

# RIVERSIDE LAWYER

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MAGAZINE



## 25th Annual RCBA Good Citizenship Awards



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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*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

### 20 Family Law Section

RCBA Bldg., 3rd Floor – Noon  
MCLE

### Valuing Goodwill

Law Firm of Friedman & Brounstein

### 29 Business Law Section

RCBA Bldg., 3rd Floor – Noon  
MCLE

### The ABCs of Workers'

### Compensation: What Every Non-'Comp' Lawyer Should Know

Carrie O'Connor, Partner, O'Connor-Telezinski  
(Lunch provided by Knobbe, Martens, Olson & Bear)

## JULY

### 4 Holiday

### 5 Bar Publications Committee

RCBA Boardroom – Noon

### 11 PSLC Board

RCBA Boardroom – Noon

### 28 Special General Membership

### Meeting / Justice Gabbert Birthday Celebration

RCBA Bldg., 3rd Floor – Noon  
(Resch from June 16)

## AUGUST

### 2 Bar Publications Committee – Noon

RCBA Boardroom – Noon

### 16 LRS Committee

RCBA Boardroom – Noon







by Theresa Han Savage

*“California is suffering from a severe shortage of trial court judgeships. The ramifications are serious and far-reaching, and include compromised public safety; decreased access to the courts; an unstable business climate; and enormous backlogs that inhibit fair, timely, and equitable justice. Senate Bill 56 (Dunn) addresses the critical shortage of judgeships.”*

“Fact Sheet” (February 2006) “Frequently Asked Questions About SB 56 (Dunn): New Judgeships” by the Administrative Office of the Courts.

In 2004, the National Center for State Courts, the nation’s leader in state court research, consulting and education, conducted a study to determine how many judges are needed in California. The study identified a statewide need for 355 new judgeships. In light of California’s ongoing budget crisis, the Judicial Council of California, the policymaking body for state courts, decided to seek only the most urgently needed 150 judgeships, instead of the 355 identified in the study.

The shortage of judges has resulted from the fast-paced population growth in California, especially in the Inland Empire, coupled with the lack of governmental response to address the population growth and its impact on our judicial system.

The following is a brief description regarding the status of the courts in our area:

*A. Riverside County.*

1. Riverside County is the fastest-growing county in California. Over the past decade, we have experienced a 50 percent growth in population. However,

(a) Riverside currently has 2.88 judges per 100,000 people; the statewide average is 4.28.

(b) Since 1989, only three judges have been added to the bench, with the last position being added in 2001.

(c) Riverside’s filings have increased by 23% in five years. Over the last three fiscal years, the number of trials increased by 127%.

(d) Using Riverside’s filing data and the Administrative Office of the Court’s Judicial Allocation Needs Model, Riverside should have 124 judicial officers; it currently has 49 judges and 20 commissioners (69 judicial officers).

2. In the past two years, Riverside County *twice* closed all civil trial courtrooms for several weeks to push the criminal trial backlog.

*B. San Bernardino County.*

1. San Bernardino County is perhaps the most “underjudged” court in the state – the National Center for State Courts shows that it needs 123 judicial officers; it currently has 63.

2. San Bernardino’s caseload per judge is the highest in the state.

As an aside, although San Bernardino also copes with a shortage of judges, it has not had to suspend civil trials. One of the main differences between the two counties is the number of felony jury trials. In the 2003-2004 fiscal year, Riverside County had 314 felony jury trials while San Bernardino County had 188.

In response to the recognized shortage of judges, in the 2005-2006 Legislative Session, Senator Joseph Dunn (D-Santa Ana) introduced Senate Bill 56 (SB 56), which would provide for 150 judgeships over

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three years. SB 56 recognizes the severe shortage of judges in the Inland Empire: Out of 150 judgeships, Riverside would receive 19, and San Bernardino would get 23. In the 2005 legislative session, SB 56 got “stuck” in the Assembly Appropriations Committee. It is currently still on hold in that committee. Because SB 56 is a two-year bill, we still have time to support the passage of this bill.

In order to promote the passage of SB 56 and other bills in the Legislature affecting the judicial system, the Bench-Bar Coalition, consisting of statewide bench officers and bar associations, set up a “Day in Sacramento” on February 28, 2006. I attended the coalition’s Day in Sacramento in an effort to educate our legislators regarding the shortage of judges and other issues that affect our courts. My group – consisting of Will Schneider (immediate Past President of the San Bernardino County Bar Association), Dawn Swajian (President of the Desert Bar Association), Larry Allen (Presiding Judge of the San Bernardino Superior Court), and Doug Miller (immediate Past Presiding Judge of the Riverside Superior Court) – met with assemblymembers and senators representing our inland region.

Since we would be meeting with legislators from the Inland Empire – whose constituents are directly affected by the dire need for judges – we felt positive that SB 56 would eventually be enacted. Unfortunately, this positive feeling was short-lived. When Bench-Bar Coalition members met at the end of the day to discuss our experiences, the other members’ reports were far from encouraging. The Assembly Democrats informed team members from the Los Angeles and San Francisco areas, in no

uncertain terms, that SB 56 would not pass in the Assembly because they did not want to give Governor Schwarzenegger an opportunity to appoint 150 judges. Even some Republicans did not want to give Governor Schwarzenegger this power, because he was appointing too many Democrats to the bench. They were blunt; the critical shortage of judges was not an issue that their constituents cared about or voiced their opinions on. They will continue to put this issue on the back burner unless we step up to the plate and make these legislators take notice.

Now that I have recovered from that dismal day in Sacramento, I want to refocus on the future of SB 56 and the need for additional judges in our legal community. We need to let the legislators know that a shortage of judges affects all areas of our society. I urge each of you to write to our legislators – especially if you have connections to the Democrats in the Assembly Appropriations Committee – to urge the swift passage of SB 56. In order to make it easier for you, we will have a form letter on our website that outlines the need for additional judges. Just download the letter, tailor it as you see fit, and mail/fax it to the legislators in Sacramento. We are at a crisis point. We need your help.

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*Theresa Han Savage, president of the Riverside County Bar Association, is a research attorney at the Court of Appeal, Fourth Appellate District, Division Two.*



*by Robyn A. Lewis, Barristers President*

**I**t's hard to believe it, but my days as President of Barristers are soon coming to an end. And with that, it will be time to turn this column over to John Higginbotham, the incoming Barristers President for the 2006-2007 term.

I began writing on behalf of Barristers for the *Riverside Lawyer* about three years ago. In every one of those columns, I have urged each of you to participate in Barristers, which has been a time-honored tradition in this legal community. Since I really have only two columns left, I would be remiss if I did not try again to reach out and ask all of you for your support.

For those of you unfamiliar with Barristers, it is an organization designed for newer attorneys in our legal community to have the opportunity to meet other new attorneys and to sit in on MCLE lectures from esteemed members of our local judiciary and bar association, who give practice tips and pointers that are of special interest to less seasoned associates. We encourage all new attorneys to join us, no matter where you may practice – not just civil litigators, but also new deputy district

attorneys, deputy public defenders, other criminal defense attorneys, and deputies from the City Attorney's office.

What many of you perhaps fail to realize is how invaluable Barristers is to the legal community at large. Any member of the Riverside County Bar Association may join our meetings, regardless of your level of practice or your age. Coming to our meetings will help you meet some of the new faces in town who I am sure will go on to become leaders of our legal community in the future. And our distinguished speakers offer tips and advice that all of us can use, regardless of the area of practice that we may be in.

On May 10, 2006, we were joined by Inga McElyea, Executive Officer/Clerk of the Riverside Superior Court, who led a fantastic discussion on "A Practice Guide to Filing Documents with the Court." I would like to take this opportunity to thank her for joining us and sharing her perspective.

If you would like more information regarding Barristers, you can contact me at (951) 686-8848 or at rlewislaw@yahoo.com.

