

# RIVERSIDE LAWYER

February 2010 • Volume 60 Number 2

MAGAZINE

## In This Issue:

Protecting Victims of Domestic Violence

Prop-Scotch

To Reveal or Not to Reveal? That is the Question



The official publication of the Riverside County Bar Association



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# RIVERSIDE LAWYER

MAGAZINE

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# MISSION STATEMENT

## Established in 1894

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

## RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

## Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

*Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6<sup>th</sup> 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

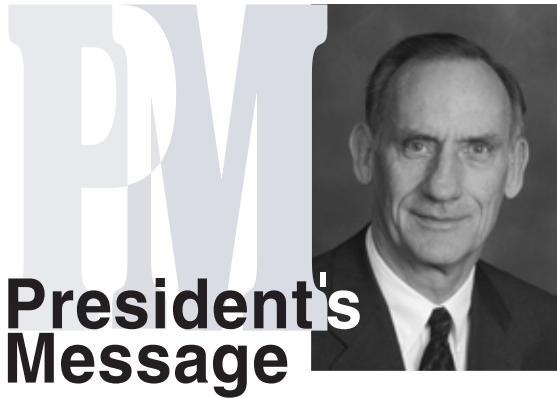
## FEBRUARY

- 15 **Holiday – Washington’s Birthday**  
(RCBA Offices Closed)
  - 16 **RCBA Board**  
RCBA – 4:45 p.m.
  - 17 **Estate Planning, Probate & Elder Law Section**  
RCBA, John Gabbert Gallery – Noon  
“How to Improve Your Chances on Getting an Accounting Approved”  
Speaker: David Bowker, Esq., Riverside County Superior Court  
(MCLE: 1 hr)
  - 18 **Human/Civil Rights Section**  
RCBA, John Gabbert Gallery – Noon  
Planning meeting, chaired by D.W. Duke, Esq.
  - 18 **Riverside County Mock Trial Competition (Round 2)**  
Hall of Justice – 5:30 p.m.
  - 19 **General Membership Meeting joint with Riverside County Law Alliance**  
RCBA, John Gabbert Gallery – Noon  
“Six Awful Truths About Personal Finance When Representing Clients”  
Speaker: Stanley Hargrave, CFP  
(MCLE: 1 hr)
  - 24 **Federal Bar Association Meeting**  
George E. Brown, Jr. Federal Courthouse – Noon  
“Federal Civil Practice Seminar”
  - 24 **Riverside County Mock Trial Competition (Round 3)**  
Hall of Justice – 5:30 p.m.
  - 25 **Solo/Small Firm Section**  
RCBA, John Gabbert Gallery – Noon  
“Successful Solo Practice Speaker Series: Testimony from the Trenches”  
Speaker: Presiding Judge Thomas Cahraman, Riverside County Superior Court  
(MCLE: 1 hr)
  - 27 **Riverside County Mock Trial Competition (Round 4)**  
Hall of Justice – 8:30 a.m.
- Mock Trial Awards Ceremony**  
Riverside Convention Center – 2:00 p.m.

## MARCH

- 3 **Bar Publications Committee**  
RCBA – Noon
  - 3 **Riverside County Mock Trial Competition (Round 5)**  
Hall of Justice – 5:30 p.m.
  - 6 **Riverside County Mock Trial Competition (Semi-Final)**  
Historic Courthouse – 9:00 a.m.
- Riverside County Mock Trial Competition (Final)**  
Historic Courthouse – 1:00 p.m.
- Riverside County Mock Trial Competition Championship Awards Ceremony**  
Historic Courthouse – 3:30 p.m.





## President's Message

by Harry J. Histen

This month, the *Riverside Lawyer* considers "Family and the Law." I touch upon two distinct topics: practice in the family law court, and looking at the law as it affects family. Family law practice is a challenging, yet satisfying and often rewarding practice area that deserves far greater respect than it receives. The trend of the law as it affects families inspires less confidence.

I have generally enjoyed my family cases. Shepherding the cases where counsel are involved is a relatively small group of family lawyers. Most are highly skilled, cordial and forthright. Family practice is one of a few areas not defined by *sides*. Virtually every family lawyer will represent either husbands, wives or significant others interchangeably. Therefore, there are no factions of the family law bar lobbying for legislation designed to favor one side over the other, e.g., husbands over wives, or vice versa.

The evolution of the substantive family law has been almost exclusively devoted to determining a person's likely expectations with respect to such issues as property rights, rearing children, and income-sharing when two people begin a committed relationship. For example, for decades, the courts and the Legislature have struggled to determine what a spouse most often intends in executing a deed to the other spouse. What did the parties, in their particular situation, contemplate was being transferred? The law is tailored to custom.

The stereotype of family practice as an endless parade of soul-draining moments is untrue. Family lawyers deal with real people facing crises that go to their essence. There is satisfaction, distinction and honor in helping

people in stressful times. Although the parties' emotions may escalate, good family lawyers can and do rise above them. I believe that we are in very good shape here.

The trend of the law as it impacts families is problematic. An essential purpose of a family is to rear children to be healthy, responsible and productive adults, as best we can. I don't think the government is traveling this path. A recent action is illustrative.

This past December, the Consumer Product Safety Commission (aided by the Window Covering Safety Council), recalled more than 50 million shades and blinds. It seems that in the last nine years, eight infants have been strangled by cords. On reading this story, I felt a need for perspective and did some research:

There are about 4 million infants (less than one year old) at any given time. The CPSC's figures equate to one of every 4.5 million children being killed by these cords. I learned through a study published in *Pediatrics* magazine regarding infant deaths from 1992 to 1999 that annual infant deaths from all injuries were then 959 per 4.5 million.

This is one of the countless examples of how we have lost all perspective when it comes to children, and that we've lost our direction. Americans will proudly rally and take heroic and costly actions to save a child in danger. We spent days and a small fortune to rescue a young girl who had fallen into a well on her parents' farm several years ago. That is a trait we never want to lose and we will punish any balloon dad who tries to take advantage of it.

Our disposition to help is different in kind from agencies attempting to create a perfect world in which no child is exposed to any risk of injury. We often hear from officials something like: "If this (insert precious name) law saves one child's life, it's worth it!" Actually, it's not worth it. We can't spend 250 million dollars attempting to save eight unidentified, statistically nonexistent children.

