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MAGAZINE

*In This Issue:

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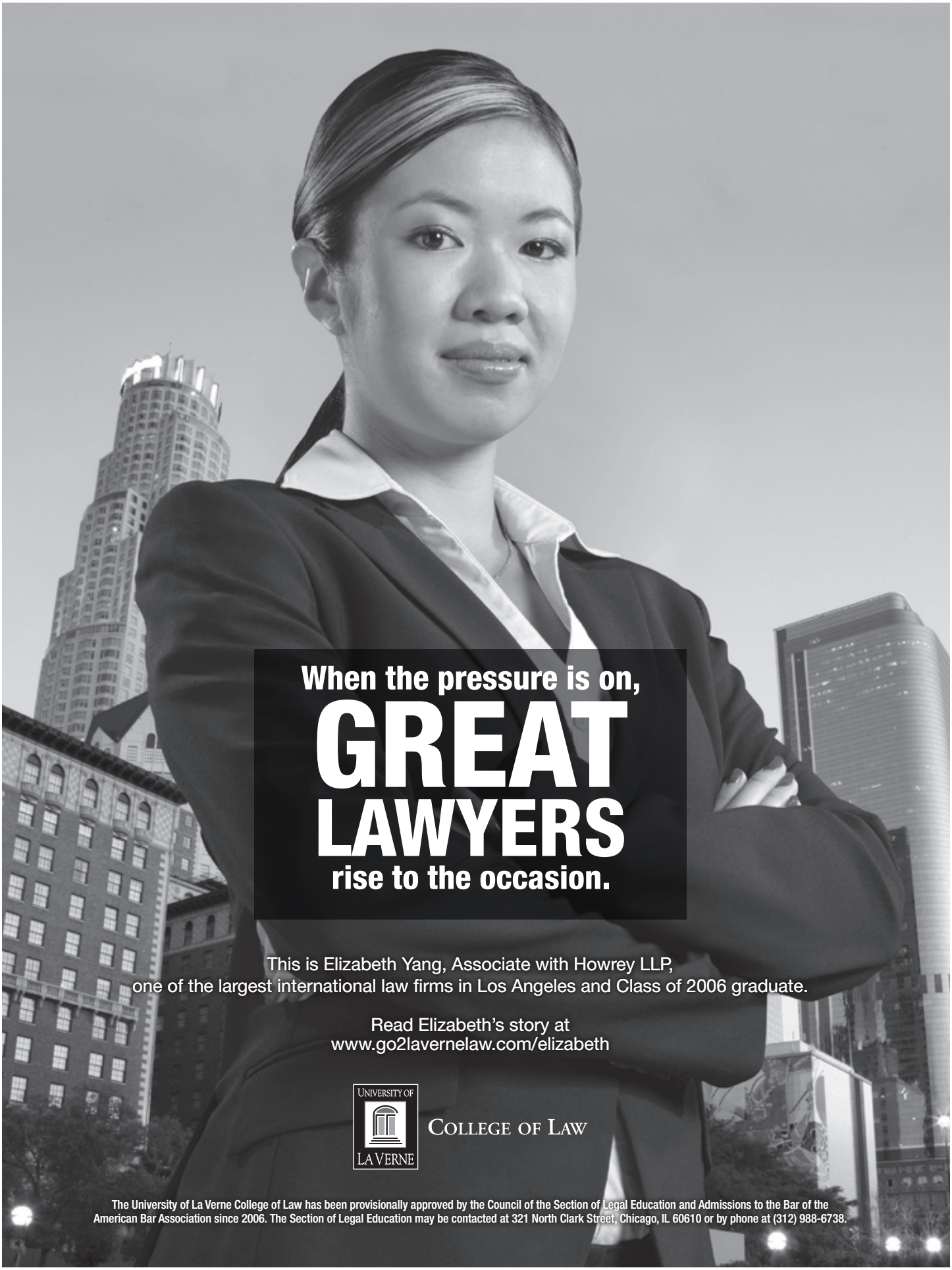
When the pressure is on,
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LAWYERS
rise to the occasion.
This is Elizabeth Yang, Associate with Howrey LLP,
one of the largest international law firms in Los Angeles and Class of 2006 graduate.
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RIVERSIDE 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

MARCH

2 **CLE Committee**
RCBA – Noon

4 **Bar Publications Committee**
RCBA – Noon

Mock Trial – Round 5 (Elite Eight)
HOJ – 6:00 p.m.

7 **Mock Trial – Round 6 (Semi Finals)**
Historic Court House – 9:00 a.m.

Mock Trial – Final Round
Historic Court House – Dept. 1, 1:00 p.m.

Mock Trial – Championship Awards Ceremony
Historic Court House – Dept. 1, 3:30 p.m.

10 **PSLC Board**
RCBA – Noon

Joint RCBA/SBCBA Landlord-Tenant Law Section
Nena's Restaurant in SBdno – 6:00 p.m.
"Policies and Procedures for Unlawful Detainers in San Bernardino Central Court"
Speaker: Hon. Kenneth R. Barr
(MCLE)

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

Barristers
Cask 'n Cleaver, Riv. – 6:00 p.m.
(MCLE)

12-14 **DRS/Riverside Superior Court Straus Mediation Training**
RCBA 3rd Floor – 8:00 a.m. to 5:00 p.m.
(MCLE)

20 **General Membership Meeting**
RCBA 3rd Floor – 12 p.m. to 1:15 p.m.
"Ethics Jeopardy: Top Ten Professional Responsibility Traps for the Unwary"
Speaker: Robert A. Hawley, Dept. Exec Dir, State Bar
(MCLE: 0.75 Ethics)

President's Message

by E. Aurora Hughes

Ah, February, the month of love. As a child, I never understood why February was chosen to be the month of love. I always thought that Valentine's Day should be a nice spring day, with flowers blooming, birds chirping, and a cool breeze blowing. But no, someone chose February as the month to celebrate our love for each other. February is always cold, freezing, and too often snow is still on the ground, or there is slushy water that freezes overnight, making black ice, which is hard as a rock when you slip and fall on it. Leaf-bearing trees break under the weight of snow or freezing rain.

Yet February is the month for love and valentines, the month to show your love for someone, tell them you love them, buy them flowers, buy them candy and give them heart-shaped cards expressing your love. I guess it was a child's romantic dream, thinking that love should be something to be enjoyed in the warm outdoors.

It wasn't until I became an adult that I realized that February, this cold, chilling, freezing month, is the perfect month for expressing your love. We see people in the streets without shelter, homeless men, women and children dressed in rags, and certainly not smelling like roses. Seeing the bareness of their plight provides the perfect opportunity to show compassion to our fellow man or woman, to reach out, not only to loved ones, but to those who appear not to have love. There are so many people and children without a ceiling over their heads, clean clothing on their backs, or food in their bellies. It is the month when sadness can bring despair, when grey skies are the norm, when one thinks that the clouds will never part, and when you feel so alone. What better time to lift someone else's spirits with a card, a kind word, a box of chocolates, some flowers, or a few dollars given to a street person?

The RCBA celebrates February and Valentine's Day at our monthly meeting. We do it in conjunction with the Riverside County Law Alliance, to celebrate our spouses, partners and significant others, who have supported us, stood by us, and tried not to complain too much when we were spending long hours on the job and away from home. When you have an opportunity like Valentine's Day to show someone you love how much you care, be mindful of the many who do not have someone to share these things with.

As lawyers, we should also be mindful of the needs of so many who cannot afford an attorney. February is the perfect time to commit to providing more pro bono services or volunteering for committees and sections of the local bar associations. As you know, RCBA's Public Service Law Corporation (PSLC) serves quite a number of individuals and families. The attorneys who volunteer provide invaluable assistance to those in need, especially in family law and unlawful detainer matters. Volunteering one evening a week to help people in need is a great way to express love.