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*Robyn Lewis, with the Law Offices of Harlan B. Kistler, is president of Barristers and a member of the Bar Publications Committee.*

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by Mark A. Mellor

## ***Time for filing motion for attorney fees runs from entry of judgment***

California Rules of Court, rule 870.2(b)(1) requires that a motion for attorney fees be filed within the time for filing a notice of appeal. Rule 2(a) requires that a notice of appeal be filed within 60 days after service of a notice of entry of judgment.

In *Saben, Earlix & Associates v. Fillet* (Dec. 9, 2005) 134 Cal.App.4th 1024 [36 Cal.Rptr.3d 610, 2005 DJDAR 14214] [Fourth Dist., Div. Three], the parties in whose favor summary judgment had been granted filed a motion for fees more than 60 days after service of a notice of entry of the order granting summary judgment. The trial court denied the motion as having been filed too late. But an order granting summary judgment is not appealable; the appeal lies from the judgment that should follow the order granting summary judgment. Since no judgment had been entered when the motion was filed, it was premature, rather than too late, and the order denying attorney fees was reversed.

## ***An action under the Unfair Competition Law cannot support a claim for non-restitutionary disgorgement.***

The Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) provides remedies in the form of injunctions and restitution. But plaintiff is not entitled to have the defendant disgorge illegally obtained money (i.e., damages). (*Feitelberg v. Credit Suisse First Boston, LLC* (Dec. 9, 2005) 134 Cal.App.4th 997 [36 Cal.Rptr.3d 592, 2005 DJDAR 14229] [Sixth Dist.]

## ***An amended pleading may not directly contradict allegations of the earlier pleading.***

Where a unlicensed contractor sued for breach of contract and foreclosure of a mechanic's lien, the trial court sustained defendant's demurrer on the basis of Business and Professions Code section 7031, subdivision (a), which precludes an unlicensed contractor from collecting compensation. (See also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412 [30 Cal.Rptr.3d 755, 115 P.3d 41].) The unlicensed contractor sought to amend the complaint by alleging that it merely supplied fixtures. The trial court dismissed the amended complaint on the ground that it contradicted material allegations of the original complaint, and the Court of Appeal affirmed. (*Banis Restaurant Design, Inc. v. Serrano* (Nov. 18, 2005; ord. pub. Dec. 12, 2005)

134 Cal.App.4th 1035 [36 Cal.Rptr.3d 532, 2005 DJDAR 14238] [Third Dist.]

## ***No right to recover economic damages for negligent infliction of emotional distress.***

*Butler-Rupp v. Lourdeaux* (Dec. 14, 2005) 134 Cal. App.4th 1220 [36 Cal.Rptr.3d 685, 2005 DJDAR 14415] [First Dist., Div. One] reiterated the well-established rule that a party cannot recover damages for negligent infliction of emotional distress based on property damage, breach of contract, or other economic losses. The Court of Appeal reversed the judgment to the extent such damages were awarded based on defendant-lessor's failure to provide adequate heating for the tenant.

## ***Where landowners delegate responsibility for contractor's employees' safety, they are not liable to employees.***

Landowners who hire independent contractors may delegate the responsibility for the safety of the contractor's employees to the contractor. Then the landowner is not liable to the contractor's employees for injury resulting from a dangerous condition. But if the landowner fails to tell the contractor of the existence of a latent hazard, the owner may be liable. (*Kinsman v. Unocal Corp.* (Dec. 19, 2005) 37 Cal.4th 659 [36 Cal.Rptr.3d 495, 123 P.3d 931, 2005 DJDAR 14539].)

## ***A motion for reconsideration after judgment does not extend the time for appeal.***

Parties have 60 days from the date that notice of entry of judgment is served to file an appeal. (Cal. Rules of Court, rule 2.) California Rules of Court, rule 3(d) extends the time to appeal where the appellant has filed a valid motion to reconsider. But where the court entered judgment before ruling on the motion to reconsider, it lost the power to rule on the motion, and hence the time for appeal was not extended. (*Safeco Ins. Co. of Illinois v. Architectural Facades Unlimited, Inc.* (Dec. 19, 2005) 134 Cal.App.4th 1477 [36 Cal.Rptr.3d 754, 2005 DJDAR 14616] [Sixth Dist.]

## ***Obtain a confidentiality waiver for settlement reached in mediation.***

As a general proposition, nothing said or done in the course of a mediation is admissible. (Evid. Code, § 1119.) So how do you enforce a settlement agreement reached in the course of a mediation? Consult Evidence Code sections 1118, 1123 and 1124 regarding the procedures to

be followed to avoid being unable to present evidence of a settlement. An oral settlement agreement may be enforced if (1) it is recorded by a court reporter or other reliable sound recorder, (2) the terms are recited on the record in the presence of the parties and the mediator, and the parties acknowledge agreement, (3) the parties express the intent that the agreement is enforceable or binding, and (4) the recording is reduced to writing and the writing is signed by the parties within 72 hours. A written settlement agreement prepared during a mediation is admissible if (1) signed by the parties, (2) the agreement specifies that it is admissible or subject to disclosure, (3) the agreement specifies that it is enforceable or binding, and (4) the agreement is used to show fraud, duress or illegality relevant to an issue in dispute. (*Stewart v. Preston Pipeline, Inc.* (Dec. 20, 2005) 134 Cal.App.4th 1565 [36 Cal.Rptr.3d 901, 2005 DJDAR 14681] [Sixth Dist.].)

***No CEQA review required for interior modifications.***

Some of you may be relieved to learn that the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) does not apply to interior modifications of your homes. At least, that is what the First District Court of Appeal held in *Martin v. City and County of San Francisco* (Dec. 29, 2005) 135 Cal.App.4th 392 [37 Cal.Rptr.3d 470, 2006 DJDAR 120] [First Dist., Div. Four]. The modifications in question were not visible to the general public, and the court rejected a demand by the city planning department that the owner should first obtain review under CEQA before a permit for interior remodeling could be considered.

***Attorney disqualified in successive representation case even in absence of information sharing.***

Where a firm represented a party and then associated as counsel an attorney who had previously obtained confidential information from the opposing party, it must be disqualified, even in the absence of any evidence that confidential information was shared between the firm and the associated lawyer. *Pound v. DeMera DeMera Cameron* (Dec. 21, 2005) 135 Cal.App.4th 70 [36 Cal.

Rptr.3d 922, 2005 DJDAR 14734] [Fifth Dist.] reversed the trial court's denial of the disqualification motion. An earlier case held, on somewhat analogous facts, that disqualification under these circumstances was not automatic, but depended on evidence that information had been shared. (*Frazier v. Superior Court* (2002) 97 Cal.App.4th 23 [118 Cal.Rptr.2d 129].) Federal cases are apparently to the same effect. (See *Smith v. Whatcott* (10th Cir. 1985) 774 F.2d 1032.)

Note: There are two lessons from *Pound*. For the second co-counsel: Keep track of your potential clients, not just those who retain you. For the co-counsel who is recused because of imputed disqualification: No amount of inquiry of the lawyer whose disqualification causes your recusal will protect you. If the other lawyer is disqualified, even if he or she didn't tell you anything about the case, you are disqualified.

***State court judgment entitled to full faith and credit in bankruptcy proceedings.***

Where judgments of state courts were final, they were binding on the bankruptcy court under the *Rooker-Feldman* doctrine and the doctrine of claim preclusion. (*Lee v. TCAST Communications, Inc.* (Bankr. 9th Cir., Nov. 9, 2005; ord. pub. Dec. 14, 2005) 335 B.R. 130 [2005 DJDAR 14794].)

***Partnership agreement providing for share of departing partner's fees is not illegal fee-splitting.***

An attorney signed a partnership agreement wherein he agreed that, if he left and took cases with him, he would pay the firm a percentage of fees derived from such cases. He left the firm, then refused to pay. The Court of Appeal affirmed a judgment in favor of the firm, ruling that



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such an agreement did not constitute an illegal fee-splitting agreement. (*Anderson, McPharlin & Connors v. Yee* (Dec. 23, 2005) 135 Cal.App.4th 129 [37 Cal.Rptr.3d 627, 2005 DJDAR 14833] [Second Dist., Div. One].)

