA, as well as certificates of merit from their local elected officials. This year, representatives from the offices of Congressman Ken Calvert, Senator Robert Dutton, Assemblyman John Benoit, Assemblyman Russ Bogh and Assemblyman Bill Emmerson were on hand to present the certificates and to congratulate the honorees, as were

Photograph by Michael J. Elderman

members of the RCBA Board of Directors, Judge Thomas Cahraman and Presiding Judge Sharon Waters.

The award ceremony was held on Friday, May 6, 2005, in Department 1 of the Historic Court House in Riverside. The award recipients were:

High School Name	Student Name
Abraham Lincoln	Esther Oree
Alessandro	Barry Thompson
Alvord	Abreshia Taylor
Amistad	Katrina Wilson
Arlington	John Paul Issa
Canyon Springs	Stephen Bishop
Centennial Vista	Veronica Herrera
Chaparral	Samy Harmoush
Coachella Valley	Jasmine Alvarez
Corona	Emmet W. Noone
Elsinore	Elizabeth Frias
Hamilton	Casey McAllister
John W. North	Ron McCoy
Jurupa Valley	Laura Hughes
La Familia	Edgardo Hernandez
La Quinta	Allison Rokke
La Sierra	Zurama Holton
March Mountain	Samantha Frohock
March Vocational Academic	Tyshanna James
Martin Luther King	John Pollock

High School Name	Student Name
Mountain View	Juanita Vera
Mt. San Jacinto	Damian Ketchersid
Murrieta Valley	Erin Kathleen Mulvanny
Norte Vista	Daniel Treat
Nueva Vista	Heather Rodriguez
Palm Springs	Linda Johanna Costello
Perris	Shaina Riego
Phoenix	Angel Barajas
Polytechnic	Alex Hoopai
Ramona	Melina Sapiano
Rancho Verde	Marisa Melero
San Jacinto	Mary Rex
Sherman Indian	Kyle Molina
Temecula Valley	Gabriela Ines Guzman
Temescal Canyon	Hien Thach
Val Verde	Tin Sam
Valley View	Laura Ramirez
West Shores	Alex Guillen
West Valley	Nicole Wilson

Photograph by Michael J. Elderman

David Bristow

Photograph by Michael J. Elderman

Judge Tom Cahraman

Photograph by Michael J. Elderman

Judge Sharon Waters

Photograph by Michael J. Elderman

Michelle Ouellette

15th Annual Red Mass

by Jacqueline Carey-Wilson

More than 100 members of the legal community gathered at the 15th Annual Red Mass on May 3, 2005. The Red Mass is celebrated by the legal community and their families to invoke God's blessing and guidance in the administration of justice. The Mass was held at Our Lady of the Rosary Cathedral in San Bernardino. Judges, lawyers, and public officials of several faiths participated.

The principal celebrant of the Red Mass was the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. Rabbi Hillel Cohn, Rabbi Emeritus of Congregation Emanu El in San Bernardino, read a passage from the Old Testament. Michael Riddell, a partner with Best Best & Krieger, read a passage from the New Testament. Deacon F. Michael Jelley, Vice Chancellor of the Diocese of San Bernardino, read the gospel. Jacqueline Carey-Wilson, deputy county counsel, read the Prayers of the Faithful, which included remembrances of Pope John Paul II, along with the judges, lawyers, and others from the legal community who passed away during the last year.

Bishop Barnes' homily reminded those present that we share in the same healing power to feed the hungry, heal the sick, and show mercy to the disadvantaged. "We need to bring healing where we find ourselves," said Bishop Barnes. "You have taken a vow to apply the laws of the nation. You defend clients. Clients represent humankind. You must carry out your obligation, but never lose solidarity with them. We are people of God and we are called to be compassionate . . . . You must abide by the oath of your profession, but never turn your hearts away . . . you must extend forgiveness." Bishop Barnes concluded by asking all men and women of faith to be the healing presence of the Lord and not let their hearts become hard or their spirits callous.

A banner depicting the Holy Spirit, Scales of Justice, and the Ten Commandments was placed on the alter at the beginning of the Mass to symbolize the impartiality of justice and how all must work toward the fair and equal administration of the law, without corruption, avarice, prejudice, or favor.

At the reception immediately following the Mass, Judge Robert Timlin introduced the recipient of the 2005 Saint Thomas More Award. Judge Timlin began by reviewing the criteria used to select the recipient of the award.