Attorneys can also take time out of their busy schedules to go to local elementary and high schools and speak about what they do, discuss the attorney code of civility and further discuss the role of the judiciary in our system of justice. If any attorney is willing to give a little of his or her time, please contact me or the RCBA, as we would love to hear from you and to provide you with an opportunity to help not only yourself, but your community as well.

Our civil courts are overburdened. There are new systems coming into play; for example, the courts are setting up a mandatory mediation program for matters under $50,000, but there are

a great number of cases that are over that limit. For those cases, the RCBA Dispute Resolution Service (DRS) is available to help. There are also individual bar members who are mediators, as well as other services for hire. Having your client's case resolved through one of these processes is also a good way to show you care.

This past month, I have shown how I care by contacting my state senator and Riverside's assemblyman concerning funding for our courts and the need for additional judges. I will be sending other letters to them and to the governor concerning this and other issues. I hope you, too, will take time to write to your state legislators about these important topics. If you are interested, email me and I can assist you in drafting a letter. My email address is eaurorahughes@aol.com.

Hiring Your Household Employee "Under the Table" May Cost More Than You Think

by Robert E. King

You're a busy attorney trying to juggle work and family. To help care for your children, you hire a nanny. Or perhaps your parents are getting older and need some help around the house, and you hire an elder care provider or companion to care for them.

Because you think you'll never get caught, you've heard that it costs so much more to hire legally, and hey, let's face it, you weren't planning on being Attorney General any time soon, you think it's safe to hire someone under the table. Think again.

The decision to hire someone "under the table" – although it may seem easier and cheaper – ultimately is penny-wise and pound-foolish. If (and most likely, when) you get caught, you will have committed federal tax fraud and endangered your ability to practice law. Even if you don't get caught, you'll be missing out on legal and tax advantages that would have applied if you were paying legally. In short, don't do it.

Admittedly, hiring a nanny, elder care provider or other household employee legally can be daunting. There are many legal, tax and insurance questions that can make employing someone seem like an onerous task. On closer examination, however, hiring a nanny or other household employee can be a straightforward process that benefits both the employer and employee.

Getting Caught

There are many ways – such as your nanny filing for unemployment (a very common occurrence in today's difficult economy), social security, disability or workers' compensation benefits – that even an amicable parting between you and your nanny could result in you facing an investigation for unpaid taxes. And these are just the unintentional examples. They don't include your disgruntled nanny, upset over some perceived slight, quitting and turning you in herself – or worse yet, trying to blackmail you. Or the neighbor or co-worker or family member who is envious or has always had a grudge against you reporting you. Or perhaps the IRS decides to audit you and notices the same amount of money flowing out of your bank account every two weeks and gets suspicious.

Under any of these scenarios, the result is the same: You get caught and face considerable consequences.

The Consequences

Because you must report household employment taxes on your personal federal tax return, failure to pay the appropriate taxes constitutes federal tax fraud. At a minimum, the consequences include payment of all back taxes, penalties and interest, and they can include federal charges of perjury and tax evasion, fines of up to $250,000, imprisonment for up to five years, and a criminal record for the rest of your life. There is no statute of limitations for failure to report and pay federal employment taxes.

The professional consequences are equally severe. For example, Business and Professions Code section 6068, subdivision (o)(4) requires that if you're charged with a felony such as tax fraud, you must report the charge to the State Bar, potentially jeopardizing your ability to practice and earn a living. Additionally, if you're even considering becoming a judge or holding elected or appointed office, having a "Nannygate" story break about you, just as it did with Bernie Kerik, Zoe Baird, Kimba Wood, or Linda Chavez, can ruin your reputation and career.

Regardless of your interest in higher office, as an attorney, you trade on your reputation for integrity, and being labeled a "tax cheat" isn't good for anyone's business.

Advantages of Hiring Legally

Happily, there are a number of advantages to hiring a nanny or other household employee legally. For example, you may be able to save taxes by putting up to $5,000 pretax per family per year into a Dependent Care Account ("DCA") to help pay for your nanny. Alternatively, you may be eligible to claim the federal Child and Dependent Care Tax Credit, for a minimum tax credit of 20% for the first $3,000 in qualifying expenses for each of up to two children per year. Most importantly, you get to spend more time with your family and sleep well at night knowing that you've done everything legally. Don't underestimate how

worrying about getting caught and the consequences of hiring illegally can take a toll on you personally and professionally.

Your Bottom Line

Perhaps the most common fallacy about employing a nanny or other household employee legally is that it will greatly increase your expenses. A review of the additional costs, especially in light of the significant potential tax savings, reveals this contention to be inaccurate.

Social security, Medicare, and state and federal unemployment taxes add approximately 9% of a nanny's salary to the typical household employer's costs. However, by maximizing your tax advantages, the true "burden" of hiring a nanny can be substantially less, as little as 4% of your costs.

An example best illustrates the true cost. The approximate 9% tax burden on a nanny's $30,000 annual salary likely would cost her employer roughly $2,700. However, the employer could shelter $5,000 pretax in a DCA and use this money toward paying the nanny.

The employer normally would pay approximately 30% in taxes on $5,000 in earnings, taking into account the employer's personal income taxes and other payroll taxes. Thus, the employer's tax savings from using the DCA would be approximately $1,500. Subtracting this $1,500 savings from the roughly $2,700 paid in taxes yields an effective "cost" of approximately $1,200, or 4% of the nanny's annual compensation.

Thus, in this typical example, the bottom-line cost of hiring someone legally is approximately 4% more, a small price to pay for the peace of mind that comes along with hiring your nanny legally. Remember, paying employment taxes isn't an option, it's the law.

Robert E. King is the Founder of Legally Nanny®, a law firm representing household employers and domestic employment and homecare agencies. King specializes in household employment legal and tax issues and has served as an expert witness in household employment matters. For more information, you may contact the firm at (714) 336-8864 or at info@legallynanny.com.

Immigration Law for the Employment Lawyer

by Mitchell L. Wexler

With the ever-shrinking or flattening world we find ourselves living and working in, employment law and immigration law find themselves intersecting with greater frequency. It is not only large, multinational companies that employ foreign nationals, but more often, small startup and even family-run operations find themselves with the need to employ key talent to remain competitive. When that skill set is possessed by a foreign national, companies then find themselves in the wonderful world of immigration law. It is therefore incumbent upon employment lawyers to be able to spot immigration-related issues in their day-to-day representation of employer clients.

Employment lawyers should be generally familiar with the concepts of "nonimmigrants" and "immigrants." The former are those foreign nationals entering the U.S. on a temporary basis to engage in specific activities. Immigrants are foreign nationals entering the U.S. to reside permanently.

Common nonimmigrant visa categories include:

B 1: For foreign nationals seeking to enter the U.S. as "visitors for business." It is critical to understand that B 1 visa holders cannot work or get paid in the U.S. Acceptable activities include attending business meetings and trade shows, testifying at trial, performing independent research and the like. B 1 visa holders should not be on the U.S. company's payroll and also should not be remunerated as independent contractors. "Stealth B 1" visa holders are a common problem at larger companies, as managers occasionally facilitate B 1 visa applications for certain foreign nationals when not appropriate without letting H.R. know.

E-1/E 2: The E 1 nonimmigrant visa is for qualifying foreign nationals of designated countries to work temporarily for U.S. companies owned at least 50% by nationals of the same foreign country. The U.S. company must trade principally with that same country, as well.

The E 2 nonimmigrant visa is for foreign nationals of designated countries who invest a "substantial" amount of money in a U.S. business. The substantiality requirement varies depending on the facts, but typically is met at the $150,000+ mark, sometimes less, sometimes more. This can be for individual investors investing in such businesses as a car wash, bed and breakfast, etc., or for a large multinational company setting up U.S. operations to facilitate the movement of qualifying foreign nationals into the U.S. Both E visas provide employment authorization, so these foreign nationals can be put on a U.S. payroll. Interestingly, spouses of E visa holders can apply for unrestricted employment authorization, as well.

