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MAGAZINE

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The Economy and Criminal Defense

Surviving the Budget: One Court's Story
of Riding out the Storm

The Great Recession's Impacts on Public
Education

Ensuring Public Safety While
Maintaining Fiscal Responsibility

Freelance Attorneys: Building Your
Practice and Profits and Improving Client
Service

The Effects of *Brown v. Plata* and the
Budget Crisis

Budget Cuts Will Severely Affect the
Federal Courts



The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

CALENDAR

SEPTEMBER

5 Holiday – Labor Day

RCBA Offices Closed

7 Bar Publications Committee

RCBA – Noon

13 PSLC Board Meeting

RCBA Boardroom – Noon

Landlord Tenant Section Meeting

Cask ‘n Cleaver – Riverside – 6:00 p.m.

14 Mock Trial Steering Committee

RCBA - Noon

15-18 State Bar of California 84th Annual Meeting

Long Beach

20 Family Law Section

General Meeting – Noon

RCBA John Gabbert Gallery

No MCLE

21 RCBA Annual Installation of Officers

Dinner

5:30 Social Hour, 6:30 Dinner & Program

Mission Inn, Music Room

22 Barristers Meeting

Salted Pig, 5:30 p.m. - 7:00 p.m.

“Voir Dire”

OCTOBER

5 Bar Publications Committee Meeting

RCBA Boardroom - Noon

11 Red Mass

Our Lady of the Rosary Cathedral

San Bernardino - 6:00 p.m.





by Robyn A. Lewis

This is my very first President's message – I can't believe it! I am so excited and am honored to be serving as President for the 2011-2012 term and am looking forward to the challenges that lie ahead.

For those of you who don't know me, I am a civil practitioner specializing in personal injury. I share a practice with my husband, Jonathan Lewis, at J. Lewis & Associates, here in downtown Riverside. I am originally from New Jersey and moved to Southern California in 1998 after graduating from Seton Hall University School of Law. After passing the bar exam that same year, I began my job search and, like many other new attorneys, had difficulty finding a job. A friend of mine, Moira Kamgar, had worked as an attorney in Riverside and had urged me to try to find a job there. After she introduced me to Harlan Kistler, I began working for him in 1999 until we parted ways in 2009.

On a personal note, my husband and I welcomed triplet sons, Hayden, Noah and Henry, in July of 2010. It has been a crazy, wonderful, busy year!

One of the first things that struck me about Riverside when I first began working was the tight-knit legal community that it offered. Within just a few months, I was already seeing familiar faces in court or working again with the same opposing attorney on another case. When I started to become involved in the RCBA, Barristers, and the Leo A. Deegan Inn of Court, I realized how truly blessed I am to be part of such a wonderful community.

Through the connections that I have made by participating in the bar association, I have learned so much.

My goals for this year as President are simple – it is important to me to ensure the financial security of our organization so that it can continue to provide financial assistance for so many worthwhile programs and causes, both in our legal community and the greater community at large. It will also be my priority not only to increase the bar association's membership, but to really encourage existing members to become active. Participation is the catalyst for change, and there are so many worthwhile causes to become involved in as a member of the bar association. By volunteering time at the Public Service Law Corporation, or coaching Mock Trial, or helping out with the Elves Program, or mentoring a new lawyer, you can make a difference.

The theme of this *Riverside Lawyer* deals with issues involving the financial crisis that we are facing today. There can be little doubt that the economy has impacted all of us. From large firms to the solo practitioner, none of us are insulated from the effects of the recession. As a personal injury attorney, I have noticed changes in the values of claims, which is largely due to people's driving habits, the amount of insurance coverage available (both liability and health), and the insurance companies offering little money, as they too feel the pressures of economic stress. My husband, who also does general civil litigation and family law, has had issues with clients not being able to pay their bills and potential clients who just don't have the funds to retain him. I am sure that we are not alone in feeling those types of pressures.

I hope that attorneys realize, though, that they should not cut their RCBA dues from the budget as they try to scale back. Being a member of the RCBA in these tough economic times is crucial. Not only does your membership provide you with an opportunity to network with other attorneys, which can afford you business, but it also provides you with the opportunity to attend free MCLE seminars, many of which will be focused on dealing with navigat-

ing the waters during these tough economic times. RCBA membership is priceless.

I would like to take this opportunity to welcome Jack Clarke, Jr., Richard Roth and Jean-Simon Serrano to our Board of Directors. They will be joining Richard Ackerman as our directors-at-large. Also joining our board this year is Scott Talkov as Barristers President. I know Barristers is going to have a great year, as Scott's enthusiasm is contagious. I would also like to thank Kira Klatchko, Jackie Carey-Wilson, Chad Firetag, Chris Harmon and Harlan Kistler for their continued hard work and devotion to our bar association. I am looking forward to working with all of them this year.

It is important to also recognize the efforts of Jim Manning and Tim Hollenhorst, who are not returning to the RCBA Board. I also must commend Harry Histen, who just finished up his term as Past President. Harry has done so much for the RCBA, and I want to publicly thank him for his service.

I would also like to take a brief moment to express my gratitude to Aurora Hughes, whom we lost earlier this year to ALS. Aurora, along with Louise Biddle and Charlotte Butt, was instrumental in my becoming involved in the bar association. She was always an amazing example of the type of attorney I aspired to be, and I miss her dearly. I wish she were here to help me this year, and I only hope she knew how very much all of her efforts and her friendship were appreciated.

And finally, I need to take just a brief moment to thank my husband, Jon. When you have your own practice and three one-year-olds at home, it is a lot. But when you have to share your wife with the bar association on top of all of that, you have to be a special kind of person, which Jon is. He is always supportive and always encouraging, and I want to thank him for giving me the time that I will need this year to fulfill my duties as president. I love him very much!

I look forward to this year and truly am honored to be serving you as President this year.



Letter to the Editor

Gentlefolk,

Thank you for producing the June issue dealing with the dreadful practice of human trafficking. The articles were excellent, went far in describing the horrors of trafficking, and made the point that the practice is not something to be found in a galaxy far away, in distance or time. It exists throughout the world, and here, and now. None of the articles dealt, however, with one of the most obvious factors causing the practice to flourish – the combination of the principle of supply and demand with the astonishing growth in the human population of our planet. Human life is now cheap – less expensive in our time than ever before. And it is sold for less as a result.

The technology which creates wondrous products, and enhances everything from manufacturing to agriculture, is a double-edged sword, one which provides luxury for those who can afford it, and destitution for those who are displaced. We are provided evidence on a daily basis, virtually whenever we watch a news program (one that provides news of events other than the misadventures of celebrities) that unemployment and poverty seem to be increasing throughout the world, regardless of the political systems under which most human beings must survive. The problem is particularly acute among the young – and there are a great many young. Revolution and chaos seem the natural result. So is slavery, and I would suggest that more people are enslaved now than at any other time in human history. As other resources become more scarce, the human beings who desperately need them become ever more numerous.