***Amended complaint does not relate back to factually devoid original complaint.***

Where the original complaint was filed within the statute of limitations but was devoid of factual allegations, the amended complaint filed after the statute had run did not relate back. “An amended complaint relates back to a timely filed original complaint, and thus avoids the bar of the statute of limitations, only if it rests on the same general set of facts and refers to the same ‘offending instrumentalities,’ accident and injuries as the original complaint.” Therefore, where the original complaint failed to allege facts, the relation-back doctrine does not apply. (*Davaloo v. State Farm Ins. Co.* (Dec. 30, 2005) 135 Cal.App.4th 409 [37 Cal.Rptr.3d 528, 2006 DJDAR 53] [Second Dist., Div. Seven].)

***Sophisticated user doctrine under review by Supreme Court.***

In *Johnson v. American Standard, Inc.* (Oct. 17, 2005) 133 Cal.App.4th 496 [34 Cal.Rptr.3d 863, 2005 DJDAR 12366] [Second Dist., Div. Five], the Court of Appeal adopted the “sophisticated user” doctrine, limiting liability for failure to warn of a dangerous condition. The

California Supreme Court has granted review in the case (S139184), so it may no longer be cited.

***No abuse of process in filing a motion.***

In affirming dismissal of a complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16), the Court of Appeal held that, whether meritorious or not, the filing of a motion cannot be the basis for a cause of action for abuse of process. (*Ramona Unified School Dist. v. Tsiknas* (Dec. 9, 2005; ord. pub. January 6, 2006) 135 Cal.App.4th 510 [37 Cal.Rptr.3d 381, 2006 DJDAR 199] [Fourth Dist., Div. One].)

***Court lacks power to remove arbitrator.***

A judgment on an arbitration award was reversed where the trial court had removed an arbitrator and appointed another in his place. (*Bosworth v. Whitmore* (Jan. 6, 2006) 135 Cal.App.4th 536 [37 Cal.Rptr.3d 560, 2006 DJDAR 235] [Second Dist., Div. Four].)

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



# THE TEMECULA VALLEY CONNECTION: NEWS FROM THE SOUTHWEST RIVERSIDE COUNTY BAR ASSOCIATION

*by Kelly A. Bennett, President-Elect*

## Ken Starr Coming In August 2006!

Save the Date: On August 17, 2006, former Clinton-Whitewater Independent Counsel and current Pepperdine University School of Law Dean Kenneth W. Starr will be the guest speaker at the monthly luncheon of the Southwest Riverside County Bar Association (SWRCBA). This special event will be open to all members of the RCBA, the SWRCBA, and local dignitaries. Please call Lauren Stiles at (951) 719-3456 or email her at [lstyles@mediationlawgroup.com](mailto:lstyles@mediationlawgroup.com) for further information and to reserve your place at the luncheon. We look forward to seeing you there!

Other News: The SWRCBA held its annual changing of the guard (installation dinner) on Monday, December 5, 2005 at the beautiful Pala Mesa Resort in Fallbrook. The 2006 board members were ushered in after many acknowledgements and kudos for the hard work of the year's outgoing members. Taking the helm for 2006 are President Christine Greer (Family Law, Beck & Greer, Canyon Lake); President-Elect Kelly Bennett (Mediation/Arbitration, Mediation Law Group, Temecula); Ed Nowakoski (Business and Estate Planning, Temecula); Russell Fuerst (Personal Injury, Gibbs & Fuerst, Temecula); John Pozza (Criminal Law, Temecula); Robert J. Sweeney (Personal Injury, Sweeney, Sweeney & Sweeney, Temecula); David Lander (Personal Injury, Temecula); Reed Webb (Criminal Appeals, Temecula); and John Siciliano (General Litigation, Temecula).

The SWRCBA is the local bar association for the Temecula Valley area, and is under the auspices of the RCBA. A little-known fact is that



Kelly A. Bennett

attorneys joining the SWRCBA (\$40.00 annual dues) get a \$40.00 discount from their annual membership dues with the RCBA.

The SWRCBA meets the third Thursday of each month for lunch at Marie Callender's Restaurant in Temecula, from 12:00-1:30 p.m. The cost is \$14.00 per person. One hour of MCLE credit is available. Join us for great food, interesting speakers, and a time to get to know your area colleagues! Upcoming speakers include: July 20, 2006 – The Hon. Dallas Holmes, "Jury Reform"; Thursday, August 17, 2006 – Kenneth W. Starr (location TBA, call for more information). For further information or to RSVP for upcoming luncheons, call Lauren Stiles at (951) 719-3456.

*Kelly Bennett is CEO and Lead Mediator of Mediation Law Group, headquartered in Temecula. Ms. Bennett is the 2006 President-Elect of the Southwest Riverside County Bar Association and can be contacted at (951) 719-3456 or [kbennett@mediationlawgroup.com](mailto:kbennett@mediationlawgroup.com) for further information.*



# 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 6, 2006:

Richard Beck	Janice Cleveland
Michael Geller	Christine Greer
Ralph Hekman	Brian Percy
Rosetta Runnels	Jeff Smith
John Vineyard	



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# WE'RE NOT SCARY AT ALL!

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*by Bret Christensen*

**F**irst, an introduction. My name is Bret Christensen, and I'm the Public Services Librarian at the Riverside County Law Library. No, I don't have a pointy nose, a bun in my hair (I don't even think I have enough hair for a bun), or large black glasses, and I'm not that scary a person, either. This last point is important, if only for the fact that the other day I had a newly minted attorney come into my office and tell me that while he had just graduated from an ivy league school, he had never stepped foot in the law library because libraries (and librarians) scared him silly. Who knew there was such a thing as libriphobia (fear of libraries or librarians)? At least now I know what I want to dress up as for Halloween!

In any event, contrary to what some on the east coast might think, law libraries are not such scary places. While we may have a few big, dusty books, I have yet to see a single ghost or any skeletons. Actually, over the last couple of years, the staff at the RCLL has worked to make our library an inviting place to visit and work. Okay, maybe not inviting like Aunt Melba's house, where when you walked in she handed you your favorite cookie, but for a law library, we've done pretty well.

For instance, did you know that we have Westlaw on all of our public computers? Well, we do, and we don't charge anyone to use it. Yep, not one penny (except maybe to print out your research). Do you know what this means for you? Well, say you're struggling to find primary law critical to your case, and the managing partner of your firm just told you to keep costs down. What are you going to do? You're going to come to the Riverside County Law Library, of course. In fact, you're going to run (not walk) over to the RCLL and do your research free of

charge. Then you're going to bill your client for all that great research. It's a dream come true!

But wait, it gets better! Did you know that the Riverside County Law Library also has HeinOnline? HeinOnline is a service that lets users search hundreds of law reviews and journals. Imagine that kind of power at your fingertips! Not only that, but in addition to having all your research favorites like Witkin, Cal.Jur., Am.Jur., and the Rutter Guides, you also have an all-knowing, all-powerful Public Services Librarian at your disposal eight hours a day, five days a week! Picture it: A mere hour a day at the RCLL, and your clients will think you're a researching god(dess).

But wait, it gets even better!! Did you know that we have a great staff here at the RCLL that is dedicated to helping you find information lickety-split? Sure we do. We also have a fax machine, four copiers, several dozen tables where you can work in peace and quiet (some days are quieter than others), 30 study carrels wired for laptops, Internet access (also free to the public), two 20-person capacity conference rooms that can be rented (for a nominal fee), and over 90,000 titles covering everything from animal control to zoning, from eminent domain to trademarks, and from immigration to bankruptcy. And don't worry about getting bad law, because we have Shepard's both in print and online, and we're updating our resources all the time (just ask our intake person – she works her fingers to the bone to make sure our shelves are stocked with the latest and greatest information).