"This award is given to an attorney or a judge in the Inland Empire selected by the Red Mass Committee," said Judge Timlin. "Among the criteria for selection are: (1) The person's performance of his or her profession as an extension of his or her faith, (2) she/he must fill the lives of the faithful with hope by being a legal advocate for those in need and (3) must be a person who has shown kindness and generosity of spirit and who is overall an exemplary human being. The person selected for 2005 is Judge Cynthia Ludvigsen, to whom I will refer on occasion as Cindy.

"As personal background, Cindy was born in Chicago, Illinois and eventually her family settled in Southern California and she graduated from Azusa High School. She received her Bachelor of Arts in Journalism and American Studies from Syracuse University and her Doctorate of Jurisprudence from George Washington National Law Center. She and her husband, Gary Silvius, a certified public accountant, have resided in the Inland Empire for approximately 26 years. They have four children, including a foster child, and their children have been educated in the local Catholic school system.

"As to Cindy's professional background, she practiced law in the San Bernardino area for approximately 19 years, specializing in real estate and municipal and public law. In her practice she also represented handicapped students and parents in special education matters and was a staff attorney for the Inland Counties Legal Services in Riverside and San Bernardino Counties, demonstrating that in her law practice she was a legal advocate for those in need, one of the criteria for the St. Thomas More Award.

"Her legal background also involves participation on numerous local bar association committees. She has been President of the Inland Counties Women at Law and an officer in the California Women Lawyers Association. For the last eight years she has served as a judge in San Bernardino County and presently sits on the California Superior Court for San Bernardino County. As a judge she continued her active participation in matters involving the judiciary by serving on several judicial education committees for the California Judges Association.

"Recognizing Cindy's exceptional professional background and contributions to the legal profession, her participation in church and community activities, in my view, are equally if not more noteworthy and meet the award criteria of showing kindness and generosity of spirit and of being an overall exemplary human being. At her local parish church for years she has taught religious education programs and presently teaches confirmation students at Our Lady of the Assumption. For years she has served as a Confirmation and Youth Minister and continues to be involved with other local parish and diocesan programs.

"She and her husband have coached and sponsored youth sports, particularly soccer. She has been coaching a high school Mock Trial Team at St. Thomas Aquinas High School for five years. She has also been a Board Member of the City Library Foundation and participated in numerous community-sponsored leadership development and youth shadowing programs. Additionally, Cindy is an original founder of the Inland Empire Red Mass Steering Committee and has been active in a leadership role since its inception to the present. She is one of the real inspirational leaders. Finally, she has also found time from her daily professional and family activities and participation in the various service programs to build houses with the Habitat for Humanity organization. Just reading her list of accomplishments is exhausting.

"As you know, this award is entitled the Saint Thomas More Award. In doing some brief research regarding Saint Thomas More, it is striking how Judge Ludvigsen's accomplishments closely reflect the spirit of Saint Thomas More's life in certain respects.

"As you may recall, Saint Thomas More was a religious and political force in England during the Renaissance period, having been recognized for his scholarship and political skills. At one time he was close to Kings Henry VII and Henry VIII, becoming a Lord Chancellor of England. His life spanned a period of 57 years, from February 7, 1478 to July 6, 1535. As we all know, his life ended by being beheaded at the direction of King Henry VIII because he refused to take the oath of allegiance which proclaimed the King of England as head of the Catholic Church in England and thereby overruled the doctrine of papal supremacy. Saint Thomas More was beatified in 1886 and in 1935 was canonized as a saint.

"Fairly recently, on October 31, 2000, Pope John Paul II proclaimed Saint Thomas More to be the patron of statesmen and politicians. In his proclamation, the Pope stated that Saint Thomas More's 'life teaches us that government is above all an exercise of virtue. Unwavering in this rigorous moral stance, this English statesman placed his own public activity at the service of the person, especially if that person was weak or poor; he dealt with social controversies with a superb sense of fairness; he was vigorously committed to favoring and defending the family; he supported the all-round education of the young.' Without question Cindy's activities over the years mirror those attributes of Saint Thomas More, which were highlighted by Pope John Paul II.