You have rarely produced an issue which demonstrates just so well why economics is called “the dismal science.” We are oversupplied with human life, and that oversupply has implications for society which cannot be overlooked – in virtually any context. The morality and practice of slavery, physical or economic, must be considered in the context of and very likely the result of an explosion in human population which also has or will drain every resource, and foul our nest. At least in my view, that explosion is the greatest threat to the survival of our species, and any others which we might eat, or burn, or evict, both physically and morally.

Joseph Peter Myers



BARRISTERS PRESIDENT'S MESSAGE

by Scott H. Talkov



“Building Leadership for a New Generation”

The worst financial crisis in modern history has limited the professional opportunities for young and new attorneys at private, government and public interest law offices. The Barristers have responded by expanding the avenues for our colleagues to learn about the law, give back to our community, network, socialize and exemplify the democratic ideals of the RCBA.

Educating Future Leaders

The Barristers aim to provide innovative MCLE events that will prepare young attorneys for excellence in their legal careers. This past January, the Barristers took the lead in welcoming newly elected District Attorney Paul Zellerbach and longstanding Public Defender Gary Windom as these leaders explained their perspective on “Access to Justice” to a standing-room only crowd. In April, we organized a law firm management panel, allowing the 80 attorneys in attendance to gain an inside view of internal decision-making and business development at some of the most respected firms in our region. The panel included Eric Garner (BB&K), Dave Moore (Reid & Hellyer), Mark Ostoich (Gresham Savage), Bruce Varner (Varner Brandt) and Paul Grech (Grech & Firetag), with introductions by Barristers at each firm. Both of these events were sponsored by various law firms, attorneys and LexisNexis, thereby offsetting the cost of food and drinks for the Barristers. In August, we hosted a successful panel on medical marijuana, discussing the legality of prohibiting dispensaries through zoning, which included Barrister Curtis Wright of BB&K. Over the next year, we invite all Barristers to join us in making these creative and well-attended educational events a success.

Serving Our Community

The Barristers have also renewed their multi-decade commitment to the students of U.C. Riverside by launching the new Associated Students of UCR Legal Education Clinic, which connects students, through a new online portal, to Barristers who provide legal advice in their areas of practice at no cost. This pro bono opportunity allows young lawyers to gain valuable skills in their chosen areas of practice while giving back to future leaders in our region.

Socializing and Networking

While the food fight at the Cask ‘n’ Cleaver is now a legend, passed down by Barristers who are many decades into their careers, the story reminds many that Barristers has long been the place for young attorneys to socialize and network. In this spirit of camaraderie, the Barristers hosted a July bar review in downtown Riverside, organized by Amanda

Schneider of Gresham Savage, and a June social at Sevilla, the costs of which were offset by the generosity of the Collision Center of Riverside. The social also included the first election in recent memory that allowed the membership to elect their Board of Directors.

Building Democratic Leadership

I am honored to announce that our democratically elected board will include Vice-President Brian Pedigo of the Pedigo Law Corporation, Treasurer Arlene Cordoba of the Legal Action Group, Secretary Amanda Schneider of Gresham Savage, and Member-at-Large Sophia Choi of Riverside County Counsel. As President, I will represent the Barristers on the Board of Directors of the RCBA, the most successful inland bar association.

In the spirit of building democratic leaders by modeling our parent organization, the leadership of Barristers will propose an amendment to allow the board to include additional members-at-large, as well as the past president. The amendment also removes the final remnants of the lock-step system that was almost

entirely relegated to Barristers history by a unanimous vote in April. To ensure that this merit-based board best represents the interest of the membership, I encourage all Barristers to participate in the election, which will take place, should the amendment pass, on the same day as the anticipated vote on the amendment: October 12, 2011, at the Barristers meeting.

For a full copy of the proposed amendment, email barristers@riversidecountybar.com or attend the Thursday, September 22 social (from 5:30 to 6 p.m.) and education event on "Voir Dire" (starting at 6 p.m.) at the Salted Pig, featuring Michael J. Marlatt of Thompson & Colegate and John Aki of the Riverside District Attorney's office, organized by Barristers Kelly Moran and Sophia Choi.

Join our email list and Facebook group at <http://riversidecountybar.com/barristers> for more information.

Scott Talkov is the newly-elected 2011-12 President of Barristers, as well as an attorney with Reid & Hellyer, where he practices real estate and business litigation.



**RIVERSIDE AND SAN BERNARDINO
SUPERIOR COURTS
COMPLETE TELEPHONE AND E-MAIL CONVERSION**

Riverside Superior Court:

For the latest information and current listing of telephone numbers, please visit the court's website at www.riverside.courts.ca.gov. Get the latest information by signing up for Listserv emails at <http://listserv.riverside.courts.ca.gov>.

As part of the court's transition to a new telephone system, effective August 29, 2011, the court's direct fax filing telephone numbers will change. The new numbers are listed on the direct fax filing information page on the court's website at <http://riverside.courts.ca.gov/faxlist.shtml>.

San Bernardino Superior Court:

A major effort to convert the Superior Court of California, County of San Bernardino to a new telephone system is now complete. A full set of the new published phone numbers is available at <http://tinyurl.com/newsbphones> or from the Court website <http://www.sb-court.org>.

San Bernardino Court e-mail addresses changed to recipient@sb-court.org in April 2010. Effective June 17, 2011, mail sent to the old addresses (recipient@courts.sbcounty.gov) will no longer reach the intended recipient. Please update any old addresses to the new format.

THE ECONOMY AND CRIMINAL DEFENSE

by Donna Thierbach

Gideon v. Wainwright (1963) 372 U.S. 335 held it is a fundamental right of an indigent defendant in a criminal trial to have the assistance of counsel. Naturally, this right does not change even in difficult economic times. The most cost-effective means of delivering the required legal services is through a public defender's office. So in the face of budget cuts and shortfalls, how is the public defender's office able to continue to provide quality legal service to indigent clients?

Assistant Public Defender Brian Boles, along with others in the office, bears the burden of preparing a balanced budget for the Law Offices of the Public Defender of Riverside County. He said it is a difficult budget environment, and, unlike law enforcement agencies, which receive sales and property tax money and grants, the public defender's office is almost totally dependent upon money from the county general fund.