F 1: Generally, foreign students cannot lawfully work in the U.S. However, when they obtain a university degree, they typically get a one-year period of employment authorization called Optional Practical Training (OPT) to get U.S. work experience with the idea of furthering their career upon their return home. These students are typically hired from university campuses around the country. Employers should be aware of the limited duration of employment authorization available in this category and plan accordingly.

H 1B: The H 1B is the most popular and also the most regulated employment-authorized nonimmigrant visa. To qualify, a foreign national must have the functional equivalent of a U.S. bachelor's degree in a specialized field and be "petitioned" by a U.S. company for a professional-level job requiring that degree. The wage to be paid must be in accordance with the prevailing wage for similarly employed workers in the area of employment. There are only 65,000 H 1B visas available per year. There are another 20,000 available for foreign nationals with advanced U.S. degrees. The government's fiscal year begins October 1st, and employers can file H 1B petitions six months early, so on April 1st of each year, U.S. Citizenship & Immigration Services (CIS) receives tens of thousand of H 1B petitions. In fact, last April 1st, it received about 180,000, resulting in an annual lottery. Although H 1B visas are employer-specific, a petition filed by a new employer seeking the services of an H 1B visa-holding foreign national is NOT subject to the annual cap.

L 1: The L-1 nonimmigrant visa is exclusively for multinational companies, either big or small. If there is a qualifying U.S. entity, certain employees of the foreign entity can be transferred to the U.S. pursuant to this "intracompany transferee" nonimmigrant visa. This visa is for skilled (not professional) foreign nationals, petitioned by a U.S. company for temporary employment in an occupation for which it can be proven that there is a shortage of qualified and available U.S. workers. The most challenging requirement of this category is that the need must be proven to be less than one year in duration. Like the H 1B visa category above, the L 1 category has an annual limit of 66,000. As with the Es, spouses of L-1 visa holders can apply for employment authorization.

The two most common processes by which foreign nationals can acquire immigrant (green card) status, and thus lawful permanent residency, are through qualifying family relations or through "sponsorship" by a U.S. company.

Contrary to popular belief, not all foreign nationals with "legal" family in the U.S. can be sponsored for green card status. Other than spouses and parents of U.S. citizens, there is a quota for other qualifying relationships. Such relationships include parent, sibling, son or daughter of a U.S. citizen, and spouse and unmarried son or daughter of a green card holder. Some of these categories are backlogged over 12 years. Fast-track immigration for distant or even close relatives is a myth.

Employers wishing to seek the services of a foreign national on a permanent basis typically must first prove there is a shortage of qualified and available U.S. workers in the area of employment. This process is presently taking the better part of a year. Then, the employer must file an immigrant petition with CIS seeking to classify the occupation that is the subject of the application in one of several employment-related green card categories. This phase, too, is taking the better part of a year. Depending on the category achieved and the foreign national's country of birth, there may or may not be a backlog of green cards available, which can prolong the process by approximately five years or so.

It is worthy of mention that there is also an investor mechanism though which to apply for a green card. A foreign national can invest $1 million in a new business that employs at least 10 U.S. workers to qualify. There is also a program whereby a foreign national can invest $500,000 with a qualifying "Regional Center" to achieve green card status. Regional Centers are approved in a variety of ways, typically in areas of particularly high unemployment.

Due to varying grace periods, implications and other restrictions, terminating the employment of a foreign national may bring with it extra requirements and considerations that should be vetted by counsel. Employment lawyers, sensitized to the basic concepts and processes companies must consider when employing foreign nationals, can bring greater value to their client relationships.

Mitchell L. Wexler is a partner with the worldwide immigration law firm, Fragomen, Del Rey, Bernsen & Loewy, LLP. He has been practicing exclusively in the immigration area for over 20 years and is a frequent author and speaker on a variety of immigration law topics. He can be contacted at mwexler@fragomen.com or at 949-660-3531.

Judicial Profile: Hon. Jackson "Jack" Lucky

by Donna Thierbach

One of the most amazing things about writing profiles is I learn a lot about people I thought I already knew! Judge Jack Lucky's parents met in Vietnam in 1966. His mother is Korean and his father was in the Corps of Engineers. Interestingly, his mother had told him since he was a young child that he would be a lawyer.

Judge Jackson Lucky

At the time of his birth, his parents were living in Seoul, Korea, where they remained until he was five years old. The family moved to Richardson, Texas, where they stayed until he was seven. The next stop was Riyadh, Saudi Arabia, where they lived until he was ten. Upon the family's return to the United States, they lived in California, and they eventually settled in Apple Valley when he was 15.

Judge Lucky attended Apple Valley High School from the tenth to the twelfth grade. There, he and his friends Mike Fermin (now a San Bernardino supervising district attorney) and Michelle Lauron (Mike's wife, who is also with the San Bernardino DA's office) competed in mock trial and ran the student government. I thought perhaps that was when Judge Lucky became interested in becoming a lawyer. However, he confessed that since he was six, he aspired to be an actor.

He started in community theater and school plays. The pinnacle of his acting career was eighth grade, when he played Kenickie in Grease. At that time, he started to change the way he looked, dying his hair, wearing strange clothes, and piercing his ears.

After Judge Lucky graduated from high school, he took a detour from performing arts and accepted a Naval ROTC scholarship to UCLA, with a Marine Corps option. After the first year, he realized he didn't have what it took to be a Marine, so he decided to make a real go at being an actor, dropping out of the ROTC program. He joined "The Young Americans," a singing and acting group based out of Fullerton, and eventually transferred to Fullerton Junior College.

After years without a car in Southern California, Judge Lucky decided to leave California for a place with decent public transportation. He moved to Chicago, Illinois, and attended DePaul University. Somehow, in spite of these moves, he managed to earn his Bachelor of Fine Arts degree in a total of five years!

Unfortunately, his time in the real theater world showed him people with real talent. When he realized he wasn't one of the talented people, he went directly to law school. He thought he would try being an agent or producer.

Judge Lucky attended the two-year "SCALE" program at Southwestern Law School in Los Angeles. He found he really enjoyed law school, doing better there than he had in high school and college. After competing in moot court, he wanted to be a litigator. More importantly, he discovered his true love: his future wife Deborah, who was also attending Southwestern. They were very competitive, finishing number one and two in their class (she was first, of course) and joining law review.

Judge Lucky knew Deborah was "the one," but she initially took some convincing. After winning her over, he did not want to get married without a job. He had interned at the Riverside District Attorney's office during his last two months of law school. He had interviewed for a job with the office twice, but had not received an offer. Ironically, Deborah had beaten him on the job front, as well; she had received an offer from the same office six months earlier and was working there. In October 1994, he got the job and was ready to propose. He borrowed a wedding ring from his mother and stuck it in Deborah's coffee cup one morning, hoping she wouldn't accidentally swallow it. She didn't, which enabled her to say yes.

Judge Lucky was in the Riverside County District Attorney's office for 14 years. During that time, he served on assignments in misdemeanors, preliminary hearings, trials, identity theft, domestic violence, grand theft auto, gangs, and the sexual assault unit. At first, he loved to be in trial, so he never gave much thought to becoming a judge. However, Judge Mandio piqued his interest in a judgeship when he said being a judge was an opportunity to be involved in shaping the future of the Riverside legal community. By that time, Judge Lucky was starting to like the idea of not being an advocate, but rather determining issues of law. He applied.

Judge Lucky and his wife Deborah enjoy playing cards, especially Hearts and Spades. They have each won the

District Attorney Hearts Tournament, the only couple to do so. They also enjoy entertaining family and friends, which provides Judge Lucky with the opportunity to cook and to bake bread. Then, to work off all that food, he runs.

He did not start running until he was 35 years old. A fellow deputy district attorney, Chuck Hughes, had been trying to get him to run for years. Judge Lucky waited until Chuck was recovering from a broken leg, so he could keep up. Eight months after he started running, another deputy district attorney, Carlos Monagas, convinced him to run a marathon. He has now run in the Baker to Vegas Relay five times and run three marathons. His goal is to qualify for the Boston Marathon. Deborah does not share his passion for running, but is very supportive. She and their two children attend the races and cheer him on.