We no longer trust each other. Though seat belt laws addressed a pervasive problem, the blinds recall does not. I believe people would react favorably to announcements that there is no known, cost-effective solution to a problem other than individual responsibility. People make such decisions every day in their own lives. There are many things that are almost universally agreed upon – the desirability of rehabilitating serious child-abuser parents, for example. However, there is no evidence that we know how to rehabilitate, or that reha-

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bilitation is even possible. Admitting a fact of life is a good, honest resolution, not failure.

What we have come to call the Law of Unintended Consequences, T.S. Eliot once expressed more precisely: "Half of the harm that is done in this world is due to people who want to feel important. They don't mean to do harm. But the harm does not interest them."

Families are to develop strong children. Strength requires overcoming challenges. No one favors children being harmed, but overall, there is a far greater detriment to them. Taking the risk out of life takes the life out of life.

We should begin by calling on the political branches to act based on facts, experience and cost considerations. Later, there should be verified results before going state- or nationwide. We must give our leaders permission to say no to us. Now, in bad economic times, we impose 10 percent across-the-board cuts, even while knowing that we'd do better to abolish the Window Covering Safety Council and retain valuable core services.

The less we trust, the less we tolerate. Though not a warm, fuzzy concept, tolerance can help a majority begin to accept ideas and behaviors that cause no harm, but that the majority may (temporarily) find repugnant. Tolerance could likely help resolve a current family issue by helping us focus on what the question really is. The challenge to Proposition 8, *Perry v. Schwarzenegger*, was discussed in this January's California Lawyer. As I understand the facts and issues, the plaintiffs will endeavor to keep the focus on a single issue and away from the unsubstantiated risks. Unless I am mistaken, defendants make no serious challenge to the right of a gay couple to share a romantic relationship. Defendants concede that gays may rear children. Gays are even allowed to marry – just not each other.

Does anyone recall the chaos and civil uproar that we experienced from the time *Marriage Cases* was decided and before Proposition 8 passed? Neither do I.



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In its first year of operation, the AMVETS Legal Clinic handled 160 cases while recovering more than \$2.2 million for military families. Operating on the campus of Chapman University, the clinic has represented California troops from around the world, from Texas to Japan and Kansas to Germany.

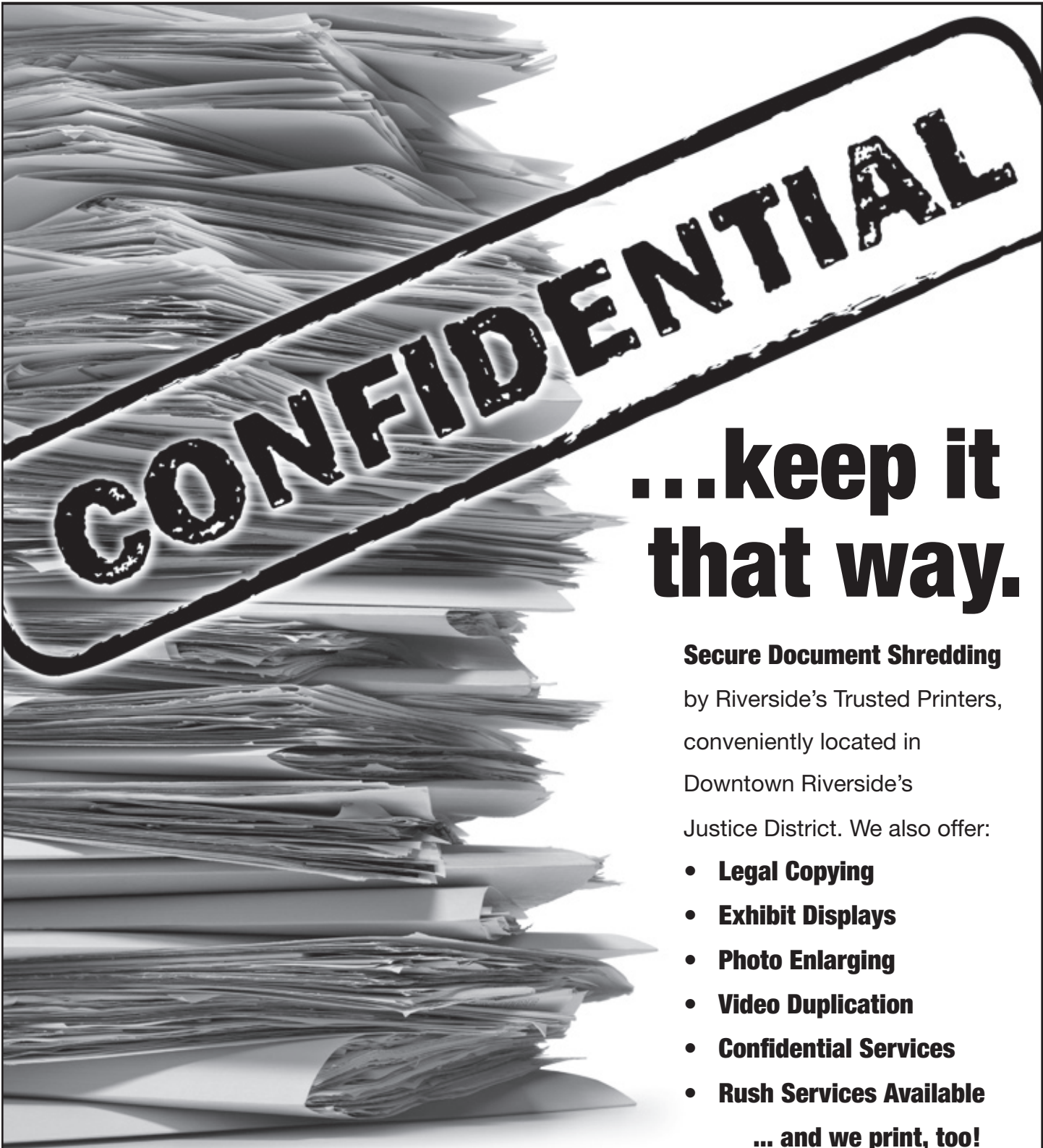
The high volume of cases has led to the creation of the AMVETS Legal Clinic Pro Bono Legal Network, a case-referral system for local practitioners who can help in the following areas:

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- ◆ VA & Military Disability Claims
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# IN MEMORIAM: THE HON. VILIA G. SHERMAN

*Submitted by her husband, Dr. Irwin Sherman*

Vilia G. Sherman died on December 18, 2009, after a long bout with breast cancer. Her singular life was filled with multiple reinventions and achievements, ranging from zoologist to activist, attorney to judge, and most importantly, beloved wife, mother, and grandmother.