Last year, the public defender's office was required to take a five percent reduction by the Board of Supervisors. This resulted in the layoff of 15 paralegals, which basically cut the paralegal staff for the entire office in half. Additionally, county employees have not had a step increase in two years, and two years ago were required to take a 10 percent furlough, while continuing to meet all deadlines and make all court appearances. At the time of our interview, the 2011-2012 budget was not yet final, but one thing was for sure, there would be no increases.

So what is the impact on services for indigent defendants? Mr. Boles stated the office is not at the breaking point where they cannot accept any cases, but they continue to monitor caseloads closely. Last summer, to assist with the large number of death penalty cases in Riverside County (Riverside County had almost as many cases as Los Angeles County), the Capital Defender's office was formed. The Capital Defender's office is administered by the Public Defender's office, but they have no day-to-day dealings with each other. The new office was staffed entirely from existing personnel, so there was a net loss of personnel in the Public Defender's office. However, since all death penalty cases will be sent to that office first, it eliminates any conflicts the public defender's office may have on those cases and should be a more efficient system. On a positive note, newly elected District Attorney Paul Zellerbach has been reviewing and reevaluating all the death penalty cases. Additionally, there is a greater spirit of cooperation;



Brian Boles

the public defender, Gary Windom, has been meeting with the district attorney and other department heads at regular intervals to discuss and resolve management issues of mutual concern.

Mr. Boles said their goal continues to be to provide quality legal work and to get cases to trial within a reasonable period of time. Of course, they would never be willing to sacrifice clients for increased efficiency. He said it takes a unique lawyer to juggle the demands of the position, and he is very proud of the quality of attorneys in his office. Furthermore, in spite of the decreases in the budget, Public Defender Gary Windom has done a fantastic job of maintaining professionalism and high standards within the

office, and the office is one of the most highly respected in the state.

Mr. Boles stated that the public understands the need for a prosecutor and a sheriff, but in general, there is no empathy for a person who is charged with a crime or who seeks to have their record expunged after being convicted and serving their sentence. However, expungement services are crucial to help people become more employable so that they can reenter society as successful citizens. He said it has become apparent that programs that assist in the rehabilitation of wrongdoers are essential. Locking people up and throwing away the key was very short-sighted and did not work, and now the Supreme Court is saying something must be done about prison overcrowding. With the passage of Assembly Bills 109 and 117, over a period of time, approximately 1,700 prison inmates will return to the county to be housed and supervised at the local level. Parole hearings will also be at local level, and thus the courts, public defender, district attorney, probation department and sheriff will have increased workloads, in addition to the drug court calendar, domestic violence court, misdemeanor courts, preliminary hearings, and trials currently handled. Mr. Boles said his office is not expecting to receive any additional county funding to assist with this new burden, but with effective management and teamwork within the office, and with their other law enforcement partners, he is confident they will develop a system that will continue to provide excellent legal services to their clients.

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





SURVIVING THE BUDGET: ONE COURT'S STORY OF RIDING OUT THE STORM

by Sherri R. Carter

I joined the Riverside Superior Court as its new Court Executive Officer in September 2008, at the beginning of what was to become the worst economic climate faced by the State of California in recent history. The housing industry was collapsing, companies were failing, governments were furloughing, and state funding for the judiciary looked bleak. I realized that my first priority was to assist the court in reducing its spending, increasing its revenue and becoming more efficient with its limited resources.

The budget problem . . .

The governor's original budget for fiscal year 2011-12 included a \$200 million reduction to the judicial branch. The legislature passed a formal budget that included this \$200 million, plus an additional \$150 million reduction to the judiciary in an effort to balance the state budget. It is important to note that this \$350 million reduction was on top of the permanent \$297 million reduction to the judiciary last fiscal year. In short, the state judiciary was facing a \$647 million reduction to its budget this fiscal year.

On July 22, 2011, the Judicial Council of California approved a budget plan that resulted in a 6.8% reduction in funding to the trial courts. The actual reduction to the courts would have been 15.2%, but the Judicial Council approved \$302.4 million in one-time funding to lessen the impact of budget reductions this fiscal year. While these one-time funds took the \$647 million reduction down to \$344.6 million, the funds will not be available to assist the state judiciary next fiscal year. It is interesting to note that the judicial branch represents 2.88% of the state budget, yet it is providing 3.5% of the entire state's budget solution.

. . . impacts the Riverside Superior Court . . .

The Riverside Superior Court's share of the state fiscal year 2011-12 reduction is \$5.7 million (without the additional one-time funding, its share would have been \$18.3 million). The actual total reduction to the court's budget this fiscal year is \$10.6 million, due to statewide judiciary revenue shortfalls, on-going budget reductions from previous fiscal years, and various other miscellaneous reductions.

. . . and is compounded by the heavy workload

The Riverside Superior Court has been, and continues to be, severely under-resourced in terms of the number of

judicial officers to handle the high volume of cases. For example, Riverside County has 2.2 million residents and 76 judicial officers, which equates to 3.5 judicial officers per 100,000 citizens, compared to the statewide average of 5.2 per 100,000. In addition, the county's population increased by nearly 42% between the years 2000 and 2010; however, the number of funded judicial positions increased by only 10%. Based on a recent statewide study, the Riverside Superior Court requires an additional 70 judges to handle its workload, which helps to explain why there are typically 18 to 21 retired judges sitting by assignment in Riverside County each day.

Unfortunately, the shortage of judges also impacts funding for court staff, because staff funding is allocated based on the number of judges. Also, while the state pays for the costs of the retired assigned judges, the court must find the resources to pay for the costs associated with the staff that assists the retired assigned judges.

How the court prepared

In anticipation of the projected budget reductions, in fiscal year 2008-09, we began a comprehensive review of our operations and policies. Through this review, we made numerous operational changes; properly reassigned expenses to the correct government agencies; eliminated non-mandatory programs and practices; implemented new automated programs; and reviewed each and every contract and purchase to determine cost effectiveness and necessity. In addition, several duties and responsibilities previously contracted out to vendors were brought in-house, at a lower cost; overtime was drastically reduced; facility improvements, furniture upgrades and hardware and software purchases were curtailed or deferred; many contracts were limited or canceled; and training, printing and distribution costs were reduced.

Court staff was also affected. Every vacancy was carefully scrutinized to determine if the work could be restructured so that it could be shared by remaining staff. Many positions and vacancies were eliminated or reclassified to a lower level. The management structure was significantly reduced, departments were consolidated and an early retirement program was offered. In 2008, there were 1,219 court staff positions, and today there are 1,094, plus a few vacancies.

Where do we go from here?

The court took immediate action in fiscal year 2008-09 to reduce spending, increase revenue and become more efficient through many new programs and the innovative use of technology. These timely actions have better aligned the court's requirements with its funding and have placed the court in a better position this fiscal year so that no furloughs or other personnel actions are anticipated.