I can't imagine him having any additional free time, but Judge Lucky also enjoys computers, reading, writing, guitar, videos and woodworking. He even built a wood-working shop, but never has the time to use it.

Judge Lucky's current assignment is in family law. He said he is really enjoying the assignment. He learns something new every day, and the attorneys in his court have been very professional and helpful. He hopes the work he does there will help Riverside families.

Donna Thierbach, a member of the Bar Publications Committee, is Chief Deputy of the Riverside County Probation Department.

Judge Jack Lucky in Alaska

Opposing Counsel: Kurt E. Yaeger, a Class Act

by Kirsten S. Birkedal

Kurt Yaeger is an all-around class act. Not only is he a distinguished lawyer, but he has a natural ability for making friends wherever he goes. Kurt was born in Los Angeles and raised in a La Sierra neighborhood. It was in La Sierra that Kurt met his lifelong friend, Judge Doug Weathers, who was a neighbor of his. When asked about his friendship with Kurt, Judge Weathers said, "I've known Kurt more than 45 years, long before La Sierra had curbs and gutters." Judge Weathers added, "I've never seen him without a smile. He is one of the finest persons I have ever known."

Kurt E. Yaeger

While growing up, Kurt was largely influenced by his father, Derrill Yaeger, who is a well-respected attorney specializing in land use issues at Clayson Mann Yaeger & Hansen in Corona. However, Kurt did not immediately set his sights on becoming a lawyer. Instead, he focused his career path on his love of sports and athleticism, a love he had developed at an early age.

Kurt obtained his Bachelor of Science from Loma Linda University, in Physical Education, and a Master of Arts from San Diego State University, in Exercise and Physiology.

Throughout high school and college, Kurt remained very athletic. His high level of physical activity caught up with him in college, at which time he underwent three separate knee operations. Always one to make lemonade out of lemons, Kurt fondly recalls that one of his knee operations led to his first job after graduating from college; during the time of his third operation, which was performed by the renowned orthopedic surgeon, Frank Jobe, M.D., in Los Angeles, the two became friends, which led Dr. Jobe to offer Kurt a position at the famous Kerlan-Jobe Orthopaedic Clinic in Los Angeles. Kurt was involved in research projects on college and professional athletes, including the physical testing of team members of the Los Angeles Rams during their annual spring training camp.

While working at the Kerlan-Jobe Clinic, Kurt received a call from a former teacher, who asked him to consider taking an assistant professor position at Walla Walla College in the state of Washington. Kurt decided to take the job and moved to Walla Walla. While Kurt enjoyed teaching immensely, the cold, wet weather was not so enjoyable, and after a year Kurt moved back home to sunny Southern California.

Shortly thereafter, Kurt accepted a position at Corona Community Hospital, where he developed an innovative hospital-based system for providing personal training, weight loss, smoking cessation, cardiac rehabilitation and lifestyle modification programs, all under the supervision of a medical director. The success of this system led to his appointment as Director of Development for the hospital. It was around this time that he decided he wanted to go to law school. Kurt remarked that he knew he wanted additional education that would promote his professional career, and he believed a law degree would provide him with the most flexibility. Kurt attended law school at Western State University College of Law in the evenings and continued working full-time at the hospital. It was his intention to use his law degree in his job as a hospital administrator.

During his first year of law school, Kurt married the love of his life, Andrea, who shares his love of athletics. She has worked for many years as a teacher of physical education and currently teaches at Villegas Middle School in the Alvord District. In addition, both Kurt and Andrea devote much of their time to their two daughters, Jacqueline and Elizabeth. Jacqueline is a high school senior at Poly High School in Riverside and dreams of following in her dad's footsteps by becoming a lawyer. Elizabeth is in the eighth grade at Gage Middle School and involves herself in any sporting activity she can find. Both are straight-A students.

In 1989, Kurt obtained his J.D. from Western State. Around this time, he decided he wanted a change from his role as a hospital administrator and to practice law instead. Kurt obtained his first legal job with a prominent insurance defense firm in Bakersfield under the tutelage of a well-known litigator, Robert King.

Kurt not only obtained the experience and responsibility he desired, he also discovered that he excelled at developing client relationships, and as a result he was made a partner three years after starting with the firm. Kurt's insurance defense clients began giving him their private commercial and employment law issues. Always up for a challenge, Kurt jumped at the opportunity and began developing his practice in these areas. As a result of these efforts, he considered opening his own practice, a move encouraged by his client, country music star Buck Owens.

Kurt fondly recalls the excitement of opening his own practice. He remarked that it was exciting to be an entrepreneur and work for himself. However, he had a young family at home, and he soon realized that he wished to spend more time with them. To that end, he decided to join a labor and employment law firm in Sacramento. Two years after he and his family moved to Sacramento, Kurt learned that his father had been diagnosed with prostate cancer. Wanting to be closer to his father, they decided to return home to Riverside.

After his return in 2000, Kurt joined Thompson & Colegate, after being recruited by then-managing partner, Jack Marshall, with whom he was acquainted through playing golf at the Victoria Club. It did not take long for Kurt to find his place at the firm and make lifelong friends with his fellow colleagues.

Kurt is currently the head of the successful Labor and Employment Section of Thompson & Colegate and represents business clients in all areas of labor and employment litigation, discrimination and business development/risk management.

Kurt enjoys practicing employment law because of the dynamic and evolving issues in each case. Currently, Kurt believes that the hot topics in employment law continue to be discrimination, harassment and wage and hour issues, and he also points to the issue of classification of employees as a critical legal question that faces many employers.

Kurt declares that Thompson & Colegate is the "greatest place in the world to work," citing its collegial atmosphere, which he really appreciates. Kurt adds, "practicing law is hard work, but working at Thompson & Colegate makes it less stressful."

Those who know Kurt know that he is an avid golfer. As a member (and past president) of the Victoria Club here in Riverside, he has developed his game to the point of becoming a "scratch" player, which means he plays golf without a handicap. He enjoys taking trips to play golf at many of the world's famous courses. He fondly recalls a golf trip he took a couple of years ago with seven of his friends, including Jack Marshall, to Muirfield, Scotland. Kurt says "Golfing with my friends is the best recreation I can imagine."

Kurt is also very active in the legal community. He has been a member of the Leo A. Deegan Inn of Court since 2000, and serves as a Special Master for the State Bar. At the Inn, Kurt has formed numerous friendships, with both local attorneys and judges. Kurt declares that Riverside has "a superb group of lawyers and judges, which makes the practice of law very satisfying." In this author's opinion, as well as the opinion of many others, Kurt stands out as one of the best Riverside lawyers, who makes our legal community shine.

Kirsten S. Birkedal is an associate at Thompson & Colegate, LLP, who was told her annual review would not be affected by this article! (Yaeger humor!)

Four Years After the April 10, 2004 Workers' Compensation Reform: They Killed the Goose That Laid the Golden Eggs

by Sandra Grajeda, Deputy County Counsel, County of San Bernardino

In an article I wrote for this journal several years ago, when the 2004 workers' compensation reform law (S.B. 899) was quite new, I commented that we did not know how well the 2003 and 2004 changes would work to cure the ills of the workers' compensation system. I anticipated that it would take at least two or three years to see if the changes would have the desired effect. We are now almost five years into implementation of the reform law.

From my perspective as a workers' compensation defense attorney, the reform has been very effective in reducing costs in the system and eliminating some of the abuse. Treatment is largely under the employer's control. Treatment recommendations are subject to utilization review. Injured workers are limited to two years of temporary disability benefits. Permanent disability awards are greatly reduced, due to disability ratings being much lower under the 2005 disability rating schedule.

How and why did all this reform come about?