Born on July 20, 1941, in St. Ives, England, Vilia attended the Ashford School for Girls in Kent and then the University of Leicester. In 1963, she received a degree in zoology with high honors and was awarded a scholarship for graduate study at UCLA. This then led her to the Marine Biological Laboratory in Woods Hole, Massachusetts, where she met a young biology professor, Irwin Sherman, and in 1966, they married. Settling in Riverside, California, together they wrote the biology texts *The Invertebrates: Function and Form*, and *Biology: A Human Approach*.

In 1968, their first child, Jonathan, was born, and in 1970 their daughter, Alexa, and Vilia “retired” – at least from a life of science. In 1975, a failed septic tank led her to take the fight for a sewer straight to city hall. She soon found herself involved in other civic activities, and in 1979 Governor Jerry Brown named her to the Santa Ana Regional Water Quality Control Board. There she dealt with proposals to clean up Riverside’s own Love Canal and the Stringfellow Acid Pits, as well as



*The Honorable Vilia G. Sherman, Ret.*

with her own burgeoning desire to continue her community involvement. And so, at age 39, she enrolled in the Western State University College of Law, where two years later she graduated summa cum laude.

From 1984 to 1994, Vilia served as a Riverside County deputy district attorney and tried more than 50 felonies. Many were high profile-cases, including *People v. Earl Arthur Allen, Sr.*, in which the defendant received a sentence of 111 years – at the time, a record for Riverside County. She later became the first Riverside prosecutor to identify a suspect by DNA, and soon she became the office’s resident DNA expert.

In 1994, Governor Pete Wilson appointed Vilia to the Municipal Court, and she was later elevated to the Superior Court. By many accounts, Vilia was a “judge’s judge,” with a sharp intellect and a strong sense of fairness. She served for 11 years, and in 2003 was given the YMCA Woman of Achievement Award.

Vilia loved to travel and, with her husband, embarked on numerous exotic adventures to locales around the globe, ranging from Antarctica to the Okavango. She is survived by Irwin, her husband of 43 years, her younger sister, Georgina, her children Jonathan and Alexa, and her three grandsons, Zachary, Jack, and Nathaniel.



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# PROTECTING VICTIMS OF DOMESTIC VIOLENCE

by John A. Henry

When most people think of crime, they think of something taking place “out there” – in the street, in a store, at a bar. Most people don’t think of crime as being something that takes place in the home. We think of our home as being a place we can go to escape the stress and danger of the outside world. For thousands of people throughout Riverside County, however, home is not an escape. For them, home is a place where the threat of violence is an everyday concern. The arguments and disagreements that are a part of most relationships quickly transform into threats, slaps, kicks and punches in relationships plagued with domestic violence. As time goes on, the victims of domestic violence can begin to feel that this violence is their fault – that they brought it on themselves. They often worry that if they call the police, they will be responsible for breaking up the family. They are sometimes reluctant to confide in family or friends, fearing that they will be judged. Many victims worry that their children will be taken away if the authorities learn that there is violence in the home. Some victims feel trapped in a violent relationship, fearing that they will not be able to withstand the loss of the abuser’s financial contributions, especially in these days of tough economic times. For these and many other reasons, it is often very hard for a domestic violence victim to leave.

Over the last 25 years or so, the way society views domestic violence has evolved. We now understand that the effects of domestic violence are not felt only by the abuser and the abused. Beyond the obvious emotional toll a child suffers from seeing someone they love being hurt, children learn about relationships by watching their parents. If they grow up with violence in the home, they will eventually see violence as being a normal part of a relationship. This realization has resulted in society no longer viewing domestic violence as a pri-

vate matter, to be dealt with only by those directly involved. Now, we understand that ending domestic violence requires action by family, friends, and society at large.

The criminal justice system’s handling of domestic violence has evolved, as well. Police officers receive specific training aimed at helping them to handle domestic violence cases more effectively. Many police departments and prosecutor’s offices have specialized units exclusively dedicated to investigating and prosecuting domestic violence cases. The Penal Code also sets forth specific terms and conditions that must be a part of any grant of probation in a domestic violence case. As a result, any person who is convicted of a domestic violence offense and placed on probation must be placed on probation for at least three years and attend a 52-week class aimed at changing the abuser’s behavior. The court is also required to issue a protective order prohibiting the abuser from committing any future acts of violence or harassment. When appropriate, the court can also prohibit the abuser from having any contact with the victim.

The Riverside County District Attorney’s office has been a leader in the effort to end domestic violence. Recognizing the unique issues presented by domestic violence, this office has teams of specially trained



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prosecutors assigned exclusively to prosecuting domestic violence cases. Cases are assigned to a specific prosecutor early on in the process, and that same prosecutor handles that case until its conclusion. This allows the assigned prosecutor to deal more effectively with the unique challenges and concerns in each case. It also makes it easier for the victim and the prosecutor to build a trusting relationship.

Additionally, in 2005, the first Family Justice Center opened in downtown Riverside. The second Family Justice Center opened in 2006 in Murrieta. There are plans to open a third center to service the eastern area of the county when space and funding become available. These centers are a unique partnering of community organizations, law enforcement, victim's services advocates and prosecutors in a "one stop shop," designed to provide domestic violence victims and their families support in a safe and secure environment.

Under District Attorney Rod Pacheco, the office has also maintained its history of raising public awareness of domestic violence. Every October, the office hosts an Annual "Walk-A-Mile" event as a part of National Domestic Violence Month. Additionally, the District Attorney's office, in conjunction with the Family Justice Centers, collects old cell phones as a part of Verizon Wireless' Hopeline project. The old cell phones are exchanged for new cell phones, which are then provided to domestic violence victims, enabling them to have a phone to use in an emergency.

Through these efforts, the Riverside County District Attorney's Office demonstrates its commitment to protecting victims of domestic violence from further suffering and to ensuring that domestic violence offenders are dealt with swiftly and justly.

*John A. Henry, Supervising Deputy District Attorney, is with the Riverside County District Attorney's office.*



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# LMIC

*by Richard Brent Reed*

In 2009, the voters of California passed Proposition 8, which placed into the state constitution a provision defining marriage as a connubial contract between a man and a woman. That definition is nothing new, but it is being challenged in the Ninth Circuit Court of Appeals. Whatever that court decides, the inevitable appeal will, eventually, place the issue before the U.S. Supreme Court: whether or not a state has the power to define “marriage.” That will be a question of federalism.