It is projected that the trial courts will face a 15.2% reduction in fiscal year 2012-13. With additional ongoing and other miscellaneous reductions and the scheduled expiration of some court fees, the total reduction to the Riverside Superior Court could reach \$22 million.

Will the various actions previously taken to mitigate the impact of these budget reductions be enough so that we can continue to ride out the severe economic storm? Only time will tell, but it is my goal to meet these challenges by continuing to provide quality service to the citizens of this county with minimal negative impact to the bench, court employees, members of the bar and our justice agencies.

Sherri R. Carter is the Court Executive Officer and Clerk of the Court for Riverside Superior Court.



YOU ARE INVITED TO SPA FOR A CAUSE!

The Riverside County Bar Association is having a Day Spa fundraiser for its giving-back programs, such as Mock Trial, the Elves Program, Good Citizenship Awards for high school students, Adopt-a-School Reading Day, and other RCBA community projects.

We have made it easy for you to shop online and support us!

Enjoy \$300 of Spa Services for only \$59.

(\$15-\$20 of every \$59 purchase goes back to our cause)

- 1.) Each Spa Card entitles the recipient to 4 visits at a spa near them.
- 2.) Go to the website www.spasforacause.com and select/click on "pick a fundraiser." Type in Riverside County Bar Association.
- 3.) Select/click on "pick a spa" and type in your address or city for the spa nearest you or your recipient. The spa cards will be sent via email within 48 hours, Monday through Friday.

Thank you for continuing to support the RCBA and its giving-back programs.



FINAL DRAWING of the Riverside Historic Courthouse by Judy Field

\$100 each
(unframed)

Signed and numbered limited edition prints.

Great as a gift or for your office.

**Contact RCBA office, (951) 682-1015
or rcba@riversidecountybar.com**

THE GREAT RECESSION'S IMPACTS ON PUBLIC EDUCATION

by Kenneth M. Young

With districts like Jurupa and Riverside calling their students back to school in August, it's official: Summer is over. The graduating Class of 2012 has begun its senior year. For anyone who worries about the Great Recession's impacts on education and who does the math, it is shocking.

Imagine: These seniors were just eighth-graders when the recession technically started in December of 2007. Or imagine this: The kids who finished kindergarten in 2005 are starting seventh grade this year. Everything they have learned, from finger-painting to pre-algebra, has been delivered by a school system groaning under the strain of having to do more with less, year after year. We are in danger of handicapping an entire generation of California's students. And in frightening ways, Riverside County is in the eye of this storm.

The county's most recent unemployment rate is 14.4% – 2.6% above the state average, and the county had the highest foreclosure rate in the state for the first half of this year. Imagine the impact on students when foreclosure or joblessness disrupts their families.

Skyrocketing annual student proficiency requirements of the federal No Child Left Behind Act are now beyond the reach of most public schools. Penalties for not meeting these requirements are severe. Many states perceive NCLB as a forced “march to failure” by 2014. With no reform imminent in Congress, NCLB will certainly compound California schools' budgetary pain, and the whole thing has fostered the perception that public schools are “failing” – a damaging misstatement of schools' problems.

Meanwhile, Sacramento's long-term indecision has left us with a system of public school funding that is so complicated, it might as well be expressed as differential calculus. Almost nobody in the state truly understands how it works. The funding equation that was supposed to preserve a secure level of school funding (Prop. 98) is actually ratcheting it backward. California now ranks 50th among states in real per-pupil funding. It is shortening the school year, furloughing educators, pink-slipping teachers. When you see a district's brand new school (Alvord USD) with the doors closed because there is no money to staff it, you realize there are real limits to effectiveness, and that they are being reached.



Kenneth M. Young

Sacramento's response to this has been to *reduce* safeguards to school districts' fiscal responsibility. Yes, really. There is a pattern there. Call it Chaos Theory.

Over the past 3 1/2 years, state funding for California's K-12 schools has been cut by \$18 billion, with another \$10 billion in “deferrals” – IOUs for money that the state owed to education, but chose to spend elsewhere. This gimmickry forces school districts to borrow billions just to pay their bills and pay interest on those huge loans. The State Legislature seems dazed by the crisis, unable to make resolute choices. That has the effect of making everything a priority – and when every-

thing's a priority, nothing is.

We need to change that. There should be no higher priority in this state than education, because education empowers us, as individuals, to make better lives for ourselves and our families. It is the key to helping people help themselves, to stabilizing our communities, to ensuring a place for our children in the new global economy.

This is not just a plea for the public schools. By 2009-2010, community colleges statewide had eliminated fully 9% of their classes because of budget cuts. The current California State University system budget is \$2.1 billion – about what it was in 1998-99. Trustees have reduced enrollment by about 10,000. Since 2007-08, the budget for the University of California has been slashed by more than 27%, from \$3.25 billion to \$2.37 billion. It's a frightening panorama. There are breaks in the education pipeline from end to end.

Now, let me say this, too. California's schools are not failing. *Riverside County's* schools are not failing. The latest data shows this county is sixth among the state's 16 largest counties in graduation rate (we were sixth last year, too), and we have improved two spots, to sixth, in dropout rate. Riverside County schools are moving *up*, not down. Our educators are determined, as individuals called to this profession, to prepare our children for a successful future. As Riverside County Superintendent of Schools, my pledge is that all students in Riverside County will graduate high school well prepared for college and the work force, and that is not a platitude. We have planted our flag on that ground, and we are rallying the county's 23 local school districts to us.

I also see our educators rising to this challenge, becoming more resourceful and innovative. The Riverside County Office of Education has just opened our new countywide School of Career Education. In fact, we've got 40 years of reliable, solid experience at this. We've adapted the familiar old high school ROP and Voc-Ed programs that helped two generations of young people enter Riverside County's workforce. Our new school serves adults and is fee-based, but we're breaking the mold here. Class prices are reasonable and published right in the brochures. Students will know at a glance that they won't be assuming a new mountain of debt, and that their training will have the full faith and credibility of the public education system behind it.

We have another new invention, too: The Leadership Institute of Riverside County. We recognized that this long recession has caused heavy attrition in the ranks of experienced leaders in education, and in government and private enterprise as well. Our institute is designed to help all our partners rebuild their leadership ranks quickly, capably and with confidence. We have developed programs to help the county's teachers do more with less, too. And we know our districts are also dedicated to the process of staying nimble under duress.

How do we make up all this educational erosion to the students who are passing through our school system now? How many years can we really ask *them* to do more with less before it starts to show, in their performance, in their prospects, in their families' hopes?