The basic benefits in workers' compensation have always been (1) medical benefits, (2) temporary disability, which provides payments while a person is off work, (3) permanent disability, which provides weekly payments for any permanent residual disability, and (4) death benefits. Between 1975 and 2003, we also had mandatory vocational rehabilitation benefits. The adoption of mandatory vocational rehabilitation was a major boon for injured workers and their attorneys, because it essentially extended the length of temporary disability benefits and the attorneys received an additional fee out of these benefits. It also created a whole new industry of vocational rehabilitation counselors, vocational schools and vocational rehabilitation employees in the state system.

When I began practicing as a workers' compensation applicant's attorney in 1978, the practice was quite straightforward. It was not a lucrative practice, according to some attorneys' standards, as fees were contingent upon a permanent disability award or settlement and were 9 12% of the permanent disability award. However, an attorney could make a decent living and feel good about helping injured workers maneuver through the sometimes bewildering system. Injured workers often were not too eager to "sue" their employers, but a termination of their benefits without explanation or a brush-off by a claims examiner would send them to us. We usually could obtain a more favorable settlement for them than they would have received if they were dealing directly with an insurance company, thus justifying our modest fee in most cases.

The process involved obtaining medical treatment and temporary disability benefits for the injured worker for a period of months. Once the injured worker's condition was stable, we settled the case based on the treating doctor's final report or obtained medical legal evaluations on both sides and usually "split" the value of the permanent disability in the employer's report and the applicant's report. A final medical evaluation cost about $250 in those days. The process was quite expeditious in most cases and not too complicated.

In 1984, the permanent disability rates doubled from $70 to $140 per week, which also served to double the applicant's attorneys' fees. The 1980s were a good time for injured workers, workers' compensation attorneys and people involved in the vocational rehabilitation system.

The Boom of the 1980s

At some point in the 1980s, medical groups, hospitals and diagnostic testing facilities realized that a workers' compensation practice could be very lucrative for them. All they had to do was set up a system to handle the paperwork. By the end of the 1980s, we were seeing a lot of abuse: increased psychiatric and internal claims, as well as injury "hotlines" with associated doctors and attorneys. Medical facilities were offering trips to Las Vegas and Hawaii to attorneys and claims adjusters in return for sending business their way. Defense attorneys were throwing lavish parties for insurance companies in order to attract and maintain clients. In the 1980s, workers' compensation definitely became "the goose that laid the golden egg" for many practitioners.

Workers' compensation was becoming more and more expensive, as employees took advantage of long

periods of temporary disability, then vocational rehabilitation and generous permanent disability settlements. The Lab. Code, mandates liberal construction of the laws in favor of the injured workers (Lab. Code, § 3202), and it seemed that judges were more and more liberal in their decisions. I became a defense attorney in 1985, and we were happy to be able to settle a case by splitting the medicals, because we knew that at trial, a judge would most likely base his or her decision on the applicant's very liberal medical report.

We started to hear rumblings of reform in the 1980s. It always seemed that abuse by injured workers was cited as a major problem. However, a lot of us believed that the injured workers were the scapegoats, with the real culprits being greedy attorneys, doctors and vocational rehabilitation practitioners and schools, as well as insurance companies that only valued the bottom line. Abuse certainly existed among injured workers, but they were not the major culprits.

1989 and 1993 Reforms

The first major reforms in the workers' compensation system were made in 1989 and 1993 and came about largely because of abuses by medical providers. Doctors were charging several thousand dollars for a medical-legal exam. We used to joke in those days that it cost about $600 to get a complete work-up at the Mayo Clinic, but in California, an internal, orthopedic or psychiatric medical legal exam and report cost about $2,500!

Psychiatric stress claims had become very popular and vocational rehabilitation plans were costing tens of thousands of dollars. Despite the dollars expended, studies showed that very few injured workers ever worked in the fields to which they were retrained. Reforms between 1989 and 1993 reduced medical legal fees, made it more difficult to prevail on psychiatric stress claims (Lab. Code, § 3208.3) and a 1994 amendment to Labor Code section 139.5 capped vocational rehabilitation benefits at $16,000.

1994 to 2003

In 1994, S.B. 30 removed the floor on workers' compensation insurance premiums (de-regulation), and by 1995 employers paid $3.9 billion less in premiums. By 1997, major workers' compensation insurance companies were going out of business. In 1998, Governor Gray Davis pledged support to injured workers to increase their benefits, but ended up vetoing several bills due to costs to employers, which were reportedly driving businesses and jobs out of California. Governor Davis did sign legislation in 2002 that increased benefits to injured workers.

Over the period 1993 to 2002, workers' compensation costs had risen from $9 billion in 1993 to $32 billion in 2002. The problems were the same as they had been in the 1980s: medical treatment extended way beyond a reasonable period, long periods of temporary disability, large settlements, ever-increasing medical bills, and costs of vocational rehabilitation. (Although vocational rehabilitation was capped at $16,000, the state rehabilitation unit and the judges were happy to award substantial monies to injured workers "outside the cap" for technical mistakes by the employers in administering the complicated vocational rehabilitation benefits and forms.)

Governor Davis also signed bills that standardized medical rates, including costs for outpatient surgery centers (Cal. Code Regs., tit. 8, §§ 9789.30-9789.35) and drugs, capped visits to chiropractors and physical therapy (Lab. Code, § 4604.5) and required utilization review (Lab. Code, § 4610). Outpatient surgery centers had found a loophole that allowed them to bill incredible amounts. They were billing facility fees for short procedures such as epidural injections and simple surgeries in the neighborhood of $20,000 to $40,000. This legislation ended that practice, at least for services after January 1, 2004. Chiropractic treatment and physical therapy was going on for years in some cases. The 2003 legislation limited the number of visits to 24 per year.

2004 Reform (S.B. 899)

One of Governor Arnold Schwarzenegger's major initiatives after winning the election in October 2003 was to reform workers' compensation. In his State of the State speech on January 6, 2004, he said:

> We must fix the state's business climate. And we must start with workers' compensation reform. Our workers' compensation costs are the highest in the nation, nearly twice the national average. California employers are bleeding red ink from the workers' compensation system. Our high costs are driving away jobs and businesses. My proposal brings California workers' compensation standards and costs in line with the rest of the country. To heal injured work-

ers it emphasizes the importance of health care and doctors rather than lawyers and judges. It requires nationally recognized guidelines for permanent disability and it provides for innovative approaches. I call on legislators to deliver real workers' compensation reform to my desk by March 1st. Modest reform is not enough. If modest reform is all that lands on my desk, I am prepared to take my workers' compensation solution directly to the people and I will put it on the ballot in November [2004].

Major Elements of the Reform

1. Abolition of vocational rehabilitation;
2. Abolition of the presumption of correctness of the treating doctor's opinion, enacted in 1994, and limitation as to obtaining medical-legal reports;
3. Medical treatment regulated by the *American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM);*
4. Chiropractic and physical therapy limited to 24 visits per year;
5. Medical treatment utilization schedule;
6. Medical provider networks (employer control of medical treatment);
7. Limitation of temporary disability payments to two years from first payment;
8. Reduction of permanent disability awards by 15% if person returns to work;
9. New rating schedule in 2005, based on the *AMA Guides;*
10. Apportionment of disability based on causation and credit for prior awards;
11. Different calculation of penalties, making them less onerous to employers.

Employee advocates and doctors were particularly unhappy with the medical provider networks referred to as MPN's (Lab. Code, § 4616), whereby employers create a pool of doctors and employees select their treating doctors from that pool. Previously, employees had been able to select their treating doctors, which gave them a lot of leverage as to length of treatment and temporary disability, as well as the ultimate level of permanent disability. It had also created a huge industry of employee-friendly doctors.

Criticism of S.B. 899 centered around the elimination of the free choice of treating doctors, the new permanent disability schedule's reduction in benefits, cuts in benefits for workers who return to work, the refusal to regulate excess insurance premiums, reductions of benefits through apportionment to non-industrial causation, arbitrary termination of temporary disability benefits and reduction in penalties for insurance misconduct and delay.

How Has the 2004 Reform Worked?