No Californian can enter into a marriage contract with someone of the same sex unless they do it outside California. A political system that allows one to live in a state where the laws suit one is called “federalism.” That’s why states have sovereignty. Prior to the Civil War, an escaped slave would head for a state where that government did not recognize slavery. A slave in Maryland, for instance, could step across the border to Pennsylvania and live free, as long as he or she did not return to Maryland.

The first argument before the court will, no doubt, be one of equal protection based on the 14th Amendment. A law, to be constitutional, must be generally applicable and not target a specific group. Defining marriage as a contract between different sexes applies to all applicants, regardless of race, creed, color, national origin, lifestyle, or sexual preference. Even if you have a lot of money, you can’t get the state of California to give you a marriage license if your co-licensee is the same sex as you are.<sup>1</sup> The law applies equally to everyone, no questions asked.<sup>2</sup>

When it comes to marriage laws, the country is a checkerboard. Same-sex marriage equivalents such as domestic partnerships or civil unions (as they are called back east) exist in such states as New Jersey, Oregon, Nevada, and California. Same-sex marriage is available in Iowa, Connecticut, Vermont, and Massachusetts. Several states – Maine, Maryland, Pennsylvania, West Virginia, North Carolina, Indiana, Illinois, Minnesota, Wyoming, and Delaware – prohibit same-sex marriage by statute, and Mississippi, Tennessee, Missouri, Arizona, Montana, and Alaska ban same-sex marriage in their constitutions.

1 No one is denied a marriage license because of who they are, as long as the parties to the contract are chronologically adult, numerically binary, and sexually opposite.  
 2 If marriage licenses were denied on the basis of sexual orientation, a straight man could not marry a lesbian, nor could a gay guy marry a straight woman.

Florida, South Carolina, Georgia, Alabama, Louisiana, Arkansas, Texas, Oklahoma, Kansas, Nebraska, Utah, Idaho, Virginia, Kentucky, Ohio, and Michigan have constitutional bans on all same-sex unions.

Not all laws impact everyone equally. Prohibitions against polygamy impact – well – polygamists. Anti-smoking laws inconvenience smokers more than non-smokers, though they apply equally to both.<sup>3</sup> Smoke-sensitive non-smokers have the option of living in a tobacco-free community like Calabasas,<sup>4</sup> but should think twice before moving to, say, Texas. The practicing polygamist, on the other hand, may have to relocate to Nigeria or South Africa, where such arrangements are winked at.<sup>5</sup>

Most states ban smoking in restaurants, bars, and non-hospitality workplaces. Idaho and Georgia ban it only in restaurants. Nevada, North Dakota, Pennsylvania, Louisiana, Arkansas, Tennessee, and Florida permit smoking in bars. Texas, Oklahoma, Kansas, Missouri, Alaska, Kentucky, Indiana, West Virginia, Mississippi, Alabama, South Carolina, and Virginia allow smoking pretty much everywhere. No state requires a smoker to take out a license, but there is nothing to prevent such a scheme.<sup>6</sup>

The Supreme Court is unlikely to impose uniform marriage laws throughout the country<sup>7</sup> and will not overturn Proposition 8. The same-sex couple will still have to go to Iowa, Connecticut, Vermont, or Massachusetts for total affirmation, just as the chain-smoker will have to find refuge somewhere in the Midwest. As for the chain-smoking, same-sex polygamist: there’s always South Africa.

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



3 Not even a non-smoker can light up a cigarette in Calabasas – not even as a joke.  
 4 Where smoking, even on public sidewalks and in apartment complexes, is a misdemeanor punishable by a fine of at least \$250.  
 5 On April 25, 2009, South Africa elected self-proclaimed polygamist Jacob Zuma who had just married his fourth wife. Two of his wives were currently living with him. Though polygamy is not, strictly speaking, legal in South Africa, same-sex marriage is.  
 6 Smoking should be defined as the relationship between a man and a cigarette. Pipe smokers and cigar aficionados are unfairly persecuted.  
 7 Marriage is not even mentioned in the Constitution.

# THE RCBA ELVES PROGRAM 2009

by Brian C. Percy



On December 24, 2009, the RCBA's Elves Program concluded its eighth and most successful year ever. This season, your Elves purchased, donated, wrapped, and delivered gifts to the largest and most diverse group of economically challenged families (38) we have ever served. The RCBA provided Christmas to 140 children and 65 adults throughout Riverside County.

Due to the faltering economy, our usual nonprofit identifier of families in need closed its doors this past year. As a result, we had the opportunity to work with a few new and different organizations. Those organizations included the Casa Blanca Home of Neighborly Service, the Childhood Cancer Foundation of Southern California, and the Riverside County Department of Public Social Services. Each organization's staff was very helpful and supportive of the program.

The success of the RCBA Elves Program is due to the great support and generosity of our membership. In many instances, as in past years, some members wore two and three Elves' hats! Helping others is infec-

tious, and Elf participation has grown beyond our immediate membership to include their office staff, their families, their clients and their friends. And now for some recognition....

## The Money Elves:

Despite the tough economy, the Money Elves really stepped up to the plate again this year. We received money from direct donations, along with money raised throughout this past year at bar events and contributions made at the time of membership renewal. This money provided gifts for every family member, along with a \$25 Stater Brothers gift card to help each family buy holiday dinner fixings of their choice.

I'd like to thank the following Money Elves for their support: Mary Jean Pedneau; Commissioner John Vineyard; Attorneys to Go (Judith Murakami); John and Taffi Brandriff; Barrie Roberts; Dale and Ruth Adams; United Diamonds; Best Best & Krieger Environmental Department partners and attorneys; Susan Nauss Exon; Bernard Donahue; Ellen Stern; Pamela Walls; Presiding Judge Thomas Cahraman; Daniel Greenberg; Vicki Broach; Laura





Rosauer; Judge Richard Van Frank (Ret.); Chris Harmon; Sandra Leer; Karen Wesche; Judith Runyon; Dan Hantman; Judge Irma Asberry; Judge Becky Dugan; George and Mary Ann Reyes; Justice John Gabbert (Ret.); Judge John Monterosso; Rosetta Runnels; Harry Histen; Jim Wiley; Juan Phillips; Veronica Reynoso; Justice James Ward (Ret.); Judge Doug and Theresa Weathers; Shelly Reylea; Andy Graumann, Nancy Brokaw; Lisa Yang; William Kenison; Rosemarie Roa; Harlan Kistler; Holstein, Taylor & Unitt; and many anonymous donors.