"I have personally known Cindy on a professional basis for a number of years. Over and above her tremendous accomplishments, particularly remarkable is her buoyant, upbeat personality. The glass is always half-full to Cindy. This aspect of her life is also comparable to Saint Thomas More, about whom Desiderius Erasmus, an important figure of the Renaissance era in the 1500s, stated in a letter to a colleague that his friend Thomas More had a 'countenance [which] is in harmony with his character, being always expressive of an amiable joyousness and even an incipient laughter…'

"I suspect that Cindy's positive approach to life is steeped in her deep Catholic faith and justifiable self-satisfaction for all the good deeds she has performed. She is a modern lady of all seasons." Judge Timlin then presented the Saint Thomas More Award to Judge Ludvigsen in gratitude for her extraordinary service and devotion to church, community and justice.

The Red Mass Steering Committee is accepting nominations for the 2006 Saint Thomas More Award. The award will be given at the reception following next year's Red Mass, which will be on Tuesday, May 2, 2006. If you have any questions or would like to be involved in the planning of next year's Red Mass, please call Jacqueline Carey-Wilson at (909) 387-4334 or Patricia Cisneros at (951) 248-0343.

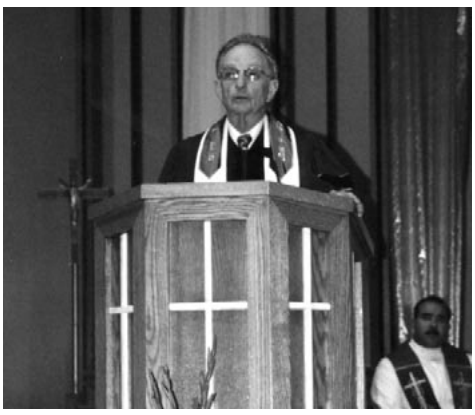
Photographs by Jacqueline Carey-Wilson

Nancy Smoke and Judge Patrick Morris

Barbara Keough, Jim Heiting, Bishop Gerald Barnes, Louise Biddle, BJ Burgess

Deacon F. Michael Jelley and Michael Riddle

Judge Cynthia Ludvigsen and Judge Robert Timlin



Rabbi Hillel Cohen

Chief Justice Ronald George Luncheon (April 29, 2005)

Photograph by Jacqueline Carey-Wilson

Justice Bart Gaut, Chief Justice George, Judge Peter Norell, Justice James Ward, Justice Betty Richli

Photograph by Jacqueline Carey-Wilson

Chief Justice George, Judge Robert Spitzer, Jay Orr, Judge Patrick Magers, Judge Sharon Waters

Photograph by Jacqueline Carey-Wilson

Overflow in the Ho-O-Kan Room

Photograph by Jacqueline Carey-Wilson

Chief Justice Ronald George and Justice John Gabbert (Ret.)

Photograph by Michael J. Elderman

Justice George and Theresa Han Savage, incoming RCBA President

Photograph by Michael J. Elderman

James Heiting, incoming State Bar President and Judge Douglas Miller

Photograph by Michael J. Elderman

David Bristow, RCBA Vice President

Photograph by Michael J. Elderman

Michelle Ouellette (RCBA President) Chief Justice Ronald George, Will Schneider (SBCBA President)

Photograph by Michael J. Elderman

Judge Roger Luebs, Chief Justice George, Judge Stephen Cunnison, Judge Paul Zellerbach, Commissioner Jeffrey Prevost

Photograph by Michael J. Elderman

Judge Dallas Holmes and Justice John Gabbert (Ret.)

Photograph by Michael J. Elderman

Justice George, Judge Waters (Presiding Judge, Riverside County County Superior Court), Judge Peter Norell (Presiding Judge, San Bernardino County Superior Court)

Whither or Not – Prop. 36 Drug Treatment

by Joe Hernandez, Judge, Riverside Superior Court

Proposition 36 was an initiative passed by the People of the State of California. It became effective on July 1, 2001. It is a wide-reaching drug rehabilitation program. It expires on June 30, 2006. The State Senate is considering legislation that would extend Prop. 36 through FY 2010-11. The extension is contained in Senate Bill 803 by Senator Denise Ducheny. She represents southwestern Riverside County and northern San Diego County. SB 803 would not only extend Prop. 36, but would amend some of its provisions. A temporary task force has been working with Sen. Ducheny to make the bill meet the expectations of all interested parties. The temporary task force includes, among others, prosecutors, public defenders, judges, drug counselors, and the original coalition behind Prop. 36. This article is a brief explanation of the issues.