The Class of 2024 has just walked wide-eyed through the door to start kindergarten in Riverside County. Isn't it time we started setting this right?

Kenneth M. Young is the Riverside County Superintendent of Schools.



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- Dept. F – 401 (951) 777-3516
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- Dept. F – 501 (951) 777-3514
- Dept. F – 502 (951) 777-3515

HEMET:

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- Dept. H3 (951) 306-3422
- Dept. H4 (951) 306-3427
- Dept. H5 (951) 306-3424

ENSURING PUBLIC SAFETY WHILE MAINTAINING FISCAL RESPONSIBILITY

by Paul Zellerbach

“The people of the State of California find and declare all of the following:

“(a) Public safety services are critically important to the security and well-being of the State’s citizens and to the growth and revitalization of the State’s economic base.

“(b) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.” (Cal. Const., art. XIII, § 35, subd. (a).)

In August of 1978, I joined the District Attorney’s office straight out of law school. The office I joined as a new prosecutor, much like the county that has been my home ever since, bears almost no resemblance to what it had become when I was sworn in as your District Attorney on January 3, 2011. In 1978, we had approximately 45 prosecutors and a yearly budget of \$2.9 million. As our county has grown, the District Attorney’s office has also grown. Today, we have 250 prosecutors and a yearly budget of \$92.2 million. The one constant has been the mission of the District Attorney’s office as public prosecutor of both criminal and civil cases, which requires that we protect our citizens while also ensuring that justice is done and that the rights of all are safeguarded. The office of the District Attorney must always seek to fulfill this duty, despite any economic difficulties that we may be facing. And, as we all know all too well, the economic reality that each of us is now facing is as difficult as any in our lifetime.

What has the economic crisis facing our nation, our state, and our county meant for the District Attorney’s office? Because we are a public agency, our funding is tied directly to the health of governmental budgets. As the county has suffered financially, as the state has suffered financially, as our nation has suffered financially, so has the District Attorney’s office. Approximately two-thirds of our annual budget comes directly from the County of Riverside. As we all know, the last three years have been



Paul Zellerbach

devastating. The unprecedented growth in property values in our region during the early to mid-2000’s resulted in property tax revenue the likes of which had never been experienced in local government. With the extra revenue, the Board of Supervisors made great efforts to improve the level of service for our citizens and increased funding to all county departments. But, as our homes lost their value through no fault of our own, property tax revenue fell precipitously. What took almost a decade to develop was lost in a matter of two short years. Accordingly, the amount of money

the District Attorney received from the county, known as “net county cost,” was significantly cut in fiscal years 2009-2010, 2010-2011, and 2011-2012.

This was not the end of the cuts. Another revenue source for the District Attorney’s office is state sales tax revenue. Pursuant to Proposition 172, a percentage of state sales tax revenue must be designated for public safety. As you can imagine, as the recession took hold of consumers statewide, the amount of purchases fell. Accordingly, the District Attorney’s office has lost millions of dollars.

Finally, our budget depends on revenue generated by grant funding. Through the extraordinary efforts of my staff in identifying potential grants, applying for those grants, and then efficiently administering the grants we receive, my office is able to obtain funding to investigate and prosecute crimes of a specific nature. Much of the work in our Special Prosecutions Section (which includes consumer fraud, mortgage fraud, worker’s compensation fraud, environmental crimes, and elder abuse, among others) is made possible through these types of grants. Unfortunately, the economic crisis has affected this revenue stream, as well. As anyone involved in a charitable or nonprofit organization can attest, it has been rough going getting funding. Earlier this summer, matters were complicated even more when the state vehicle license fee was allowed to sunset during

the state budget stalemate. Many of our specialized programs were funded either directly or indirectly by revenue from the vehicle license fee. As a result, many programs are in danger of being eliminated.

All of this financial distress comes at a time when the future of our criminal justice system is in flux. The Governor's "Realignment Plan," as outlined in A.B. 109, A.B. 111, A.B. 116, and A.B. 117, redefines the way in which many of those convicted of crimes are supervised and punished. Beginning on October 1, Riverside County will be responsible for housing felons convicted of non-serious offenses, non-violent offenses, or non-"high risk" sex offenses. With severely limited jail space, the requirement that we house those inmates locally who are considered one of the "three nons" necessarily means that other offenders will be released from custody earlier, or possibly not even face incarceration for their crimes. As a result, local law enforcement agencies will have to be even more vigilant in their supervision of individuals on probation or parole. Further, the District Attorney's office has been given the added responsibility of prosecuting parole violations, a duty previously assigned to the California Department of Rehabilitation and Corrections. I have often thought that the law enforcement agencies of Riverside County can conduct these activities better than state agencies, but the combination of decreased funding and increased responsibility has created a "perfect storm" situation.

Given all of these developments, the startling reality is that it could have been much worse. For the last eight months, members of my staff and I have made a concentrated effort to increase and improve the level of communication and cooperation between the District Attorney's office, the courts, other law enforcement agencies, the Public Defender's office, and government officials at all levels. By speaking with the governor, members of the California State Senate and Assembly, the Board of Supervisors, and city officials, we

have been able to limit the number of budget cuts the office must endure. Every elected official recognizes that public safety is the primary concern of the government and has been willing to work with us to maintain the high level of service that the District Attorney's office provides. It is through this increased emphasis on cooperation that we have been able to save such vital programs as the Regional Gang Task Forces and the Sexual Assault Felony Enforcement (SAFE) Teams throughout Riverside County. As a result, communities will remain as safe as possible.

The economic concerns remain. And, just when we think we begin to see the light, another storm develops. How can we survive in such a climate? How can we continue to fulfill our mission when our budget has lost more than \$14 million in the last two years and 200 staff positions remain unfilled? The answer is simple: we have no choice but to make it work. The District Attorney's office will make it work the same way that countless families across the Inland Empire have made it work for the last three years. We are becoming more effective and efficient, and we have necessarily found ways to do more with less. We will continue to find additional ways. I am constantly seeking to balance my constitutional duty to public safety with my fiscal responsibilities to the citizens of Riverside County.

Paul Zellerbach is the District Attorney of Riverside County.



FREELANCE ATTORNEYS: BUILDING YOUR PRACTICE AND PROFITS AND IMPROVING CLIENT SERVICE

by Amy Leinen Guldner and Erin Giglia

We all know that the down economy has affected the legal practice – layoffs, hiring freezes, and the like are widespread. Clients are more cost-conscious than ever, and to meet their needs and wants, the legal marketplace is evolving more rapidly than ever. Technologies like cloud-based practice management software, iPads, and virtual support staffs give law firms options and increased flexibility to better compete with the traditional law firm model. Clients, still mired in an oppressive economy, are shifting away from high-sticker legal services. Many law firms – small, large, and virtual – are turning to freelance contract attorneys to handle their overflow work and to expand their areas of expertise. Freelance attorneys are often able to provide exceptional legal service and have the ability to be more flexible in their billing arrangements, helping you increase your bottom line, build your practice and better serve your clients.