### The Shopping Elves:

Our many Shopping Elves arrived in a mood to shop and to find the best bang for the buck for our families! They generously spent a part of their evening handpicking hundreds and hundreds of special gifts at Kmart in Mission Grove. Kmart once again helped stretch our dollars by providing us with an additional 10% discount on all items purchased. The store manager was incredibly supportive, and she dedicated four of her staffers to ring up, bag, tag and load the Shopping Elves' purchases. Even the Kmart employees got into the giving spirit and thanked us for allowing them to be a part of our program.

This year's Shopping Elves were: Maria Hale; Andy Graumann; Shannon Jonker of the Law Offices of Robert Deller and her daughter;

Allyson Mandry; Marsha Wesche of the Blumenthal Law Offices; Karen, Mitch, and Danielle Wesche; Tera Harden, Deepak Budwani and Veronica Reynoso of the Law Offices of Brian C. Percy; Adrienne Bennett of Berman Berman & Berman; Marcos and Krystal Reynoso; Jesse Male; Meg Hogenson; Harry Histen and family; Jeannette and Reina Guerra; Charlene Nelson of the RCBA; Virginia Corona; Barbie Trent; Laura and Samantha Rosales and friends; Esther Percy; Edna Cote; Cristi Frevert of Swanson & Myers; Judge Charles Koosed and family; Arlene Sineguar; Pamela Bratton, Danielle Hamlin, Amanda Lopez, and Alex Bratton of Bratton & Bratton; Christina Sovine and her daughter, Justice Bailey; Melissa Moore; Melissa Jacobson; Sharon Nelson; Rosetta Runnels; and Tracy Dentsey.

### The Wrapping Elves:

Due to the big jump in families served, the Wrapping Elves needed to be a model of efficiency, and they were! With over 200 individuals getting gifts, the Wrapping Elves blazed through the toys, clothes, and household items over the course of two nights and wrapped the largest number of items ever. Their wrapping skills would make them the envy of any fine department store.

This year's Wrapping Elves were: Maria Hale; Dan Hantman; Riley Disenhouse; Connie Younger; Carla



Kralovic; Judge Dallas Holmes (Ret.) and his wife, Pat; Maria Dagostino; Sabrina Alt; Pam Bratton; Danielle Hamlin; Venessa Lewis; Paula McIntyre; Karen Griffith; Clifford Bryant; Jenniemarie Ramirez; Christy Glass; Sheila Dillard; Marcia LaCour; Jessica Gladden; Christina Sovine and her daughter, Justice Bailey; Bruce Larsen; Commissioner John Vineyard and his two children, James and Kathleen; Commissioner Paulette Barkley and her son, Noah; Lynn Venegos; Jennifer Wong; Harry Histen, his wife, Sherise, and his step-daughter, Sahdia; Lisa Yang, Rosetta Runnels; and Tera Harden, Deepak Budwani, Veronica Reynoso and Brian C. Percy of the Law Offices of Brian C. Percy, APC.

### The Delivery Elves:

This year, our Delivery Elves touched down in a wider geographic area than in past years, including the following Riverside County communities: San Jacinto, Mira Loma, Corona, Hemet, Riverside, Moreno Valley, Perris, Desert Hot Springs, Cathedral City, Palm Desert, Indio, Thermal, and unincorporated areas scattered throughout the middle and western part of Riverside County.

The Delivery Elves who donated their time and gas were: Commissioner Pamela Thatcher; Shannon Jonker and family; Harry Histen and fam-

ily; Teresa Burke; Adrienne Bennett; Deepak Budwani; Veronica Reynoso and family; Tera Harden; the Rosales family; Nanci McMurray; Jesse Male; Meg Hogenson; Jeannette Guerra; Jennifer Smith; Virginia Corona; Sabrina Dagostino; Maria Hale; Christina Sovine and family; Rosetta Runnels; Diana Renteria; Pamela and William Bratton; Melissa Jacobsen; Karen Wesche and family; Susan Exon and family; and Lisa Yang of the RCBA.

### Special Thanks:

To my assistant Veronica, whose dedication and organizational skills made this one of the most streamlined shopping and delivery experiences we've ever had. To Veronica's husband Marcos and their two children, Krystal and Marcos Jr., not only for their participation, but also for being extremely patient with Veronica's absences on those extra-long days when she kept everybody moving in the right direction. To the Riverside County Bar Association staff, especially Lisa Yang and Charlene Nelson, for all their energy and skill. To the management and social workers of the Casa Blanca Home of Neighborly Service, the Childhood Cancer Foundation of Southern California, and the Department of Public Social Services, for making sure we helped the most needy families in the county.

And once again, a very big "thank you" to the wonderful manager and staff of the Big Kmart at Mission Grove in Riverside.

Finally, a big "thank you" hug to the Elves themselves. Your wonderful spirit and camaraderie (which you can see in the photos accompanying this article) were evident throughout all the events.

For those who may not have tried being an Elf yet, we suggest you put it on your agenda for this upcoming December. It is truly a great way to share the joy of the holiday season.

*Brian C. Percy, president of the RCBA in 2002, is the chairperson (and Head Elf) of the Elves Program.*

*Photographs courtesy of Brian C. Percy*





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# TO REVEAL OR NOT TO REVEAL?: THAT IS THE QUESTION

by Laura C. Rosauer

"I hate her so much, I want to kill her. I can picture my hands wrapped around her neck, my fingers squeezing so tight she can't breathe anymore."

"I can't believe the way things are going in trial. I am so mad I am going to do something to her."

I received this last threat on my answering machine several years ago. I was representing a husband in an ongoing custody battle. We were in the middle of trial, with his ex-wife testifying and slinging mud against my client. The allegations were mounting, as they usually do in custody battles. As I listened to the messages on the answering machine, I couldn't believe what I had just heard. He didn't have to say his name; I recognized his voice. He was loud, upset and angry. "I can't believe the way things are going in trial. I am so mad I am going to do something to her." Her? Which her? The judge? The wife? The wife's attorney? Worse yet, me? Should I call the police? Can I call the police? More questions filled my head than answers. Fortunately, a phone call to the State Bar led me to Rules of Professional Conduct, rule 3-100<sup>1</sup> and answers to my questions.

Our legal ethics prohibit us from revealing information disclosed by a client without the client's informed consent. (Rule 3-100(A).) Maintaining client confidences – no matter how horrific the detail – is a hallmark of our professional ethics. In fact, we are legally sworn to silence: An attorney has a duty "to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." (Bus. & Prof. Code, § 6068, subd. (e)(1).) But at what price? Is silence really golden if it means someone else's life is at stake?