Before going into the details of SB 803, a review of Prop. 36 is in order. Prop. 36 provides for out-of-custody drug treatment. About thirty per cent of the defendants who have enrolled have successfully completed the program. Not only have these people become better human beings, but they are not in jail or state prison, which is a savings, in dollars, to the taxpayers of California. Many of the successful defendants obtain jobs and pay taxes. Those who fail the program still save the taxpayers money. They have pled guilty up front, so there is no preliminary hearing, no jury trial. After failing Prop. 36, the next step is a sentencing hearing where they are sent to county jail or state prison, which is where they would have been anyway but for Prop. 36. In counties such as Riverside and San Bernardino, where the courts cannot keep up with ever-increasing caseloads, even a few additional jury trials could close one or more civil departments. Formal probation is given to all Prop. 36 defendants.

(Sidebar: Both misdemeanants and felons are eligible for Prop. 36, although the vast majority are felons.)

Terms of Probation are imposed. Some terms of probation are common to all people on formal probation, not just those with drug issues. Examples of these common terms are: do not violate any law or ordinance; search terms; live in a place approved of by the probation officer (PO); report to the PO immediately and thereafter as directed. Some terms of probation are related to being in Prop. 36. Examples of Prop. 36 terms are: report to your assigned drug treatment program within two business days; return to court for a progress report in 30 days.

(Sidebar: Although every court orders drug testing, Prop. 36 purposely did not allocate money to pay for drug testing, so drug testing is paid for from a variety of other local resources. SB 803 includes drug testing as a funded provision of Prop. 36.)

Several groups cooperate to make Prop. 36 work. These entities are the court, the Probation Department, the Department of Mental Health, and the private drug treatment providers. The Prop. 36 program is set up to help defendants succeed. There are three levels of treatment. There is constant monitoring by the PO and the Court. For those who do not succeed, there are several possibilities. If they violate a non-drug-related term of probation, or if they violate a drug-related term of probation, such as having a "dirty" drug test or failing to appear in court, at the PO's office, or at the program, then a warrant is issued for their arrest. They remain in custody until the violation of probation (VP) is adjudicated. But those who show up voluntarily for a drug-related VP are not taken into custody. Once they are found to be in violation of probation for committing a new non-drug related crime or violating a non-drug related condition of probation, they can be dropped from Prop. 36 and given an appropriate sentence. These people tend to get exactly what they would have gotten if they had pled at an early stage of the proceedings before Prop. 36 became law. Alternatively, they can be held in custody and then sent to a more intensive type of program. Those found in violation of a drug-related condition of probation cannot be incarcerated and, if in custody, they are released. They receive at least one more chance to complete the program. When minor violations occur, it is not unusual to get several chances to complete the program. If they still do not complete the program, then they are either given the appropriate sentence or placed in custody and considered for a more intensive, non-Prop. 36 drug rehabilitation program.

Other programs exist. Before Prop. 36, there were a number of drug rehabilitation programs used by the courts to help those with drug problems. These programs are often lumped under the name Drug Court. That term actually includes several programs. The most successful

program is called the Comprehensive Collaborative Court (CCC) Drug Program. It is an intensive outpatient program in which custody time is a possibility. The program lasts two years. It is for those who would be going to state prison but for the program. There is a 75 % success rate. However, it is expensive and thus small. The capacity is less than 100 persons. Prop. 36 has impacted the program both negatively and positively. Prop. 36 took away many people who would otherwise have been considered for the program. Defendants facing drug charges do the calculus of the least intrusive immediate alternative. They evaluate how soon they will be released from custody, the length of the program, and the rigorousness of the program. They do this for all of the programs for which they are eligible. The CCC program is much more intensive than Prop. 36 and the result is always, "Go with Prop. 36." If they fall out of Prop. 36, some are re-reviewed for the CCC program.

There are other drug programs available, and they all have an impact on or are impacted by Prop. 36. One in-custody program is the RSAT program run by the Riverside Sheriff's Department. It is for those who have been sentenced to a year in county jail. It has a capacity of less than 100. Only those who have failed at Prop. 36 or are ineligible for Prop. 36 consider RSAT. Before Prop. 36, many more defendants considered RSAT. Another in-custody program is the drug rehabilitation program at the state prison at Norco in Riverside County, which is called the California Rehabilitation Center (CRC). It has several hundred participants, but fewer than 50 of those participants are from Riverside County. The CRC program is also affected by Prop. 36. The CRC program is for those sentenced to state prison for less than six years who otherwise qualify for the program. The program takes about 12 months in custody and then a year on intensive parole supervision. During the first 12 months, the defendants are at the state prison in Norco, housed right along with the other state prisoners. If they complete the program, their cases are dismissed. If they fail, they do the agreed-upon prison sentence. Since Prop. 36 allows those with any number of prison priors to participate in a Prop. 36 treatment program, only those ineligible for Prop. 36 consider CRC.