In short, we want you to consider us your law office away from the law office. Maybe you're tired of looking at the same computer screen every day. Maybe you're tired of listening to the same clients day after day, or maybe you just need a change of scenery. Whatever excuse you need to get away from the office, why not come on down to the Riverside County Law Library and see what we can scare up for you?





# 25TH ANNUAL RCBA GOOD CITIZENSHIP AWARDS

*Photographs by Michael Elderman*

On Friday, May 12, the Riverside County Bar Association and the Riverside Superior Court recognized high school students from around the county for their good citizenship. The annual awards are a part of the RCBA's celebration of Law Week.

President-Elect David Bristow, Presiding Judge Sharon Waters, Judges Thomas Cahraman and Helios J. Hernandez, and Sergeant Keenan Lambert of the Riverside Police Department each spoke to the assembled high school juniors and their parents, teachers and counselors. Thanks to the generous contributions of RCBA members, each student receives an award of \$100 and a certificate of recognition from the RCBA. In addition, representatives from the offices of many state and local government officials recognized the students with certificates.

Each year, the RCBA asks high school principals and counselors throughout the county to nominate one junior from each school. The specific criteria for selection are left to the school, but the nominated students all share many of the qualities we expect to see from "good citizens" – they care, they participate, and they make a difference.

The RCBA would like to thank the following members, judges and law firms for contributing to this event:

Robert Chandler  
Judge Sarah Christian  
Judge James Cox  
Judge Stephen Cunnison  
Judge Becky Dugan  
Justice John Gabbert, Ret.  
Judge Helios J. Hernandez  
Holstein, Taylor, Unitt & Law  
Law Offices of Brad Husen  
Law Offices of Harlan B. Kistler  
Law Offices of Mary Jean Pedneau  
Law Offices of Diana Renteria  
Lively, Ackerman & Cowles  
Judge Victor Miceli, Ret.  
Barry Lee O'Connor & Associates  
Barbara Purvis  
Redwine & Sherrill  
Judge Elwood Rich, Ret.  
Judge Craig Riemer  
Thompson & Colegate  
John Vineyard

Certificates of recognition were given by the following government officials: U.S. Senator Barbara Boxer; Representatives Mary Bono, Ken Calvert and Darrell Issa; California Senators James Battin, Denise Moreno Ducheny, Robert Dutton and Dennis Hollingsworth; and Assembly Members John J. Benoit, Russ Bogh, Bill Emmerson, Bonnie Garcia and Ray Haynes.



The 2006 Good Citizenship Award recipients are (student name - high school name): Jory Mitchell - Abraham Lincoln; Ruben Hernandez - Alessandro; Evan Burke - Alvord; Yanely Iturbide - Arlington; Ernan Anguiano - Banning; Isabel Masanque - Chaparral; Earl Kim - Desert Hot Springs; Karina Venegas - Desert Mirage; Cody Robert Evan Crippen - Elsinore; Andy Whisnand - Great Oak; Natalie Freeman - Hamilton; Kelly Clark - Hemet; Tori Leathers - John W. North; Vincent Weaver, Jr. - La Familia; Charles Coleman - La Sierra; Tiffani M. Barker - March Mountain; David Weissman - Martin Luther King; Kelly Cuevas - Mt. San Jacinto; Nevine Standley - Norte Vista; Martha Delgado - Nuview Bridge Charter; Rosa Olivas - Palm Desert; Marie Araux - Perris; Julie Lapidus - Polytechnic; Christian Medero - Santiago; Tracy Empson - Temescal Canyon; John Ng - Valley View; Shane Sohail - Vista Murrieta; and Christina West - West Valley. Congratulations to all!



# MANAGING A SMALL LAW FIRM

*by Robyn A. Lewis*

When I first began practicing law at the Law Offices of Harlan B. Kistler back in 1999, I was a new associate and practically new to the legal profession. I had no idea back then that I would soon become the managing attorney in our office. But that evolution was one born out of necessity, given the small size of our firm. There were really just the two of us, Harlan Kistler, who is the owner of the firm, and myself. We were fortunate to have a small support staff. But we had no firm administrator, no office manager, no one person designated to “run the law firm,” so to speak. As the firm began to grow and we got busier and busier, it immediately became apparent that one of us had to manage the firm. And with Harlan’s busy trial schedule, that position fell to me.

Managing a small law firm is not an exact science. There is no “proper way” to achieve organization and efficiency. And much of what it takes to run a successful law practice is based on an evaluation of your firm’s own specific needs and demands. But I can offer some tips that I have learned over the last seven years from things that have come up in our own firm that may assist you in running or managing a small law firm.

## Organization Is Key

The first thing that I did when I assumed the position of managing attorney was centralize the organization of our office. In our office, the buck stops with me. While support staff are there to assist you, it is important to remember that the ultimate accountability for each and every file is and should be on the handling attorney for that file. Just ask any judge, who I am sure will tell you that he or she loathes attorneys who come in and blame their secretary for filing or calendaring mishaps!

It is important to start the organization of your office at the very beginning, when a file comes in. The attorney responsible for the intake of the new client should draft an intake memo, setting forth in detail all of his or her comments regarding that particular client and the case. In that memo, the attorney should set out all of the special tasks that he or she would like the support staff to accomplish. I think that the intake memo is crucial, as it helps me to remember my initial thoughts on the case months after I have met with the client. It also seems to me that the client, when he or she first is meeting with you, has a better memory of the facts relating to the case. It also helps the support staff to ensure that all of the tasks that need to be done during the work-up of the file are accomplished.

Using memos to the file is another great way to maintain organization. I always send a memo to the file if I have talked to opposing counsel, if I need something done and want my assistant to help me, or for any other issue that may arise during the handling of a case. That aids me in assuring that all tasks on the file are completed. It also provides a good basis for the history of the file if any other staff member or attorney should need to work on it as well.

Early on, I divided our cases into two categories for further organizational purposes – pre-litigation and litigation. I am also a big fan of the checklist. Every file in our office has a checklist, which covers the basic necessities for each file while it is classified as a pre-litigation or litigation file. For instance, since our firm is a personal injury firm, our pre-litigation checklist includes an outline for ensuring that our support staff obtains the police report, medical records, and other pertinent items that the file will require.

Litigation checklists are similar, in the sense that the checklist distills the basic necessities of bringing a case through litigation. It begins with the filing of the complaint, monitors the service of defendants, and documents discovery, depositions of witnesses, arbitrations, and discovery cut-offs, up to the time that a case has been set for trial.

All of the pre-litigation checklists and litigation checklists in our office are kept in binders. That way, if members of our support staff are working on a pre-litigation file, for instance, they can pull the binder and go to the checklist for that file. They can then see, at a glance, when the last time was that someone worked on the file, what was accomplished, and what needs to be done. It also helps that attorneys can grab it and take a quick look to get basic information on a file in seconds. And it helps me to see where our firm files are and what else I need to accomplish as the firm manager.

Once a case has been resolved, there is still much to do on a file. In our office, we usually have to resolve medical liens and then pay out on all settlements that we have received. A file continues to be monitored and tracked until it has been formally closed.

Calendaring is obviously a critical task in any law office. I cannot emphasize enough how important it is to be organized with your calendaring. In our office, we have one staff member in charge of central calendaring (just as we do with accounting and check-writing). Everyone

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else must submit a calendaring request to her in writing so that there is no confusion. We attorneys also make it a point to have weekly calendar meetings with her and monthly meetings with the entire staff to keep everyone on track and to discuss upcoming events.

You have to evaluate your firm, your staff, and your caseload and come up with a system that best suits your needs. But however you decide to do it, organization is the key to the running of a successful law firm.