Vocational rehabilitation (Lab. Code, § 139.5) seems to have died a peaceful death. It never really worked, but was a way to extend the time off work a little longer. The vocational rehabilitation law was to sunset as of December 31, 2008, and it does not appear that any new legislation has been passed to extend it. Part of the 2004 reform involved the provision of "vouchers" for up to $10,000 in schooling (Lab. Code, § 4658.5). I personally have not seen much of an interest by injured workers and their attorneys in obtaining these vouchers.

The difference in the way that medical expert reports are obtained has benefited both sides in different ways. Although the treating doctor's opinion no longer has any presumption of correctness (which benefited employees who could choose their treating doctors), employers also are no longer able to obtain medical-legal reports from conservative employer-friendly doctors, as they could previously. We now have a system where we either have to agree on an agreed medical examiner or go to a state panel qualified medical examiner. State panels are a gamble, as one never knows which three doctors will comprise the panel. The reform has definitely been a boon for agreed medical examiners, and their practices are booming.

Use of the *ACOEM Guidelines* to determine reasonableness of medical treatment seems to have worked quite well and has capped medical expenses substantially. The cap of 24 visits per year for chiropractic and physical therapy has definitely cut down on abuse by chiropractors and physical therapists. Previously, treatment extended far beyond any benefit that it might have initially been to the injured worker and essentially just served to line the doctors' pocketbooks. Utilization review helps keep medical treatment within reasonable parameters.

The Legislature has modified the two-year limit for temporary disability for injuries after January 1, 2008 (Lab. Code, § 4656(c)(2)) . The maximum benefit is still 104 weeks, but it can be paid out up to five years from the date of injury. This seems fair, especially where multiple surgeries are involved.

The 15% reduction in permanent disability where the employee returns to work (Lab. Code, § 4658(d)(3)(A)) has been a good incentive to employers to get people back to work, either in a modified position or regular work. Those who cannot be returned to work receive a 15% increase in their permanent disability benefits (Lab. Code, § 4658(d)(3)(B)).

Estimates are that permanent disability levels pursuant to the 2005 permanent disability rating schedule have been reduced by about 60%. This has severely reduced the costs for employers. Employees are not happy about the low percentages of permanent disability. Since attorneys' fees are based on the amount of permanent disability, applicant's attorneys' practices have been severely affected. Locally, we have seen many applicant's attorneys go over to defense, go out of business or consolidate their practices with other applicant's attorneys. If the current schedule continues without amendment, I predict that very few attorneys will be representing injured workers. All attempts to invalidate the 2005 schedule have proved fruitless.

The change in the apportionment laws (Lab. Code, §§ 4663 and 4664) has made it much easier for employers to get credit for previous awards and to apportion to degenerative disease. Prior to 2004, it was very difficult to get apportionment to non-industrial causes. This has also caused a reduction in permanent disability awards.

Statistics issued by the Workers' Compensation Insurance Rating Bureau indicate that employer premiums are down significantly since the 2004 reform. However, the cost of the average claim is still about $42,000.

In conclusion, there is no question that the 2004 workers' compensation reform law has represented a huge savings for employers. However, rising costs of workers' compensation are always an issue. In a veto last fall of a senate bill that would have amended Labor Code section 4658 to increase permanent disability payments for injuries incurred after January 1, 2009, Governor Schwarzenegger stated:

The workers' compensation reforms I enacted in 2004 have worked. Costs to employers have decreased and return-to-work rates for injured workers have increased.

Our work, however, is not done.

Medical costs in the workers' compensation system are climbing, leading the Workers' Compensation Insurance Rating Bureau to recommend a 16% increase in premiums starting next year. Given this fact, we must proceed cautiously before adding any other costs to the system. As such, the billion dollar benefit increase proposed by this bill cannot be justified at this time.

The greed of the medical providers and to some extent the applicants' attorneys brought about a very significant reform, which definitely involved "killing the goose that laid the golden eggs" of vocational rehabilitation, psychiatric stress claims, outrageous medical expenses, lengthy temporary disability periods and high permanent disability awards.

Real Estate Legal/Financial Update

by D. W. Duke

Due to events in the financial industry over the past decade, the United States, and indeed the entire global economy, have been placed in the worst financial crisis since the Great Depression of the 1930s. In an effort to address this situation, several significant measures have been taken at both the federal and the state level within the past year. It is important for the attorney to be aware of these measures to anticipate what the future might bring and to know what relief might be available to help his or her client. To understand the forecast of our nation's economic health, it is beneficial to learn how we arrived in our present economic situation.

Causes of the Current Economic Crisis

After the Great Depression, the Roosevelt administration introduced New Deal legislation designed to prevent the United States from ever suffering another Great Depression. One of the most important New Deal enactments was the Glass-Steagall Act of 1933 (part of the Banking Act of 1933), which established the Federal Deposit Insurance Corporation and included provisions designed to prevent speculative investments by banking institutions. Over the next half century, many of these provisions were repealed as a result of deregulation by Congress. Significant portions of Regulation Q (12 C.F.R. part 217) of the Glass-Steagall Act, which had allowed the Federal Reserve to place limits on the interest rates that banks could pay, were repealed by the Depository Institutions Deregulation and Monetary Control Act of 1980. Provisions that prohibited bank holding companies from owning other financial institutions were repealed by the Gramm-Leach-Bliley Act of 1999, which was signed into law by President Clinton that same year. The net result was that by the year 2000, the banking and mortgage industry had been so deregulated that many of the New Deal provisions designed to prevent another depression no longer existed.

The aftermath of deregulation of the banking industry was an explosion of adjustable-rate mortgages, subprime lending, stated-income loans, zero-money-down loans, cash-back-at-closing loans, and many other practices that made mortgage fraud exceedingly easy and prevalent. Combined with this was the selling of loans from the original lender, such that much less care was taken when originating the loan to assure that the borrower was creditworthy. These unhealthy conditions eventually led to double-digit inflation in the housing industry, combined with easy credit, and many homeowners found themselves in houses they simply could not afford. When the bubble burst, many homeowners openly admitted that they knew they would not be able to afford the payments once the loan adjusted, but they had planned to refinance before the adjustment, or if unable to do so, to have enjoyed the experience of home ownership while it lasted. When the housing market crashed, many of these homeowners found that either they did not have enough equity in their homes to refinance, or they could not obtain a loan due to the tremendous tightening of credit.

Federal Government Relief Efforts

In an effort to assist homeowners facing the devastation of foreclosure, Congress passed the Mortgage Foreclosure and Debt Relief Act of 2007, which relieved homeowners from the obligation of paying tax on the "phantom income" derived from the discharge of debt on their principal residence. Pursuant to the provisions of this act, homeowners who lose their home in foreclosure, sell it by short sale, or return it to the lender by deed in lieu of foreclosure are relieved from the obligation to pay federal income tax on the income realized by the discharge of the debt. This includes debt discharged through mortgage restructuring (loan modification). The relief applies only to debts that constitute qualified principal residence indebtedness. Qualified principal residence indebtedness is any debt incurred in acquiring, constructing or substantially improving a principal residence that is secured by the principal residence. Qualified principal residence indebtedness also includes any debt secured by the principal residence resulting from refinancing of the debt to acquire, construct or substantially improve the principal residence. The act went into effect January 1, 2008 and will remain in effect until December 31, 2012.

A second important federal effort to stimulate the economy and help the failing financial industry was the Economic Stabilization Act of 2008, commonly called the bailout plan, which was signed into law by President Bush on October 3, 2008 and was intended to stabilize the financial markets by releasing $700 billion to purchase distressed assets, especially mortgage-backed securities, and to capitalize banking institutions. The first $350 billion was quickly released, with few strings attached, by the Treasury. However, within a short period of time after the release of the first $350 billion, foreclosures were still on an increase,

and little if any of the money had been allocated to prevent foreclosures. This brought criticism from Republican and Democratic lawmakers alike. On January 15, 2009, the U.S. Senate released the second phase of the bailout fund, amounting to $350 billion, and Congress also unveiled an $825 billion fiscal recovery plan. Critical to the success of the bailout plan is Congressional oversight. If it is left to the banking industry to decide how the money should be used, no doubt there will be further mismanagement, with no real benefit to the American public.