Firms often bring in temporary contract attorneys out of necessity – they simply do not have enough associates to handle a particularly heavy workload caused by a trial or multiple active cases. Other times, firms bring in contract attorneys because their clients have asked them to handle legal issues outside of their expertise. Rather than referring their client to another firm, they will bring in a contract attorney to provide the necessary expertise. Regardless of the reason, freelance attorneys can save law firms money in a number of important ways.

In the past, “contract attorneys” frequently were lawyers who could not get jobs or clients. These contract attorneys primarily were given projects like document review, and firms would never consider allowing these attorneys to perform complex or substantive tasks. Their work was thought to be substandard. There has been a recent change in attitude about “contract attorneys,” now generally called “freelance attorneys.” (See, e.g., Filisko, *Freelance Law: Lawyers’ Network Helps These Women Keep a Hand in the Workforce*, available at <<http://www.abajournal.com/magazine/issue/2011/08>>.) For a number of reasons, including layoffs and an increasing desire for work-life balance, freelance attor-

neys today have excellent credentials from top law schools and extensive experience from working at the biggest law firms in the nation. Using a freelance attorney today means adding experience and skill to a firm’s practice, and any stigma previously associated with outsourcing is disappearing.

Freelance attorneys have the ability to work at more affordable rates, thereby costing a law firm and its clients less than traditional associates. It is as simple as that. Because freelance attorneys charge substantially less per hour, law firms can lower legal fees by 25 to 50% and pass the savings on to clients. Oftentimes, freelance attorneys may have better credentials and more training than law firms can afford to hire full-time.

Using freelance attorneys to staff cases and projects during particularly busy periods allows firms to keep their high quality and meet their commitments while accepting more aggressive caseloads. It also allows firm attorneys to devote more time and energy to case strategy and big picture issues, not to mention developing business, writing articles, and networking. These critical revenue-generating tasks are often pushed to the back burner while attorneys focus on the immediate deadlines and tasks that require attention. Bringing in a freelance attorney can increase efficiency, help to ease the burden, and free up partners and solos to handle all aspects of the business (or, dare we say, even take a vacation).

One of the most important benefits of using a freelance attorney is that, because they cost less per hour than a traditional associate and have low to zero overhead, law firms can receive a margin on their services and still save their clients money. Under the California and ABA Rules of Professional Responsibility, upcharging freelance work is acceptable as long as the overall rate is “reasonable.” Pay the freelance attorney for the time he or she bills, charge the client a percentage above that, and keep the profit, without overhead. In other words, freelance attorneys generate pure profit for a law firm. Clients are generally receptive to the arrangement because they can get highly trained “big firm” attor-

neys at a fraction of typical law firm rates, even after a markup.

We are all familiar with the ebb and flow of a typical legal practice. Sometimes firm associates are so busy that everyone is working crazy hours, and you're still not sure how everything will get done. But firms often hesitate to hire an associate because of uncertainties in the market. Hiring a full-time associate, with all the costs, benefits, and training involved, may not be the right decision for a firm. Freelance attorneys are not looking for vacation pay, insurance, profit-sharing, or other benefits – they knowingly gave those things up when choosing an alternative career path. Because experienced freelance attorneys can assist law firms during periods of increased work on an as-needed basis, firms can lower their hiring risk.

Associate turnover is a concern to any firm, because of the high training costs involved. But many firms have no idea how to better retain the associates they have. Most firms cannot afford to pay more than the high salaries they are already paying. Most also do not realize that money is not the problem. Many partners are surprised to hear that young Gen X and Gen Y attorneys are not interested in working 60-80 hour weeks, regardless of attractive compensation. They all want a life and are willing to sacrifice money to have one.

Law firms are also increasingly using freelance attorneys to build weak or nonexistent practice areas within a firm, to provide increased services to their existing clients and to obtain new ones. An attorney may specialize in negotiation or have excellent trial skills, but quickly lose patience with the drudgery involved with discovery practice. Perhaps a client requests assistance with an unfamiliar area of law, like bankruptcy or probate litigation. Or a transactional attorney has an opportunity to handle some litigation cases, but lacks experience in litigation practice. Whatever the case may be, outsourcing to an experienced freelance attorney will give a firm access to that attorney's skills and experience. A firm specializing in one area can contract with freelance attorneys with specific expertise in another area to train their associates and partners, provide expertise in niche areas, and provide case strategy. More experience and skills lead to more value to the client.

Marketing and business development are crucial to any law firm, small or large. To grow or even sustain a law practice, attorneys should be spending approximately 25% of their time marketing and developing business, which is often difficult to maintain. Delegating legal work to an experienced freelance attorney can free

time to develop business. Freelance attorneys can also assist marketing efforts by ghostwriting presentations or whitepapers.

Small firms and solo practitioners also seek help from freelance attorneys to bring or oppose particularly challenging motions, especially when up against prestigious law firms. If this is done correctly, firms can choose highly trained contract attorneys, provide information about the project and the required documents, and then receive a finished motion.

Even with all of the benefits of freelance attorneys, firms should take the utmost care in outsourcing their legal work. Indeed, if a firm would not be willing to hire a particular attorney for full-time employment (if the need was there), then that firm should not use that attorney at all, for any reason, to handle their legal work. Firms owe their clients the utmost duty of care, and entrusting their clients' important legal projects to anyone they would never want as a part of their permanent team may be a breach of that duty.

There are other fundamental issues to be resolved as well, such as conflicts of interest, the duty of competence, the duty to maintain client confidences, upcharging and fee-splitting, insurance considerations, and the like. Firms should carefully research the applicable ethical rules when utilizing a freelance attorney, to avoid disciplinary action, disqualification and firm liability.

There are practical considerations in utilizing freelance attorneys, such as stylistic and personality issues and availability issues. Some clients are hesitant about using freelance attorneys until they see the benefit of the arrangement. Alternative and contingency fee arrangements may hinder a relationship with a freelance attorney who needs compensation for his or her work regardless of a client's willingness to pay. Ultimately, it is the hiring attorney's decision, after weighing the positives and negatives.

When considering hiring an experienced freelance attorney, the positives often outweigh the negatives. A freelance attorney may solve many of the dilemmas facing today's practitioners and can benefit law firms and their clients.

Amy Leinen Guldner, a member of the RCBA Publications Committee, is a Lead Attorney with Montage Legal Group, a network of experienced freelance attorneys. (See Ms. Guldner's profile on page 24.) Erin Giglia is a co-founder of Montage Legal Group.