## **Always Remember Customer Service Is A Priority**

Sometimes, I think that attorneys lose sight of the fact that their clients are customers, just as in any other business. Clients want to know that their business is valued and that their case is being worked on diligently. I soon learned that clients would clog up the phone lines with questions about their cases when they didn't hear from our office. The better part of my day was spent on the phone with clients rather than working on their files. So I made client relations a priority for our firm. And I must admit that just a few simple things that we have adopted have really assisted us in maintaining high client satisfaction and control.

To begin with, it is important to educate clients about whatever legal process they are embarking on. In our firm, it is usually personal injury matters. Consider drafting a form letter that can be used to explain the initial

legal process to your clients. Our new clients receive a lengthy letter within a week after they first meet with our firm that sets forth what they can expect during the pendency of their case. We also send clients copies of all correspondence that we send out on their behalf. It takes two seconds to print off an extra copy of a letter that you have drafted and mail it to your client. It may cost a little extra, but clients are so happy to see that you are working on their file.

During each critical step of a case, we have a form letter that is sent to the client that explains what is going on. For instance, if we send out a demand package on the case, our client will receive a copy of the demand as well as a letter that explains what a demand is and what the client can expect at that point in the case. Letters regarding filing a lawsuit, discovery, and what happens once a case is settled are all mailed to our clients with regularity.

Once a case is done, we send the client a thank-you card. We periodically send letters to former clients, either in the form of a newsletter or simply with a business card, to remind them that we appreciate their referrals. Every holiday season, each of our clients, both current and former, receives a card from our office.

I'd like to think that those little touches have turned into a steady stream of referrals from clients who have been pleased with our representation. But however you decide to do it, client management is critical for smooth





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firm operations, in addition to making good business sense.

## Take Advantage Of Outside Resources

If you are a solo practitioner or a member of a small firm, you may not have the resources that other, larger firms may enjoy. But there are many things that you can take advantage of to assist in the running of your firm.

The best tip that I can give you is ... use legal interns! I can't emphasize how invaluable they can be to a small law firm. Many interns just want the experience of working in a law office and are willing to work for free or for a small hourly fee. When my husband, Jonathan Lewis, who is a solo practitioner in Riverside, first opened his doors, he could not afford any support staff. However, as his practice grew, he found himself drowning without any help. He was fortunate enough to meet Matt Forsse, a very ambitious and talented student who was entering UCR. Matt was interested in going to law school, but wanted to see what it was like to work in a law firm before he made that commitment. He volunteered to work for Jon for free, which worked out great for Jon, who desperately needed help but could not afford it. Matt has since become an invaluable member of Jon's staff (and, incidentally, is now paid).<sup>1</sup>

You can take advantage of other free resources, as well, to aid in your practice. For instance, the Victor Miceli Law Library offers free sessions on Westlaw and Lexis/Nexis. You can also rely on [www.findlaw.com](http://www.findlaw.com) for legal research, if you don't have the financial resources to pay for Westlaw and Lexis.

If you are a member of any of the local bar associations, keep your eye out for deals offered in their monthly publications. You can find all sorts of freebies and discounts on everything from insurance quotes to support services.

A while back, there was a company that was advertising in all of the bar magazines, offering an online service that calculated pertinent deadlines for cases in litigation. Our firm used to use deadline software, but we opted not to renew it, as it was very expensive. However, I grew very anxious about calculating deadlines and began looking for alternatives to that software. This particular advertisement offered five free calculations per email address. I began to use that software and loved it. The company, Deadlines on Demand, then contacted me and gave me more free sessions. It was a great way for me to try a service without any cost at all.

Practicing law is hard enough, but running a practice in this day and age requires computer savvy. One of the best recommendations that I can make is to find a good computer tech person you can call upon rather than trying to deal with the hassle on your own. Our firm uses Craig Olsen of Pinnacomm LLC, who specializes in law firm computer

management. Whenever we have any sort of computer issue, be it an update of computer software, an upgrade of computer equipment, etc., I call Craig and he deals with the problem for us. There are many computer tech people out there, like Craig, who can assist you with networking, problem-solving, or creating the best solutions for your business for an economical price.

A small firm may often find it hard to compete with larger firms when it comes to finding staff members because of benefits. Often, small firms or solo practitioners cannot provide health benefits to their employees because it is just too expensive – or, at least, it seems to be too expensive. The same goes for professional malpractice insurance. Having just renewed our premium, I know how expensive that can be.

As a solo practitioner or member of a small firm, you can always take advantage of some of the programs that the local bar associations offer. The RCBA, for instance, provides discounted rates on professional liability insurance. The State Bar also provides discounted rates on life insurance, workers' compensation insurance, and other types of coverage. The RCBA is currently working with the State Bar on offering a health insurance program, similar to the one offered by the Los Angeles County Bar Association, so keep your eye out for that!

The many MCLE seminars that the RCBA offers are also invaluable tools to aid in your practice. You can always go to one of its many brown bag lunches, other seminars offered by different sections or even Barristers meetings. That is a really inexpensive way not only to get your MCLE credit, but also to get advice and tips from other attorneys.

## Miscellaneous Tips

### *Trust Account*

Your attorney-client trust account is an incredible responsibility and certainly one that you should not take lightly.

However you do your accounting, you should make sure that there is some form of reconciliation of your trust account for each individual client. Unfortunately, our firm did not use this type of bookkeeping until several years after the account was opened. We wound up doing a trust account audit, which was a very arduous task. I can't tell you how many times during that audit we found checks that were off by a penny or money on an hourly case that had been earned but still remained in our trust account.

If you find yourself in a situation where you have not been doing a regular reconciliation, I would strongly suggest hiring an accountant to help with the trust account audit and get your accountant reconciled. In our firm's case, an accountant and I spent an entire summer going through file after file until we had finally

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<sup>1</sup> If you are interested in hiring a legal intern from UCR, please contact me at [rlewislaw@yahoo.com](mailto:rlewislaw@yahoo.com).

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reconciled everything. We now have a policy in our firm that each file must be reconciled before it is closed to ensure that what went into the trust account is exactly what went out. Our bookkeeper also reconciles the entire account monthly to make sure that there were no stop payments, wire transfer fees, or other banking costs that need to be reconciled back to that account.

### ***Closed Files***

When I first started working at our firm, I adopted the system for closing files that had been established before me. Basically, we would put closed files in a numbered box that would go offsite to a storage facility. I took on the responsibility of closing all files and used this same system year after year. However, when we got to over 200 boxes of files, we soon realized that we were in trouble. We were simply running out of space, and we didn't want to expend any more money on storage.

One night, I was at a Barristers meeting and Judge Tom Cahraman spoke. Interestingly enough, he brought this dilemma up and explained that he had had a provision in his fee agreement, when he was in private practice, that would allow his office to destroy files after a particular period of time.

I adopted that policy and have added such a provision to our fee agreements. But what about the 200 boxes of files of cases that came before that addition? My firm has had to expend much time and effort to contact former clients and let them know that their files were going to be

destroyed. We also had to allow enough time to let them contact us, in the event that they wanted their files back.

Some attorneys avoid this problem altogether by giving the client the file at the end of the case. The problem with that, though, is that you don't have anything to reference for your own files. I think the smarter solution is to take advantage of current technology. If you are able, you can create a virtual file by scanning the file's contents before giving the file to the client. I know that there are companies that can do this for you. But no matter what you do, you are obligated to maintain that file on your client's behalf.

### **Conclusion**

If you are a solo practitioner or a member of a small firm, inevitably the subject of firm management will come up. Like it or not, running a law firm is running a business. You have to be organized, always be thinking about the needs of your individual office, and surround yourself with great support staff. But don't feel as if you are all alone; know that there is no one right way to do it. There are resources out there to help you, and careful consideration and planning will always lead to the success of a well-managed law firm.

For more articles, tips and guides on managing a small or solo law practice, you can check out [www.myshingle.com](http://www.myshingle.com).







# JUDICIAL PROFILE: JUDGE PAUL ZELLERBACH

by *Cosmos E. Eubany*

When I met Judge Zellerbach in his chambers in the Hall of Justice, Department 44, I was struck by his easy-going nature, his candor and his ability to communicate directly and effectively.