California S.B. 1137

In addition to the federal government's efforts to address the financial crisis, California has enacted Senate Bill 1137. S.B. 1137 was designed to provide certain protections to homeowners and tenants facing foreclosure. If not extended, the law will sunset on January 1, 2013. It impacts loans made between January 1, 2003 and December 31, 2007.

S.B. 1137 amends Code of Civil Procedure section 2924, which sets forth the provisions for nonjudicial foreclosure in California. Some of the more significant amendments include the following requirements:

- The lender, beneficiary or authorized agent must wait 30 days after contact is made with the borrower, or 30 days after satisfying the due diligence requirements set forth in the statute, before recording of a notice of default.
- The borrower's financial situation must be assessed and the borrower and lender must explore options for the borrower to avoid foreclosure.
- The lender or its authorized agent must advise the borrower of the right to a subsequent meeting within 14 days of the initial contact.
- The borrower must be permitted to designate an authorized agent, such as a counseling service, realtor or attorney, but must expressly approve any workout agreement reached by that agent.
- The notice of default must include a declaration that the lender has made the required contact or has made a diligent effort to make the required contact with the borrower; if the notice of default was already recorded prior to the enactment of the statute, the declaration must be included with the notice of sale.
- In the event that the lender is initially unable to contact the borrower, the lender must attempt telephone contact on three separate occasions at three different times.
- The lender must provide the borrower with an 800 number that will be answered by a live person during normal business hours.
- Links must be provided to a web page with options for borrowers who cannot afford their payments.
- The borrower must be provided a list of financial documents to gather when discussing his or her options.
- The borrower must be given a toll-free telephone number, available at HUD, for certified counseling services and a toll-free telephone number for discussing options to avoid foreclosure with the lender or lender's representative.

In addition, upon posting a notice of sale, the lender's agent must notify the resident in English and several other languages that the foreclosure process has begun, that a sale is 20 or more days away, and that, if a tenant, he or she will receive a 60-day notice of eviction after sale. Contacting a lawyer, legal aid, or a housing counseling agency must be advised. A portion of S.B. 1137 amends Code of Civil Procedure section 1161, subdivision (b) and provides for a 60-day written notice to quit, pursuant to Code of Civil Procedure section 1162, before a tenant or subtenant may be removed from the property by a foreclosing lender or successful bidder at an auction. These provisions of the statute will not apply if a party to the note remains in the property as a tenant, subtenant, or occupant; in that instance, the three-day notice requirements apply.

S.B. 1137 contains other provisions designed to address other concerns, such as blight. These provisions require that a legal owner who obtains vacant residential property at or through foreclosure must maintain the vacant residential property and is subject to a civil fine of up to $1,000 per day for failure to maintain. If the local government entity chooses to impose a fine, pursuant to this statute, it must give appropriate notice of not less than 14 days and allow an owner not less than 30 days to rectify whatever problems are alleged. Notices will typically be mailed to the address in the transfer deed, unless otherwise specified.

For purposes of the statute, "failure to maintain" means failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failure to take action to prevent trespassers or squatters from remaining on the property, failure to take action to prevent mosquito larvae from growing in standing water, and other conditions that create a public nuisance.

The statute provides for shorter notice provisions in the event that the local entity determines that there is a condition threatening the public health or safety, and it

provides that local ordinances on this subject are not preempted by the statute.

The New Emerging Fraud

Just as there were thousands of unscrupulous individuals and businesses who did not hesitate to perpetrate mortgage fraud on lending institutions as a result of deregulation, thereby accelerating the collapse of our economy, there has emerged an entirely new set of unscrupulous perpetrators of fraud. This new fraud is occurring in the foreclosure assistance industry. Since 1979, California has had laws in place to protect homeowners facing foreclosure from those who would seek to take advantage of their unfortunate situation. The two most significant protections are the Home Equity Sales Contracts Act (Civ. Code, § 1695) and the Mortgage Foreclosure Consultants Act (Civ. Code, § 2945).

Despite the protections of Civil Code sections 1695 and 2945, in the past year there has been an explosion of new fraud schemes offering to assist people in financial crisis through loan modifications and other services related to foreclosures. Many of these schemes involve soliciting homeowners by informing them that they can save their home if they will invest a flat-fee amount. The fees demanded range from $2500 to $7500. Even attorneys are involved in directly soliciting clients with such offers, and some of these scams are being perpetrated by real estate sales persons. The Department of Real Estate (DRE) prohibits its licensees from taking fees prior to the rendering of services unless the licensee has prior authorization from the DRE and the DRE has approved its advanced-fee contract and all advertising materials. Therefore, you should inform your clients that any real estate licensee offering loan modifications for an advanced fee but who cannot show proof of approval by the DRE should not be trusted. To ascertain whether a given licensee has authorization to obtain advanced fees, the DRE has posted a list of the approved licensees on its website at http://www.dre.ca.gov/mlb_adv_fees_list.html.

While clearly not all individuals providing loan modification services are perpetrating a fraud, anyone offering to provide such services to your client should be carefully investigated. It would be prudent to advise your client to seek legal advice from an attorney familiar with foreclosures and loan modifications prior to actually retaining someone for that purpose.

DW Duke, of the law firm Giardinelli & Duke, is a trial attorney and a noted author and lecturer. His practice has included real estate litigation, insurance litigation, business litigation, professional liability litigation, securities law, governmental law and humanitarian law. His clients have included many major insurance companies and their insureds, as well as several public entities, including Riverside County, San Bernardino County, Los Angeles County and The University of California. DW is also a member of the California Association of REALTORS® Strategic Defense Litigation Attorney Referral Panel.

State Bar Seeks Nominations for Public Lawyer of the Year

by Elias E. Guzman

The California State Bar's Public Law Section Executive Committee is accepting nominations for the 2009 Ronald M. George Public Lawyer of the Year Award, and applications are due March 20.

The annual award recognizes an exceptional lawyer who has dedicated a significant portion of his or her career to public service. Award recipients are lawyers who represent the highest level of professional and ethical standards and who are inspirational advocates for the public interest. The Public Law Section recognizes the award recipient at a reception held at the State Bar's annual conference in the fall.

The award was renamed this year after California Supreme Court Chief Justice Ronald M. George, who traditionally speaks at the award ceremony and introduces the year's winner, to recognize his exceptional contributions to the public and to further define and exemplify the caliber of the contributions provided to the public by the award recipients.

"As public lawyers, we know that for most of us there is no possibility of a bonus at year's end, no matter how excellent the work that is performed," George said at the 2008 awards ceremony. "Instead, for public lawyers, the reward often lies in the respect of their peers and in seeing the effect of their work on those whom they serve."

The 2008 award was given to Jeff Thom, who has served as an attorney in the California Office of Legislative Counsel since 1974. Thom, who has been blind since birth, has drafted thousands of legislative proposals, prepared countless legal opinions, and provided legal advice to members of the California legislature. Outside the office, he is also active in a number of organizations that promote the rights of the disabled. Thom's distinguished record of professional service to the public, both as an attorney and as a civic leader, exemplifies everything it means to be a public lawyer.

Other recent Public Lawyer of the Year Award honorees include: Ann Miller Ravel ('07), Clara Slifkin ('06), Manuela Albuquerque ('05), Roderick Walston ('04), Ariel Pierre Calonne ('03), Herschel Elkins ('02), and Jayne W. Williams ('01).

For more information on eligibility for the Ronald M. George Public Lawyer of the Year Award or to nominate a colleague or friend, visit www.calbar.ca.gov/publiclaw.