Contrary to public opinion, attorneys are human beings. We are not (always) as cold and heartless as portrayed in legal jokes. Attorneys realize and appreciate the value of human life (who else is going to pay our fees?). But as attorneys, how do we balance the need for client confidentiality with our moral duty as human beings to safeguard others?

The result of this delicate balancing act is rule 3-100(B), a very narrow exception to the general rule prohibiting disclosure of a client's confidential information: An attorney may disclose confidential information "to the extent that the [attorney] reasonably believes the disclosure is necessary to prevent a criminal act that the [attorney] reasonably believes is likely to result in death of, or substantial bodily harm to, an individual." (Rule 3-100(B).)

Before calling the police the next time a client makes a threat, realize that this rule severely limits the circumstances under which you may disclose a client's confidential information:

1. The confidential information must relate to a *criminal act*.
2. The criminal act must be of the type that is likely to result in *death or substantial bodily injury* to an *individual*. (Thus, an attorney cannot disclose threats of vandalism or threats to animals, for example.)
3. The confidential information must relate to a *future or ongoing criminal act*, not a past, completed criminal act.
4. The attorney must *reasonably believe* that disclosure is necessary to prevent the criminal act and the attorney must *reasonably believe* that the act is likely to result in death or substantial bodily injury to a person. (Thus, you will be judged by what you subjectively believed, as well as what a reasonable person would have believed under the circumstances.)

Perhaps what is most interesting about this rule is that it does not require you to disclose the information; rather, disclosure is permissive. (Rule 3-100(B).) In other words, if your client informs you that he is going to shoot his wife, the rule does not require you to reveal it. But if you're going to call the police, you better talk to your client first. Before you disclose the confidential information, you "shall, if reasonable under the circumstances: (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii) and (2) inform the client, at an appropriate time, of the member's ability or decision to reveal information." (Rule 3-100(C).) So yes, before you disclose, you must, "if reasonable under the circumstances," rationalize with the irrational. Nobody said disclosure would be easy.

After all that, can you now disclose? The discussion to rule 3-100 lists several factors for you to consider in determining whether to disclose the confidential information: The amount of time you have to make the decision about disclosure; whether the client has made prior, similar threats, and if so, whether the client acted or attempted to act upon them; whether you believe your efforts to persuade the client not to commit the criminal act were successful; the extent of any adverse effects (e.g., criminal)

<sup>1</sup> All further rule references are to the Rules of Professional Conduct.

upon the client if you disclose; the nature and extent of the confidential information that must be disclosed to prevent the criminal act; and whether the prospective harm to the victim is imminent.

If you determine that you may and are going to disclose, you can disclose only those pieces of information that you believe are reasonably necessary to prevent the criminal act. (Rule 3-100(D).) This rule also limits your disclosure to only those people who can prevent the harm (sorry, your 15 minutes of fame on Jerry Springer will have to wait). Interestingly, the discussion to rule 3-100 suggests that the attorney should consider making an anonymous disclosure to the potential victim or police.

As you can see, the specificity of this rule requires you to jump through several hoops before you may disclose. But remember, the rule was created as a compromise between our ethical duty to maintain client confidences and our moral duty to preserve human life. Therefore, the rule was narrowly constructed to make disclosure a last resort.

In my case, after I read and reread rule 3-100, I called my client. Before I could say anything, he apologized for leaving the message. He explained that he was “blowing off steam” and that he was frustrated that his wife was lying about him in court. Throughout this conversation, my client was calm and remorseful. Nevertheless, I advised him of the criminal consequences if he should harm someone and reminded him that it would not help his children to have a father in jail. I also informed my client that if he should

make those threats again, and if I felt I could not talk him out of it, I could disclose the threat to the police. After this conversation, I did not believe, nor do I think the infamous reasonable person would believe, that my client was going to carry out his threat. (In my analysis, I considered that my client had never, at least to my knowledge, threatened anyone before; he hadn’t uses specifics, such as what he would do, when he would do it, etc.; and he had calmed down and realized the inappropriateness and gravity of making such a statement.) Although I finished representing my client through trial, I declined his request to represent him at a later post-judgment hearing. However, had this been a situation in which I felt I was warranted in disclosing the confidential information pursuant to rule 3-100(B), I would have filed a motion to be relieved as counsel. (See rule 3-700(B); the discussion to rule 3-100 suggests that a motion to be relieved would be mandatory.) But remember, do not disclose the confidential information in the motion to be relieved, since disclosure is limited to only those persons who can prevent the criminal act.

If you find yourself in an unfortunate situation such as I did, I highly recommend that you read rule 3-100 and its accompanying discussion before you do anything else.

*Laura C. Rosauer has practiced law in Riverside for over 12 years. She has devoted the last six years to family law. Before going into private practice, she was a deputy district attorney.*



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# OPPOSING COUNSEL: LAURA C. ROSAUER

by Kirsten B. Shea

Laura Rosauer is not afraid of taking on new challenges. It was only one year ago when Laura traveled with her husband, Judge Patrick Magers, and some of their close friends to the Amazon rainforest in Brazil. Laura fondly recalls this trip as being one of her favorites, because at every turn she discovered wildlife in its own habitat, including sloths, monkeys and Caiman crocodiles. Laura recalled that on this trip, she got up the nerve to do a lot of things she had never dreamed of. For instance, she had her picture taken while holding a Caiman crocodile. In



Laura C. Rosauer

addition, Laura and her companions took a guided canoe trip on the Rio Negro River and went fishing for piranhas. Laura said, "Fishing for piranhas was a real challenge for me, but in the end I totally enjoyed myself. I even ate piranha and, yes, it tasted like chicken."

In her early life, Laura thought she would become a veterinarian. However, when she entered California State University at Fullerton, she found herself majoring in economics, which interested her. It was during her studies in economics that she took a business law class, which included a short introduction to criminal law. Laura immediately found herself interested in learning more about criminal law, and after taking a few more classes in the area, she changed her major to criminal justice.

After graduating from college, Laura attended law school at California Western School of Law in San Diego. Despite some of her early misgivings about law school, Laura excelled in her classes, and by her second year she was enjoying law school. She admits that having the ability to choose her classes helped her a great deal. Laura was still drawn to criminal law and focused her classroom work in that area. During her summers, Laura worked as a law clerk for the San Diego City Attorney's office and the Orange County District Attorney's office, as well as for Riverside attorney Gary A. Foltz.