Judge Zellerbach has always wanted to be an attorney. Although he had family members in the profession and recalls many a day entertaining himself with the antics of Andy Griffith as Perry Mason, he noted that those aspects of his life did not influence his decision.

He was born and raised in Northern California, particularly in the San Francisco Bay area. He conducted his undergraduate studies at the University of California, Davis. There he earned bachelor's degrees in both Economics and Political Science. Upon completing college, he went directly to law school at California Western School of Law, in San Diego. He did not know what type of law he wanted to practice, but he knew that he wanted to be in the courtroom and that whatever field of law he chose would have to involve litigation. When he was offered a position in Riverside County as a deputy district attorney, he jumped at the opportunity. At the time, the Riverside County District Attorney's Office was comprised of thirty prosecutors. He expected to remain in the position for only a few years and then return to the Bay Area; however, little did he know that he would spend over two decades in that position and rise to the bench.

Judge Zellerbach never actively pursued a judicial position. On the contrary, he felt that he was ill-suited to be a judge and he was perfectly content as a prosecutor (a position that would come back to haunt him). However, after a successful career as a prosecutor, serving 22 years in the position and working in every facet of the field, it was time for a change. Upon reflection, he noted that the final push to run for the position came from his wife Paige, to whom he has been married for nine years.

In March 2000, Judge Zellerbach was elected. His tenure on the bench was scheduled to begin on January 1, 2001; however, due to the shortage of judges and the ever-expanding caseload, then-Governor Gray Davis appointed Judge Zellerbach to the bench on May 2000. Funnily enough, during the appointment process, he was asked to explain what he meant when he said, in the past, that he was ill-suited to be a judge.

When he is not sitting on the bench, Judge Zellerbach leads an active life. He has always loved playing competi-



*Judge Paul Zellerbach*

tive sports. He played sports in high school and he recalls playing baseball and football while he attended college at Davis. Now he enjoys racquetball and spends time at the gym. In addition to participating in sports, he is also an avid spectator and holds season tickets to the Los Angeles Angels of Anaheim.

He loves to travel and has spent time in Australia, Japan, Mexico, and the Philippines. In addition, he spent two to three months traveling in Europe. When I asked him how

he found the time for such lengthy travels, he smiled and told me about the sabbatical program offered at the Riverside County District Attorney's Office. The program allows a deputy district attorney to take a sabbatical leave after serving for a certain period of time. This, combined with vacation time, can result in a substantial leave, he recalled.

Judge Zellerbach currently sits as a general-assignment criminal law judge and his docket is comprised mostly of homicide cases. As a prosecutor, he never appreciated the difficulty of being a judge or the tremendous responsibility involved. As a criminal law judge, he has a very heavy caseload and often lacks the time to properly research an issue; he is often called upon to make split-second judgments on legal issues without the benefit of taking matters under submission.

When asked what advice he would give to an attorney appearing in his courtroom, he emphasizes the phrase, "Be prepared." Although he understands that the number of criminal cases is increasing exponentially and that there are too few attorneys, he still believes that an attorney must be well-prepared when appearing in his courtroom. He recalls that, as a deputy district attorney, his competitive nature and fear of losing a case were factors that motivated him always to be prepared. This characteristic helped to forge his successful career as a prosecutor and continues to guide him as an esteemed member of the bench.

Even with his success, Judge Zellerbach has managed to maintain his humility. When I asked him how he prefers to be referred to outside of the courtroom, he reflected for a minute and humbly replied, "Why not call me Paul?" To which I replied, "I'm not sure I can do that, your Honor."

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*Cosmos E. Eubany is an associate at the law firm of Graves & King, LLP, and a member of the Riverside County Bar Association's Publications Committee.*





# 16TH ANNUAL RED MASS: JANE CARNEY PRESENTED WITH SAINT THOMAS MORE AWARD

*by Jacqueline Carey-Wilson*

*Photographs by Jacqueline Carey-Wilson*

More than 200 members of the legal community and their families gathered at the 16th Annual Red Mass on May 2, 2006. The Red Mass is celebrated to invoke God's blessing and guidance in the administration of justice. The Mass was held at Saint Catherine of Alexandria Catholic Church in Riverside. Judges, lawyers, and public officials of several faiths participated. The Mass was dedicated to Louise Biddle, member of the Red Mass Steering Committee, past Executive Director of the Riverside County Bar Association, and a cornerstone of the Inland Empire legal community, who recently passed away.

The principal celebrant of the Red Mass was the Most Reverend Rutilio Del Riego, the Auxiliary 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. Also participating in the service was Mary Jo Carlos, an attorney with the State Compensation Insurance Fund, Deacon F. Michael Jelley, Vice Chancellor of the Diocese of San Bernardino, who is in his final year at California Southern Law School, and Patricia Byars Cisneros, research attorney at the Court of Appeal. Prayers of the faithful were offered, which included remembrances of Louise Biddle and all the other members of the legal community who passed away during the last year.

A banner depicting the Holy Spirit, the Scales of Justice, and the Ten Commandments was placed on the altar 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, Loretta Holstein presented attorney Jane Carney with the 2006 Saint Thomas More award. The Saint Thomas More award is given to an attorney or a judge whose conduct in his or her profession is an extension of his or her faith, who has filled the lives of the faithful with hope by being a legal advocate for those in need, who has shown kindness and generosity of spirit and who is overall an exemplary human being.

In October 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 Jane's activities over the years mirror those attributes of Saint Thomas More highlighted by Pope John Paul II.

Jane gives countless hours of service to civic improvement efforts, government reform projects, educational opportunity development, and a variety of charitable organizations. Jane is a wonderful, faith-filled person whose life resonates with the virtues of grace, generosity, and compassion. Jane humbly accepted the award and in her remarks highlighted the good works of



*Jane Carney*



*Loretta Holstein and James O. Heiting,  
President of the State Bar*



*Dan Hantman and Judge Cynthia Ludvigsen*



*Jacqueline Carey-Wilson, the Most Reverend  
Rutilio del Riego (the Auxiliary Bishop of the  
Diocese of San Bernardino), Katie Wilson,  
Alice Cisneros, and Julia Wilson*



*Theresa Han Savage, with her children Andrew, James and Katie*



*Mary Jo Carlos, Donna Carlson, Carol Greene and Sonja Bates*



*Mason Biddle, Raquel Biddle, Cynthia Biddle, Lisa Biddle, and Lisa Visingardi*

Bob Holstein, Loretta's husband and the first recipient of the Saint Thomas More Award, as an example of how to live one's life in service to others. Jane is truly a woman for all seasons, and the Red Mass Steering Committee was pleased to recognize her extraordinary service and devotion to church, community and justice.

The Red Mass Committee is accepting nominations for the 2007 Saint Thomas More Award. The award will be given at the reception following next year's Red Mass, which will be on Tuesday, May 1, 2007. 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 Mitchell Norton at (909) 387-5444.

*Jacqueline Carey-Wilson is deputy county counsel for the County of San Bernardino, co-editor of the Riverside Lawyer, and co-chair of the Red Mass Steering Committee.*





# A LAYPERSON'S SUGGESTIONS FOR PREVENTING FEE ARBITRATIONS

by *Gwendolyn A. Wysocki*

Without a doubt, one of the keys to preventing clients from filing fee arbitrations is good communication. This may sound ridiculously simple, but let me explain from a layperson's perspective. By way of introduction, my perspective is based on my having served on RCBA Fee Arbitration panels for the past three years and having participated as an arbitrator in 33 arbitrations for the RCBA and four arbitrations for the State Bar, involving fee disputes ranging from \$3,150 to \$89,906.



*Gwendolyn A. Wysocki*

## Understanding the Client

In my view, clients think and process information differently from the manner in which attorneys think and process similar information. Attorneys tend to think in black and white. Clients tend to think in gray. Other common characteristics of the clients I have observed stem from the circumstances surrounding their cases and how able they are to emotionally handle these circumstances. They typically feel a sense of vulnerability and loss of control.