PC 1000 is another drug rehabilitation program. It is for first-time offenders. It is also impacted by Prop. 36. Those who fail PC 1000 are almost always offered Prop. 36. And, because the PC 1000 people know that Prop. 36 is a much more difficult and more expensive program, they try much harder to complete PC 1000. One of the positive aspects of Prop. 36 is that it fills a void between PC 1000 drug diversion and longer-term, in-custody programs. It is also one of the few programs that is adequately funded. PC 1000 is inexpensive and self-funded by the clients. Prop. 36 is funded mostly by the state, with the clients paying what they can, based on income. PC 1000 and Prop. 36 are the only two large-scale programs available to defendants with drug problems. In Riverside County, there are about 1,000 people undergoing Prop. 36 treatment at any one time. Similarly, there are about 1,000 people in the PC 1000 program at any one time.

Renewal of Prop. 36 has solid support in the legislature. The various ideas for renewal are very similar, but the differences, even though small, are significant. All the legislative proposals are amendments to the existing Prop. 36 statutes, section 1210 et seq. of the Penal Code. As passed by the electorate in 2000, Prop. 36 can be amended only by a two-thirds vote of the legislature. That could be a problem. Two-thirds minus one could be considered solid support, yet the bill would fail. Money is always a problem. One of the reasons that Prop. 36 is successful is that it is funded by the state with $120 million per year. Riverside's share is $4.3 million per year. SB 803 would increase the funding level to $150 million per year. That would be nice for Riverside, since the money never seems to keep up with the population.

A major issue is incarceration. The Drug Court Model that is used throughout the United States suggests short terms of incarceration to help those in drug rehabilitation programs who have transgressed to refocus on their goals. This is exactly what happens in Riverside's CCC program. Sometimes, the custody is just for a weekend; other times, it can be for two weeks. Those who graduate from the CCC program do not say they like being in custody, but they understand the need to refocus. They are all facing state prison, and they all thank the court for not throwing them away and for giving them another chance to be drug-free. No program is perfect, but the CCC / Drug Court Model has a 75% success rate, which is excellent compared to other drug programs. Prop. 36 has a different perspective. It was set up to treat drug addiction as medical condition and to eliminate incarceration as part of the cure. The critics of Prop. 36 say that giving people several "no custody" violations of probation before they can be dropped from the program and put in custody creates a lack of personal accountability in a group of people, i.e., those with drug problems, who most need to learn personal accountability. The Prop. 36 coalition says that drug addiction is a medical problem and that Prop. 36 is fine as is.

Another significant issue is eligibility. Prop. 36 is for those who commit a non-violent drug offense; this means possession for personal use or transportation of personal-use quantities of drugs.

(Sidebar: In the street-level drug user world, there is no Costco. Everything is 7-11. Even though buying large

quantities would cost much less, users rarely have the funds or the mental wherewithal to figure out how to stockpile drugs. Instead, their life is centered around scrounging up money so that they can visit the corner drug dealer and buy one or two doses. A dose is a very small quantity, usually two-tenths of a gram for drugs such as methamphetamine and cocaine. The packet of Equal on your coffee table contains one gram of a powder-like substance similar in appearance to the powder form of meth or cocaine.)

Prop. 36 does not disqualify a person because he or she has a bad record. That means that those with strikes and prison priors are eligible. The critics of Prop. 36 consider this a back-door attack on the three strikes law. The Prop. 36 coalition says to leave it the way it is.

(Sidebar: Riverside County's experience is that those with strikes and those with three or more state prison priors rarely complete Prop. 36. In fact most of them plead guilty, get assigned to a program, are released, and then disappear.)