THE EFFECTS OF *BROWN V. PLATA* AND THE BUDGET CRISIS

by Warren Chu

The confluence of the unprecedented Supreme Court decision in *Brown v. Plata*¹ and the state's most austere budget in a generation will result in an extensive realignment of the California prison system. The most direct impacts will be the reduction of the current prison population by over 33,000 inmates and the fundamental changes that will occur in how the state deals with tens of thousands of low-level offenders. This, in turn, has started to shift the views of many Californians towards our current penal system.

The overcrowding in the state's 33 prisons has been a chronic problem for several decades. California prisons were originally designed to hold 80,000 inmates. Currently, the prisons are operating at 179 percent of capacity, with a population of approximately 143,000 inmates. The lawsuit in *Brown v. Plata* was itself the combination of two federal class actions. The first, *Coleman v. Brown*,² filed in 1990, involved the class of seriously mentally ill persons in Californian prisons. The district court found "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates." In 1995, the court appointed a special master to oversee remedial efforts. As recently as 2007, the special master reported that the state of mental health care was deteriorating in the prisons as a result of increased overcrowding. In the second action, *Plata v. Brown*, filed in 2001, the state conceded deficiencies in prison medical care that violated the Eighth Amendment. The state stipulated to a remedial injunction, which it then failed to comply with. As a result, the district court appointed a receiver in 2005 to oversee additional remedial efforts.

Believing that a remedy to both issues could not be achieved without reducing overcrowding, the plaintiffs in *Coleman and Plata* moved to convene a three-judge court, authorized under the Prison Litigation Reform Act of 1995 (PLRA), to reduce the number of inmates. After 14 days of testimony, the three-judge court issued a 184-page opinion ordering the state to reduce its prison population to 137.5% of capacity within two years. This would require shrinking the number of inmates in state prisons by more than 33,000, barring any increase in capacity. The Supreme Court in *Brown* upheld this order. In so doing,

the court discounted arguments by the state that new construction, transfers of prisoners out of state, hiring of medical personnel, and continued efforts by the *Plata* receiver and the *Coleman* special master could remedy the situation. Due to the state's fiscal crisis, the court found no other remedy other than the one it upheld. The court stated that it could not "ignore the political and fiscal reality behind this case. California's Legislature has not been willing or able to allocate the resources necessary to meet this crisis absent a reduction in overcrowding. There is no reason to believe it will begin to do so now, when the State of California is facing an unprecedented budgetary shortfall."³

When Governor Brown signed the 2011-2012 state budget, included in its \$15 billion in cuts was the reduction of \$1 billion from the California Department of Corrections and Rehabilitation (CDCR). The state will still spend \$9.8 billion on prisons, making this the third-highest general fund expenditure, behind education and health care. In anticipation of both the budget cuts and the impending Supreme Court decision, Governor Brown signed Assembly Bill (A.B.) 109 on April 4, 2011. A.B. 109, also referred to as "Realignment," is meant to address the revolving door of low-level inmates cycling in and out of prison. It will also have counties assume responsibility for tens of thousands of parole violators currently sent back to state prisons each year, even though they typically spend less than three months incarcerated. To alleviate fears that these new measures will result in the release of thousands of criminals onto the streets, the state claims that under A.B. 109, no inmate currently in state prison will be released early, all felons sent to state prison will continue to serve their entire sentence, and all felons convicted of a serious or violent offense, including sex offenders, will go to state prison. However, A.B. 109 will not go into effect until separate legislation appropriating funding for a community corrections grant program is enacted.

Given both the ailing economy and budget cuts, Californians are softening their position on the incarceration of third-strike and certain low-level offenders. Additionally, faced with the *Brown* decision, a large number of people oppose higher taxes, as well as cuts in key state services, to pay for more prison space. According

1 *Brown v. Plata* (2011) ___ U.S. ___ [131 S.Ct. 1910].

2 See *Coleman v. Wilson* (1995) 912 F.Supp. 1282.

3 *Brown v. Plata, supra*, 131 S.Ct. at 1939.

to a survey conducted by the *Los Angeles Times* and the USC Dornsife College of Letters, Arts and Sciences,⁴ over 70% of Democrats and Republicans in the survey opposed higher taxes for more lockup space. Nearly 70% of respondents would sanction the early release of some low-level offenders whose crimes did not involve violence. More than 60% would support reducing life sentences for third-strike offenders convicted of property crimes. About 80% approve of keeping low-level, nonviolent offenders in county custody, including jails, home detention, or parole, instead of sending them to state prisons.

A recent report from the Legislative Analyst's office concludes that *Brown* "will almost certainly result in some of the most dramatic changes to the state's prison system in decades."⁵ It goes on to state that A.B. 109 alone is unlikely to reduce overcrowding sufficiently within two years, as ordered. With legislators unwilling or unable to provide additional funding to address this problem, and with recent reports of decreased state revenue, California may need to rethink its plan.

Warren Chu is a Deputy County Counsel with the County of Riverside.



- 4 Jack Dolan, *Californians would rather ease penalties than pay more for prisons*, Los Angeles Times (July 21, 2011) (available at <<http://www.latimes.com/news/local/la-me-poll-prisons-20110721,0,531177.story>>).
- 5 Paul Golaszewski, *A Status Report: Reducing Prison Overcrowding in California*, California Legislative Analyst's Office (August 2011) (available at <http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.pdf>).

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ESTATE PLANNING, TRUST AND PROBATE LAW EXAM SET FOR OCTOBER

Are you ready to become a certified legal specialist? Take the first step by registering for the legal specialization examination taking place on Tuesday, October 25, 2011 in Northern and Southern California. If you will have practiced Estate Planning, Trust and Probate Law for at least three years by that time, you are eligible to register. This one-day examination consists of 75 multiple choice questions and eight 30-minute essays.

Visit www.calbar.ca.gov or www.californiaspecialist.org to register, access preparation materials, and learn more about the process. Registrations must be received by September 26, 2011. Registrations received after that date will be processed on a "space available" basis.

After taking the examination, applicants will have 18 months to complete the remaining requirements for certification. Certified specialists must demonstrate a high level of expertise in the specialty, practice in the specialty for five years (though you can take the examination in year three), fulfill continuing education requirements and be favorably evaluated by other attorneys or judges.

For attorneys who will have less than three years of experience by that time, plan ahead by requesting a sample of the application that is normally filed after passing the exam. This sample can be used as a draft tracking log to document experience and education as they are earned, and a reminder to keep all MCLE/Legal Specialty Education certificates.