The average client is stressed and may need help almost immediately upon contacting you. Clients may act out of frustration or annoyance, and may have precise expectations about their cases' progress and outcome. Clients do not always realize that you are actually working on other cases beside their own. And even if they assure you they have no questions, they may not ask questions because they do not want to appear unintelligent, or may be intimidated by an attorney.

## Simple Suggestions

Once you have evaluated your client's state of mind and behavior, you may find it easier to communicate with him or her. Hopefully the following strategies and suggestions will also be helpful.

Communicate as simply as possible. Be aware that professionals tend to communicate with each other using professional terms and language. Make an effort to avoid the use of legal jargon or terms familiar only among legal professionals. Even highly educated clients may not understand the legal language they read or hear,

especially when they are under stress. Make a conscious effort to change your language style and word usage when speaking with clients. If your client stares at you and agrees with everything you say, he or she probably does not understand all that you are saying and is fearful of asking questions.

Also, do not assume your client is as literate as you. You may not be able to determine by looking at clients, or talking with them, whether or not they understand what you are

trying to tell them or what you are trying to do for them at any particular point in time. A common fee arbitration complaint is that the attorney did not provide any meaningful services to the client, a complaint that I believe is the product of a failure of communication (though sometimes this complaint has proven to be meritorious). Avoid asking a client if he or she understands the information. Rather, ask the client to describe what he or she understands about the information or services you have just described. The response you receive will more accurately reflect your client's understanding of the information you have tried to communicate.

Communicate as completely as possible. When people are stressed or anxious, they tend to hear and comprehend less information than they would if they were not stressed or anxious. It is common for a stressed client to insist that his or her attorney said only certain things, while the fee agreement indicates that all the information was shared with the client. Go over the fee agreement with the client, and then let him or her take the agreement home to read through it on his or her own time before signing it. You might also try the method of verbally repeating key information, and telling the client that you are purposely doing so. This may be especially helpful in assisting the client to fully understand the fee agreement.

If more than one attorney or a paralegal will be working on the client's case, indicate this fact both orally and in writing. Clients need to know that they may not always have the opportunity to talk directly with you when they would like to do so. Assure clients that there will be

*(continued on page 27)*

# YOU WORK HARD FOR THE MONEY: HOW TO AVOID BEING ORDERED TO RETURN LEGAL FEES TO YOUR CLIENTS

*by Paul J. Wallin*

As we all know, three years of law school doesn't come cheap and passing the bar exam is not an easy proposition. This is just the beginning of the massive financial investment we make when we decide to open our law practice. Then there are countless "free consultations" to clients in an effort to actually convince a client to hire us to assist them with their legal problem. Finally, we are successful and a client has decided to hire us. We are excited as the client hands over their credit card, a personal check or better yet "cash" to enlist our legal services. We then embark diligently to assist our client in an attempt to prevail in their legal matter.

We certainly feel like we have done an excellent job for our client. We have in many cases promptly spent the client's funds to pay our office rent, pay our legal secretary or pay other expenses. This is when it happens. We receive a letter from the client that includes the words all lawyers should come to fear; the client wants a "refund" of the legal fees he has paid.

This is not a good day for you or your law office. No matter what happens after you receive this letter you are going to be a loser. You are either going to have to refund the client's money that you feel you have earned or you are going to have to expend a substantial number of hours defending your right to retain these funds. This article is being written to show you how to maximize the chances that you will never receive the dreaded "refund letter" or "notice of fee arbitration".

## **How To Avoid Having A Client Ask For A Refund Of Legal Fees That He Or She Has Paid To Your Office**

### **A. The Initial Conference-The Retainer Agreement**

Nothing is more important than instilling in the client the confidence that you will provide them with excellent legal services. When you first sit down with a client, however, the next most important thing you can do is make certain that the client understands what he is receiving for the money he is paying you. This means that you must explain to him orally and then in written form (the retainer agreement) exactly how your legal fees are to be calculated and what is and more importantly what is *not* included per the terms of the retainer agreement.

There are many types of retainer agreements authorized by individual State Bar Associations throughout the United States. In most states written retainer agreements are required by law if you wish to enforce the terms of your agreement with the client.

In California, for example, your retainer agreement is not legally enforceable if it is not in writing and the anticipated attorney's fees will exceed one thousand dollars. Business and Professions Code § 6148(a) states the requirement: "In any case ... in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing."

This article is not designed to review all of the retainer agreements available to you, or to discuss their legality. These issues will be addressed in future articles. This article is designed to explain that no matter what retainer agreement you are using, having your client "understand" the terms of your retainer fully is critical to your ability to avoid a fee dispute with your client and/or in prevailing if a fee dispute arises.

### **B. Have Your Client Initial A Box In The Retainer That Provides That He Or She Has Read And Understands Each Provision Of The Agreement**

Nothing is more compelling when I sit as a fee arbitrator than the lawyer providing me a document that is signed or initialed by the client and provides that the client understood the terms of the retainer agreement before he or she signed it. I have attached herein a copy of the provision we have used successfully in our law firm's retainers for many years. When a client states that they did not understand the terms of the retainer agreement it is easy for even the most novice of lawyers to point to this provision that the client signed that states to the contrary.

### **C. Have Both You And The Client Sign And Date The Retainer Agreement**

It goes without saying that you need to have your client sign the retainer agreement as well as date the agreement for it to have legally binding effect upon the parties. In California the attorney must sign the retainer agreement as well as the client. It is also important to

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note that the retainer agreement must be signed by all parties who you wish to be financially responsible to pay the legal fees.

#### **D. The Client Must Sign The Retainer Agreement**

This is an important issue. Even in a case where a third person will be paying the legal fees, the party for whom you are providing legal services must also sign the retainer agreement. In a recent case that I decided it was clear that the lawyer had provided excellent legal services to the client. In this case the parents of the client admitted to signing the agreement. However, the client himself did not sign the retainer agreement. The result was that the attorney was ordered to "refund" several thousand dollars to the client and his parents due to this oversight.

#### **E. Provide A Copy Of The Agreement To All Signers On The Agreement**

Another key legal point is that you must provide a copy of the signed retainer, with all signatures of all clients on the document, along with the lawyer's signature to make it legally enforceable.

#### **F. Review Each Provision Of The Contract With The Client**

Even though the client has signed the retainer agreement, been provided a copy and has initialed that he understands the contract, in a vast majority of cases the clients remain steadfast in their belief that they didn't understand what the retainer agreement really "meant". You must understand that as the lawyer you are in a tremendous position of "advantage" over the prospective clients. They are coming to you for legal advice and assistance. They normally have very limited prior experience with lawyers and even less with legal retainer agreements. The law is clear that as the drafter of the retainer agreement all ambiguities will be interpreted against you and in favor of the client.

What this means is that you need to sit down with the client and go over the terms of the agreement. You need to explain clearly what the hourly rate for your services will be (if it is an hourly rate agreement). If the retainer is a "flat fee" retainer agreement, then you must be clear as to what exact services are covered. You need to make clear in your contract if you have a "minimum time charge" for any services you render under the contract. You must explain what hourly rate your office will be billing for the services provided by your law clerk or paralegal and the hourly rate must be clearly stated. You must state what "costs" will be the responsibility of the client in addition to your legal services. If these matters are not clearly spelled out and explained to the client then you will be inviting a fee dispute.