Prop. 36 does not provide for ordering an in-custody program. It currently is set up to send those with the most severe drug problems to a residential live-in program. An in-custody program is not an option. To the defendant, the difference may seem small, but to various commentators this is a big deal. The court, however, has more authority under Prop. 36 than many people realize. A person who violates a non-drug provision of probation for the first time or a person who violates a drug-related provision of probation for the third time is at the mercy of the court. The court can sentence that person without regard to Prop. 36, or place that person back on probation under whatever terms and conditions the court thinks are appropriate. Those conditions could include an in-custody drug treatment program. The critics say that in-custody programs, such as the RSAT program at the county jail, are appropriate for some people. The Prop. 36 coalition says residential live-in programs are sufficient.

SB 803, the bill that Sen. Ducheny has proposed, addresses some of these concerns. The bill authorizes jail time for those who violate a drug-related provision of probation. They could get up to 48 hours for the first such VP. They could get up to 120 hours for the second such VP. If they have a dirty test, they can also get a 10-day detoxification stay in the county jail. The bill changes the eligibility rules. Those with strikes and those with three or more non-drug prison priors are not eligible unless the court determines that they would benefit from drug treatment and they do not pose a risk to the community. Although SB 803 would bring about many other changes in Prop. 36, they are all minor compared to the custody and eligibility issues. There is a lot of passion involved.

As this is written (May 12, 2005), there is strong bipartisan support for SB 803. But the original Prop. 36 people are now against the bill because of the issues mentioned above. At several past hearings, SB 803 has received unanimous support. If that support continues, then the bill will eventually be put to a floor vote. There is a similar bill in the Assembly. It is AB 858 by Assembly Member Karen Bass (L.A.). It uses the same language as SB 803, except that it sets the funding at $120 million per year through FY 2010-11 and does not authorize any custody time for transgressions until the third VP.

(Sidebar: The maneuverings and the shifting alliances on this bill are not unique to SB 803. This is common on most bills. Different people have honest and sincere beliefs that sometimes do not coincide with other people's honest and sincere beliefs. This is why legislation should not be rushed. The most important value is that all the interested parties have an opportunity to be heard. If you understand this sidebar, then you have received a passing grade in Legislation 1A. Your MCLE certificate is in the mail.)

Classified Ads

For Sale – Professional Building

Riverside tri-level professional building with private offices and reception area on the main floor. Conference room, eating area, storage space. Good parking. Within walking distance to the Court House. Call for appointment: Realty Executives – Agents Michelle Larsen (951) 897-5790 or Jerry Rachman (951) 779-8444.

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1 Attorney Needed

AV-rated Riverside law firm seeks one attorney with 1-3 years experience in bankruptcy, business and commercial litigation. Salary is commensurate with experience. Send resumes to: Thompson & Colegate LLP, Attn: GTM, P. O. Box 1299, Riverside, CA 92502.

Law Firm Seeks Attorney

Established Riverside, CA law firm seeking an attorney, admitted in California, with 8 to 11 years civil/litigation experience. Salary negotiable. Submit resume to Redwine & Sherrill, 1950 Market Street, Riverside, CA 92501, or call (951) 684-2520 for Mr. Eagans or Mr. Matheson.

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.

Attorneys Needed

Corona Firm needs Civil Litigation, Family Law and Criminal Law Attorneys. Please fax resume and salary history to (951) 734-8832 or email: sherri@coronalaw.com

Law Day at the Mall

The Riverside County Bar Association would like to thank the following members who donated their time to help with RCBA's annual "Law Day at the Mall" (Moreno Valley Mall) on Saturday, May 7, 2005:

David Bristow	Robert Chandler	Tom Flaherty
Allan Grant	William Kennedy	Brian Pearcy
Richard Reed	Rosetta Runnels	Jeff Smith
John Vineyard		

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2005.

Todd B. Becker –
Sole Practitioner, Riverside

Douglas Bader –
Sole Practitioner, Corona

Andre Bryant (S) –
Law Student, Riverside

Darryl S. Cordle –
Sole Practitioner, Palm Desert

Dariush Kiani –
Sole Practitioner, Moreno Valley

Shelli J. Lewis –
Sole Practitioner, Riverside

Linda B. Martin –
Rinos & Martin, Riverside

Kathleen McCaffrey –
Perona Langer Beck Lallande & Serbin, Long Beach

Elana Midda –
Sole Practitioner, Temecula

Dominic Mushines –
Sole Practitioner, Rancho Mirage

Tonita Williams Noonan (A) –
Twin Business Enterprises, Indio

Wendy Notz (S) –
Law Student, Lake Elsinore

(A) – Designates Affiliate Members