The Public Law Section also seeks sponsors for the 2009 awards ceremony, which will be held at the 2009 State Bar Annual Meeting in San Diego in September. Sponsors will be recognized in the Public Law Journal, all press releases announcing the winner of the 2009 award, and in signage at the awards ceremony. For more information about sponsorship opportunities, contact State Bar Section Administrator Julie Martinez at (415) 538-2523 or at Julie.Martinez@calbar.ca.gov.

The Public Law Section Executive Committee thanks the 2008 sponsors: Gold Sponsors Berliner Cohen; Burke, Williams & Sorensen, LLP; Liebert Cassidy Whitmore; Meyers Nave Riback Silver & Wilson; and Olson Hagel & Fishburn LLP; Silver Sponsors Best Best & Krieger LLP; Carpenter, Rothans & Dumont; Hanson Bridgett LLP; Richards, Watson & Gershon; and William R. Seligmann; and Bronze Sponsor Kaufman Downing LLP.

Elias E. Guzman is a deputy city attorney for the City of Elk Grove and a member of the Public Law Section's Executive Committee.

Bench to Bar

Court Provides Jurors with Complimentary Wi-Fi Access – Court Visitors also Benefit

The Superior Court of California, County of Riverside, in collaboration with the Administrative Office of the Courts (AOC), has implemented a wireless (Wi-Fi) network for court users at no charge. This program originated with the AOC's Jury Improvement Program to enhance the experience of serving on a jury. Wireless Internet access is now provided at all Riverside County courthouses.

"Citizens who spend a few hours or days in court may welcome the convenience of Wi-Fi access. This will enable visitors to get connected with business or personal communications while they are waiting for court. They can also check on court information, such as court calendars," said Presiding Judge Thomas H. Cahraman. "This program enables the court to increase public access to court information and services."

In older court buildings, cabling may not be permitted or practical. Free Wi-Fi access offers a solution to this problem, allowing the public, attorneys, and members of law enforcement agencies to access the Internet, download files, check e-mail, and view the court's Web site.

When visitors launch their Internet browser in any courthouse, the computer detects a wireless connection and the court Web page pops up with a welcome message. The court pages also provide the basic rules and regulations for Wi-Fi use in the court.

The court is one of 18 in the state participating in this $1.6 million wireless Internet project, which is funded by the AOC.

New Board of Directors at Dispute Resolution Service – Best Wishes to Geoffrey H. Hopper

The year 2008 marked the end of Geoffrey Hopper's term of service with the RCBA's Dispute Resolution Service, Inc. ("DRS").

In 1994, the California Department of Consumer Affairs promulgated the Dispute Resolution Programs Act. As a result, Geoff Hopper, former President of the RCBA, created the ADR Committee of the RCBA. The committee consisted of Peter Mort, Dan McKinney, Judge Charles Field, Michelle Ouellette, Terry Bridges and Christopher Jensen. While exploring methods to create a court mediation program, the ADR Committee saw an opportunity to fold the Settlement Now free mediation group into the bar, thus creating DRS. DRS commenced with Geoff Hopper as President, and he continued serving in that capacity through 2008.

Geoffrey H. Hopper

By 2008, Geoff's practice as a busy employment attorney no longer afforded him the time to devote to DRS. Geoff has always been conscientious about the time and energy involved and has served DRS and the RCBA well. The DRS Board understood Geoff's commitments and reluctantly accepted his resignation. DRS wishes Geoff the best in his future endeavors and we all hope, at some point in time, Geoff can return to his prior active involvement with the DRS and RCBA.

The new DRS Board of Directors is now comprised of Christopher G. Jensen – President, Michelle Ouellette – Vice President, David G. Moore – CFO, Judith A. Runyon – Secretary, and James O. Heiting, Michael G. Kerbs, Elliot S. Luchs and Harry J. Histen – Directors at Large. Harry Histen is a member because of his position as RCBA President-Elect.

Since the mid-1990s, DRS has been the mediation provider to the Riverside County Superior Court. The Desert Bar Association has been providing mediation service to the desert courts under an assignment of DRS's contract with the courts. As most of us are aware, the court has initiated a mandatory civil mediation program with its own panel of mediators, many of whom are DRS mediators. Questions have been raised as to the need for DRS's continued participation with the court. What with the backlog of cases, the courts are always looking to alternative methods of resolving cases (i.e., ADR), and hence, DRS is needed now more than ever.

DRS will now be providing settlement conferences to the court to supplement the mandatory civil mediation program and the judicial arbitration system. As always, the DRS panel of ADR providers volunteer on a moment's notice to pro tem for the court, attend the trial calendar settlement conference program, and supplement other court settlement programs, as well as provide mediation and arbitration services through DRS at a dramatically reduced fee as compared to other ADR providers. RCBA/DRS members have been at the heart of the volunteer spirit of the Riverside County court system for years and will continue in that regard.

To join DRS as a panel member, or to use the services of DRS, please go to the RCBA web site (www.riversidecountybar.com) or call (951) 682-2132 for information.

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If you would like to be a panel member on the LRS, please call (951) 682-1015 for an application.

Classified Ads

Executive Suites Moreno Valley
Executive suites available in new building on Sunnymead Blvd. in Moreno Valley. Includes voice mail, direct phone number, fax number, access to T-1 high speed internet, access to conference room and more. Contact Leah at 951-571-9411 or leah@gsf-law.com. All second floor offices.

Office Space – Riverside
Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle @ 951 686-3547 or email towerpm@sbcglobal.net. Residential services available also.

Offices - Riverside
Class A and Garden Offices available ranging from 636 SF to 11,864 SF. Offices located at Central Avenue and Arlington Avenue at the 91 Freeway exits. Affordable pricing, free parking, close to Riverside Plaza, easy freeway access to downtown courts. Please call Evie at 951-788-9887 or evie@jacobsdevco.com.

Office Space – Downtown Riverside
Centrally located within walking distance of courts and county offices. Beautiful 5-year old building. Includes receptionist and conference room. Copier and scanning services available. Visit www.3941brocton.com or call 951-712-0032 for more information.

Professional Office Space
4446 Central Avenue in Riverside. Building currently offers 3 offices, optional conference room, reception area, and a bullpen area excellent for several workstations and/or filing. Also includes kitchen, 1 bathroom and a detached garage excellent for storage. Call Marilyn at (951) 689-7053 to schedule appointment.

Professional Office Space
2305 Chicago Avenue, Suite B, Riverside. Includes 2 executive offices, 1 large conference room, large bullpen area to accommodate 4 to 5 workstations, filing or storage room and/or secretarial workspace. Please call Debbi to schedule an appointment at (951) 240-6283.

Law Office for Rent - Riverside
3 story red brick Victorian building. 2 conference rooms/library, elevator, copy machine, receptionist area for meet and greet, 2 blocks from the court, plenty street and lot parking, kitchen. Call Judie (714) 547-1234.

CPA Services
CPA with 30 plus years experience available to advise and testify on: Real Estate and Partnership Taxation and Accounting issues; Real Estate Syndication and Management issues; and Real Estate Finance matters. Please call or email for C.V., 310-476-5987, Jeff.FrombergCPA@gmail.com

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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 March 30, 2009.

Carrie S. Block – Dishon & Block APC, Irvine

Lloyd Costales – Page Lobo Costales & Preston APC, Murrieta

Sheila Dillard – Law Office of Michael R. Young APC, Redlands

Aaron Dishon – Dishon & Block APC, Irvine

Carol Jean Fogleman – Burke Williams & Sorensen LLP, Riverside

Candice Garcia-Rodrigo – Betty Auton-Beck APLC, Redlands

Cang Le – Fiore Racobs & Powers, Riverside

Joseph Ortiz – Best Best & Krieger LLP, Riverside

Casey Shaw – Stutz Artiano Shinoff & Holtz, Temecula

Ebony Taylor – Sole Practitioner, Rancho Cucamonga

NOTICE
RCBA Members
Have you moved? Has your telephone, fax or email changed?

Please contact the RCBA office at (951) 682-1015 or rcba@riversidecountybar.com with any changes.

Riverside County LAWYER

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