Laura graduated from law school magna cum laude in 1993. She then accepted a position as a deputy dis-

trict attorney with the Riverside County District Attorney's office. Laura remained at the District Attorney's office for over six years. During this time, she litigated serious felony cases, including murder. Laura fondly recalls that in her early days at the DA's office, one of her supervisors nicknamed her "the ankle biter."

Laura enjoyed her time at the District Attorney's office immensely. She enjoyed the crime-fighting element of her position, and she would often make visits to the crime scene to better understand how to convey the story to the

jury. Not only did she gain superior trial skills, but she also met some of her life-long friends, including Judge Paul Dickerson, who introduced her to her husband.

In 2000, Laura joined the Leo A. Deegan Inn of Court. Here she met a group of close friends. By joining the Inn, Laura was able to interact with attorneys who practiced in civil litigation, including Judge Michael Donnor, Judge Doug Weathers, Judge Bernard Schwartz, Judge David Bristow, and Kurt Yaeger.

In fact, it was Judge Donnor who encouraged Laura to follow her dreams of opening her own law practice in 2004. Laura decided to open a practice in family law because it was similar to work in criminal law, as it requires frequent appearances in court and the cases have a dramatic impact on people's lives.

Since that time, she has developed a successful practice and litigated numerous trials, including restraining orders, property division, support, custody and contempt.

Laura admits that family law practitioners have been faced with new challenges since the real estate bubble burst. She states, "No longer is a family's real property asset easy to divide." Most of the time, the property is under water, and it is difficult for the parties in a divorce to take on making the entire mortgage payment on their own. In these cases, Laura finds herself being a financial counselor as well as attorney to her clients.

Laura also takes time to relax by spending her weekends with her husband on their sailboat in Newport



Beach. Laura states that her favorite sailboat trip was when she and her husband sailed in the Sea of Cortez, because it felt as if they had the place to themselves.

In addition to spending time on their sailboat, Laura also relaxes by gardening, reading mysteries and spending time with her dog – a Cavachon (a mix of a Cavalier King Charles Spaniel and Bichon Frise). Laura and her husband also love to travel with friends. They are looking forward to an upcoming sailboat trip to the British Virgin Islands this spring.

Laura Rosauer can be contacted at the Law Offices of Laura C. Rosauer, 3877 Twelfth Street, Riverside, CA 92501, (951) 328-8400.

*Kirsten B. Shea, a member of the Bar Publications Committee, is an attorney at Thompson & Colegate in Riverside.*



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# JUDICIAL PROFILE: HON. JOHN G. EVANS

*by Donna Thierbach*

When I scheduled an interview with Judge John Evans, I thought he was a Riverside County native, since he graduated from the University of California, Riverside (UCR) and Citrus Belt Law School and practiced law in Riverside County. However, I soon learned he was born in Virginia, though he never lived there. How does that happen? His father worked for Pan Am, so his family moved a lot! Growing up, he lived in New York, Florida, Puerto Rico, and Torrance, California, attending six different schools. However, he lived in Puerto Rico from the fifth grade through the eleventh grade, and that is where he developed his passion for his hobby, surfing.

So how did Judge Evans end up in Riverside, especially when we do not even have a beach? Judge Evans explained that after he graduated from high school in Torrance, he was accepted at both Humboldt State University and UCR. He thought Humboldt was too rainy and dreary – and it did not hurt that he had a friend who lived in Riverside – so he selected UCR. Shortly after he started college at UCR, his parents moved to Virginia, so during the holidays and summers, he would visit his family in Virginia and work at Dulles Airport “throwing bags.” (I guess that explains the condition of checked luggage.)

Judge Evans’ great-grandfather and grandfather were both attorneys, but that is not how his interest in law developed. Rather, when Judge Evans graduated from UCR, he had no idea what he wanted to do. However, his girlfriend, whom he later married while in law school, had decided to attend Citrus Belt Law School (now known as Southern Law School) in Riverside, so he thought he might explore that as an option. His entrance interview with the founder of the school, retired Judge Elwood Rich, was such a positive experience that he knew he was making the right decision. In fact, he remembers the entire law school experience as a very happy time in his life. He attended law school part-time during the evenings and worked full-time during the day. Initially,



*Judge John G. Evans*

he worked as a substitute teacher, and then after substituting at Notre Dame High School for two weeks, he was offered a full-time job at the school teaching math the following year.

After graduation from law school, Judge Evans went into a general practice with Harding & Miller, then after a year, he moved to Furness, Flory & Middlebrook, doing insurance defense work. Mr. Middlebrook had been his trial practice teacher in law school, and Judge Evans enjoyed an excellent working relationship with him. In 1985, he felt it was time to move to a larger firm, so he moved to

MacLachlan, Burford & Arias. Then, in 1996, he began working as a sole practitioner. His practice was located in Redlands, but in 1998, he moved to the desert and opened a second office in Palm Desert.

Judge Evans said he enjoyed private practice, but after 28 years of litigation, he thought it was time for a change, and he decided to pursue a judgeship. He enjoys being a judge and thinks of it as regaining his mental freedom in exchange for giving up his physical freedom. As a sole practitioner, he had a lot of leeway in the organization and scheduling of his day, but worked long hours, including evenings and weekends, and always had his practice on his mind. As a judge, he is tied to his courtroom from 8 a.m. to 5 p.m., but while he still occasionally works evenings and weekends, he is now able to enjoy his time off, especially his weekends at the beach, surfing. He also enjoys making surfboards and would like to take up tennis again. He confessed he is still adjusting to having free time in the evenings and weekends.

Judge Evans has been happily married to Donna Ayotte for the past 10 years. Donna’s name probably sounds familiar to you desert folks, because she is the “Ayotte” in Ayotte & Shackelford Computerized Court Reporting Service, which has been serving the desert area since 1976. Judge Evans has four children from a previous marriage and Donna has two, so with six children it sounded a little bit like the Brady Bunch! The children are now ages 20-29 and have interesting occupations,

including an intellectual property lawyer, a paramedic, an EMT, and a Peace Corps volunteer. Judge Evans' youngest son is a junior at UCLA and shares his father's passion for surfing and making surfboards.