#### **G. Third Party Present When Retainer Agreement Is Discussed**

I have found that a very sound step to take to avoid a fee dispute is to have your paralegal or other member of your legal staff present when the retainer agreement is discussed and then have both you and your client sign the retainer in the presence of that staff member. I recommend having the "witness" who you have present prepare a memo that outlines what was discussed and that the client stated that they understood the terms of the retainer agreement. When a fee dispute arises and the only two people to testify at a fee arbitration are the lawyer and the client it is often difficult to reach a decision. However, when the lawyer can present a third person to the conversation that is often very persuasive. Also, when a client sends a letter to a lawyer asking for a refund, if the lawyer can reply to the client that his legal assistant was present when the retainer agreement was entered into and that legal assistant also prepared a memo immediately after the meeting such information will often discourage the client from going forth with legal action requesting a return of legal fees

#### **H. If You Want To Avoid Fee Disputes Learn To Communicate With Your Client; Communication Is More Important Than Legal Results**

After almost thirty years of practicing law there is nothing I have learned that is more important than the notion that what the client perceives is more important than the ultimate result in the case. If the client feels "listened to" you have increased your chances of avoiding a fee dispute by 80%. If you learn that returning the clients phone calls promptly is a vital part of your job as a lawyer then you will raise that percentage even higher. Finally, if you understand that you need to treat your client with respect and be honest with them you will almost assure that you will avoid most fee disputes.

One actual example of this will always stick in my mind. My law partner was representing one of two brothers accused of robbery in a serious criminal case. The other brother was represented by another lawyer. My partner is a brilliant communicator and early in his legal career understood the value of communication, perception and treating clients honestly and with respect. The robbery case was a close case and could have gone either way. At the end of the trial the jury found the client being represented by my partner guilty. The judge sentenced him to six years in prison. The other brother represented by the "other lawyer" was found not guilty and was a free man. However, the story doesn't end there.

Six months later the "third brother" found himself in jail accused of murder charges. The family of the three



brothers immediately called my law partner and asked if he would please represent their son on these murder charges. When the clients hired our law firm and paid us a hefty legal fee, we asked the family why they had not hired the "other lawyer". We were of course curious because the "other lawyer" was able to obtain an acquittal for their son while my partner's client received six years in prison. The answer the family gave us should be emblazoned on every lawyer's desk to recall before they speak to every client. It went like this:

"The other lawyer was a jerk. He didn't return our calls, he didn't answer our questions, we felt as if he thought we were trash and we never thought he was being honest with us. On the other hand you guys (our law firm) always returned our calls promptly, told us what was going on with the case every step of the way, never talked down to us and so we knew we could "TRUST YOU" when our other son was arrested for murder."

I hope you remember this story throughout your legal career. If you wish to maximize your chances of avoiding a fee dispute with your client, follow these twelve steps:

- 1.) Have a written retainer agreement signed and dated by all clients and yourself.
- 2.) Give a copy of the retainer agreement to all signers of the retainer agreement.
- 3.) Have a provision in your retainer agreement that your clients initial or sign that states they understand all the terms of the retainer agreement.
- 4.) Try to have a "witness" present when you explain the terms of the retainer to your client and have that person create a memo of the conversation as soon as client meeting ends.
- 5.) Explain all of the terms of the retainer with your client in clear, understandable language before they sign the retainer agreement.
- 6.) Send regular monthly billings to your clients.
- 7.) Communicate with your client on a regular basis.
- 8.) Provide your clients with copies of all legal documents you receive pertaining to their case.
- 9.) Return all of your clients' phone calls promptly
- 10.) Be respectful to your clients and never give them the impression that you are "better" than they are or you are talking "down to them".
- 11.) Make sure you speak to your client in a manner where they understand the legal advise you are giving them.
- 12.) Always be honest with your client and never make them promises that you will not be able to fulfill.

*Paul J. Wallin is the Senior Partner of Wallin & Klarich and has been a Presiding Fee Arbitrator for the Orange County Bar Association since 1990.*



## **A Layperson's Suggestions...** (continued from page 24)

someone who will talk with them when they call, or who will get back to them as soon as possible. Returning your client's phone calls or emails the same day will go a long way toward reassuring your client that you have his or her interests in mind. Waiting more than a day to return such calls or emails will frequently be perceived as inattention or lack of interest on the attorney's part.

Communicate as frequently as possible. Realize that the average client equates paperwork with progress. Clients judge this written "evidence" as proof you are actually "doing" something, despite the fact that attorneys spend quite a bit of time reviewing the details of a case, researching case law, writing and rewriting motions or briefs, and preparing and appearing for hearings or conferences. If you have a client who seems to need a lot of communication about the case's progress, then take the time to send a short update letter, with a copy of a court document you filed. It may take a few extra minutes, but it will save you hours later. Also, whatever contact you do make with the client, consider keeping short anecdotal notes for later reference, as memories tend to fade over time.

Choose a reliable billing method, and send out detailed monthly billing statements, even if little work was done in a particular month. Detailed invoices will also serve as a status report to your client. You might also consider creating a short tear-off portion at the end of your monthly invoice that the client needs to sign and return to you, indicating that he or she either agrees with or has questions about the invoice. You can both follow up and file these feedback tear-offs for future reference.

## **Summary**

The good news is that in 2005, with approximately 152,500 currently active California attorneys, only 144 fee arbitration requests were filed with the State Bar, and only 1,661 fee arbitration requests were assigned by local bar associations. And these filing statistics appear to be the lowest in the last four years. With a little effort to enhance your attorney-client evaluation and communication skills, you may not ever experience a fee arbitration. Just remember to communicate simply, completely and frequently.

*Gwen Wysocki has proudly served as a layperson arbitrator for the RCBA and State Bar Mandatory Fee Arbitration Programs since January of 2003. Gwen has been a registered nurse for over 22 years and also holds a master's degree in critical care nursing from UCLA. Gwen is married to Riverside attorney David L. Wysocki, a partner in the law firm of Aklufi & Wysocki.*





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## Litigation & Transactional Associate Positions

Inland Empire firm of Reid & Hellyer, APC seeks litigation associate with experience in civil litigation, preferably with business and real estate background. Excellent organizational, research and writing skills required. Transactional associate must possess at least 4+ years of experience in mergers, acquisitions, business formations/operations/dissolutions, and/or tax controversies; some estate planning/probate experience would be helpful. Fax cover letter, resume and salary requirements to Administrator (951) 686-2415 or e-mail cmcdavitt@rhlaw.com.

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Inland Empire firm of Reid & Hellyer, APC seeks litigation paralegal with at least 7+ years of experience in civil litigation. Excellent writing/research skills required for preparation of pleadings, propounding of/responses to discovery, etc.; ability to work independently. Computer proficiency in WordPerfect, Word, Lexis. Paralegal Certificate required. Fax cover letter, resume and salary requirements to Administrator (951) 686-2415 or e-mail cmcdavitt@rhlaw.com.

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Well established AV-rated, 10+ Attorney firm seeks an associate with 3+ yrs exp business/real estate transaction practice group Strong academic/writing skills req. Competitive salary offered. Please fax/send resume to Phil Jump (909) 274-7794/paj@varnerbrandt.com

## Internship Wanted

Current Maric College Paralegal honors student seeking NO PAY internship with law office in Palm Springs or Rancho Mirage two days weekly. Mature and professional. Computer literate in Excel, PowerPoint, Word and Access. I am a registered process server, former accountant, office manager and residential property manager. Inquires: Gary Whitehead (760) 325-5668, palmspringsac@aol.com

## 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.



## 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, 2006.

**Steven Kamolnick** – Anderson & Kriger, La Mesa

**Tracy Lee** – Law Student, Riverside

**Ryan G. Markson** – Sole Practitioner, Riverside

**Timothy B. McClellan** – Kramer deBoer Endelicato & Keane, Indian Wells

**Don Mitchell (A)** – Titanium Solutions, Riverside

**Kelly S. O'Reilly** – Wilner & O'Reilly APLC, Cerritos

**Mark Raymond Raftery** – Anderson & Kriger, La Mesa

**John R. Reynen, II** – Law Offices of John R. Reynen II, Murrieta

**Joshua B. Swigart** – Hyde & Swigart, San Diego

**Mike Teer (A)** – Teer One Properties Inc., Riverside

**Anna Valiente** – Law Student, Davis

Renewal:

**Mark S. Lester** – Lobb & Cliff, Riverside

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