Judge Evans was appointed to the bench in July 2008 and was sworn in on September 16, 2008. Since that time, he has been assigned to a civil courtroom in Indio. He has developed the practice of beginning each day in his courtroom with a quotation that emphasizes civility. He noted he has yet to do a civil jury trial but has tried a number of criminal trials, which he finds interesting, and he enjoys providing constructive criticism to new young trial lawyers appearing in his courtroom.

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



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The appellate practice department at Stutz Artiano Shinoff and Holtz is headed by partner Paul V. Carelli IV. Mr. Carelli is a certified appellate specialist as recognized by the State Bar of California's Legal Board of Specialization. The appellate department regularly handles proceedings in the California Courts of Appeal, the California Supreme Court and the U.S. Court of Appeals for the Ninth Circuit.

### CONTACT INFORMATION:

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## Riverside County Superior Court Announces Plan to Close Autry Court

Riverside County Superior Court Presiding Judge Thomas H. Cahraman has proposed that the Autry Court be closed effective July 1, 2010.

The court, located at 3700A Tachevah Drive #107, in Palm Springs, was never more than a temporary measure, necessitated by extraordinary case management exigencies, Cahraman noted. "At the time we opened Autry, many litigants would have had justice denied had we not opened that courthouse. Since that time, the court has added additional courtrooms throughout the county to try civil cases. The court has not postponed a civil case for lack of a courtroom since June 15, 2009. These points, coupled with our current budget difficulties, make the decision to close the Autry courthouse a prudent one."

The Palm Springs Courthouse, located at 3255 E. Tahquitz Canyon Way, Palm Springs, will not be affected by this change.

Pursuant to California Rule of Court 10.620(d)(3), the court is seeking input from the public regarding the planned closure before making the final decision. Pursuant to California Rule of Court 10.620(e), any interested person or entity who wishes to comment must send the comment to the court in writing or electronically. Written comments should be directed to the Court Executive Office at 4050 Main Street, Riverside, CA 92501. Those interested in submitting comments electronically should e-mail them to [courtwebassistance@riverside.courts.ca.gov](mailto:courtwebassistance@riverside.courts.ca.gov).

Comments must be submitted by 5:00 p.m. on Friday, February 19, 2010, in order to be considered as part of the final administrative decision.

## New Riverside County Superior Court Filing Fees – Effective January 1, 2010

The Judicial Council has announced that new, revised, and clarified civil fees have gone into effect in the state's trial courts effective January 1, 2010. Riverside County Superior Court has updated its fee schedule to incorporate these changes.

The new fees – which are being charged by all trial courts statewide – include fees for applications, petitions and responses related to discovery in out-of-state cases (Code of Civil Procedure sections 2029.300, 2029.610 and 2029.620). These changes are the result of legislation that was passed in 2008 through Assembly Bill 2193.

The updated fee schedule can be found on the court's website at <http://riverside.courts.ca.gov/feeschedule.pdf>.

## State Bar Notice — Email address will be required starting February 1

All California attorneys must provide an email address to the State Bar beginning February 1, 2010, under a new rule of court approved by the Supreme Court. Inactive lawyers over 70 are exempt from the new requirement.

Under Rule 9.7, all members of the State Bar must create an online profile through the Bar's secure membership system. Currently, 150,000 lawyers already have done so, and they need do nothing further.

But on February 1, attorneys who move will be able to change their address and phone number only through My State Bar Profile. Online address change capability has been available for several years and is widely used. In 2008, 58,000 address changes were processed, 40,000 online.

Lawyers are statutorily required to update their address within 30 days of a move.

The private email addresses will be recorded in the Bar's database and will be used only for official communications, such as courtesy reminders related to deadlines and updates of new regulations that affect members. Attorneys also will have the option to provide a public email address, which will be available to the public on the Bar's website.

Notification of disciplinary or regulatory proceedings that may lead to a loss of license will continue to be sent through regular mail.

In addition to the 150,000 private email addresses the Bar now has, another 30,000 lawyers have provided a public address. About 40,000 lawyers have not provided an email address.

Although not required by the rule, the Bar's administrative policy will provide an exemption to inactive lawyers over 70. In addition, lawyers who do not have an email address may apply for an exemption by completing a form provided by the Bar.

The Member Services Center (888-800-3400) will conduct an outreach campaign to fully apprise the membership of the new requirement.



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### Office Space – RCBA Building

4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Sue Burns at the RCBA, (951) 682-1015.

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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 Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@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 February 28, 2010.

**Barbara A. Bell** – Healey & Healey, Palm Desert

**Melanie C. Blackmer** – Sole Practitioner, Perris

**Christopher J. Buechler** – Sole Practitioner, Riverside

**Karen L. Capasso** – Smith Mitchellweiler, Riverside

**Kazoua Cha** – Smith Mitchellweiler, Riverside

**Tina M. Chen** – Law Office of Tina Chen, Ontario

**Nami Chun** – Clayson Mann Yaeger & Hansen, Corona

**Marc Cohen** – Law Office of Marc Cohen, Upland

**Tracy A. Collins** – Law Offices of Tracy Collins, Agoura Hills

**Candace A. Cromes** – Sole Practitioner, Corona

**Jennifer M. Daniel** – Sole Practitioner, Redlands

**Carrie A. Gabriel** – Sole Practitioner, Riverside

**Tashfeen Haq** – Sole Practitioner, Perris

**Rachel Hora** – Sole Practitioner, Riverside

**Daren H. Lipinsky** – Brown & Lipinsky, Chino Hills

**Jemma Maher** – Law Offices of Don Featherstone, Corona

**Christopher Mandarano** – David Justin Lynch & Associates, Palm Springs

**Brent R. McManigal** – Gresham Savage Nolan & Tilden, San Bernardino

**Kelly Moran** – Thompson & Colegate, Riverside

**Matthew Murillo** – Law Offices of Manuel J. Barba, Riverside

**Kimetra Newton** – Sole Practitioner, Fontana

**Michael A. Padgett** – Brown & Lipinsky, Chino Hills

**Walter B. Scott** – Law Offices of Walter Scott, Riverside

**Robert C. Smith** – Law Office of Robert C. Smith, Montclair

**Gregory Snarr** – Gresham Savage Nolan & Tilden, Riverside

**Yi Tong** – The Teresa Rhyne Law Group, Riverside

**John A. Varley** – Financial Law Associates, La Mesa

**Lowell M. Zeta** – Adorno Yoss Alvarado & Smith, Santa Ana

**Edward J. Zorn** – Real Estate Peace, Corona

Renewal:

**Manal Jeries Sansour** – Law Offices of Manal J. Sansour, Riverside





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