The State Bar of California Board of Legal Specialization's program for certifying legal specialists was created pursuant to California Supreme Court rules and was the first program of its kind in the nation. Since then, other states have looked to the program as a model and adopted their own programs.

This article was submitted by the State Bar of California Estate Planning, Trust and Probate Law (EPTPL) Advisory Law Committee.



ATTORNEY COACHES NEEDED FOR 2012 MOCK TRIAL COMPETITION

The 2012 Riverside County Mock Trial Competition dates have been set and a number of high schools are in need of assistance from dedicated attorney coaches.

Under the direction of a teacher coach, teams practice or meet at various times during the day/evenings. Teams needing attorney coaches include schools from the following areas: Riverside, Corona, Norco, Hemet, Lake Elsinore and Nuview.

If you are interested in becoming an attorney coach, please contact Tracey Rivas with the Riverside County Office of Education via email at trivas@rcoe.us or by phone at (951)826-6570.

The dates for the 2012 competition include:

- (Wednesdays, 6 p.m.) February 8, February 15, February 22
- Saturday, February 25, 9 a.m.
- Wednesday, February 29, 6 p.m.
- Saturday, March 3, 9 a.m.

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BUDGET CUTS WILL SEVERELY AFFECT THE FEDERAL COURTS

by Terry Nafisi

With the passage of the bill to raise the debt ceiling and reduce the federal deficit by at least \$2.1 trillion over the next ten years, the federal judiciary faces the potential of unprecedented budget cuts in Fiscal Year (FY) 2012 and the years to come. The situation is unlike anything faced by the federal judiciary in recent memory and could fundamentally change how the federal courts perform their constitutional and statutory responsibilities.

The National Picture

The Financial Services and General Government appropriations bill reported out by the House Appropriations Committee in July would provide the judiciary with \$6.76 billion for FY 2012, a net \$143 million (2.1 percent) below the FY 2011 enacted appropriations level and \$284 million below the level required to maintain on-board staffing levels in the federal courts. While this is only the first step in the appropriations process, and the Senate has not yet considered the judiciary's appropriations bill for FY 2012, anything more favorable than a hard freeze in appropriations at the level funded for FY 2011 is doubtful. Even with a hard freeze, the federal courts would be confronted with the potential loss of approximately 1,200 court staff nationwide. And given the mandate to reduce the federal deficit by at least \$2.1 trillion over the next ten years, the budget cuts will no doubt continue, and probably even intensify, in the years ahead.

In light of the likelihood of severe budgetary shortfalls, the Judicial Conference of the United States has been working on cost-containment initiatives aimed at reducing operational and administrative costs without sacrificing the quality of justice. Once they are developed, the initiatives could have a significant impact on the way federal courts conduct the business of the administration of justice.

The Local Impact

Locally, the District Court for the Central District of California will be severely impacted by the budget cuts, which come at a time when civil and criminal case filings in the district have increased by nearly 25 percent since 2006. The court's budget for FY 2011 was slashed

by 7.6 percent, and we are currently projecting a 15 percent reduction from the FY 2011 appropriations level for FY 2012, a \$3.4 million reduction. While the district court will try to offset these reductions by transferring funds from non-payroll accounts, the 318 employees in all divisions will be affected. In the Eastern Division, which serves Riverside and San Bernardino counties, the impediment to processing the division's increasing caseload is exacerbated by the judicial vacancy that has remained unfilled since District Judge Stephen G. Larson left the bench in November 2009.

The impact of the budget cuts on the public should be nowhere near the magnitude of those recently announced by various California state courts, such as the San Francisco County Superior Court's plans for massive layoffs and courtroom closures. The Clerk's Office is undertaking various measures to avoid any diminution in the level of service provided to the public and the litigants before the court. While the impact of the budget cuts should be transparent to the public, there will be sweeping changes within the Clerk's Office behind the scenes to compensate for the inevitable staffing and funding reductions. The Clerk's Office is considering various organizational, procedural, and technological alternatives with an eye toward reorganizing the Clerk's Office and streamlining operations. The Clerk's Office is particularly interested in developing and implementing technological innovations, and automating functions where possible, to help the court process its growing workload with less staff. The Clerk's Office is also developing cost-cutting and labor-saving strategies to maximize existing resources and to find other ways to work more cost-efficiently, and it is considering outsourcing, cross-training of staff, and other options. The Clerk's Office will continue to examine each expenditure carefully in its effort to find new and more efficient ways of conducting business.

How the Bar Can Help

The bar can assist us in our efforts to reduce the court's operational and administrative costs and to operate more efficiently. Each year, the court spends many thousands of dollars in postage costs alone sending out paper notices to attorneys, which also requires

a number of full-time staff members to print the documents, stuff the envelopes, and meter and deposit the mail. In 2010, approximately one million pieces of paper were mailed to litigants who requested, or in the case of pro se litigants, required, paper service. Although the vast majority of attorneys practicing before the court have already consented to electronic service, a large number of attorneys have either opted out of, or neglected to consent to, electronic service. Cumulatively, the failure of so many attorneys to consent has had a considerable impact on the court's budget and workload. Reducing the volume of paper notices that must be mailed would significantly reduce the court's postage and paper costs, as well as save time and eliminate labor for Clerk's Office staff. In addition to helping the court, electronic service enables attorneys to view and print case documents as soon as they are filed, rather than having to wait for them to arrive in the mail. Lawyers willing to consent to electronic service should contact Ms. Cristina Squieri in the Clerk's Office at (213) 894-1927.

A Continuing Commitment to Service

These trying economic times and the mandate to reduce federal spending will continue to pose significant challenges to the federal courts to find new and innovative ways to provide cost-efficient justice in the years to come. Against this bleak budgetary landscape, the Clerk's Office is committed to surmounting these challenges. In addition to ensuring that core judiciary functions are preserved, the Clerk's Office will strive to minimize the impact of the inevitable staffing and funding reductions on the litigants before the court and to continue to provide quality service to the citizens within the Central District of California.

Terry Nafisi was appointed as District Court Executive and Clerk of Court of the US District Court, Central District of California, in 2008. Previously, she served as Deputy Circuit Executive for the Ninth Circuit from 1990 to 2008 and as Assistant Circuit Executive from 1983 to 1990. Prior to joining the Ninth Circuit, she served as the Assistant Director for the State Supreme Court of Michigan from 1977 to 1983.



OPPOSING COUNSEL: AMY LEINEN GULDNER

by Donna Thierbach

Amy isn't new to the profession of law, but is fairly new to the Riverside Bar Association. When I recently met her at a bar association meeting, I found her so interesting I could not wait to profile her!

Amy grew up in Denison, Iowa, a very small town (population then of approximately 6,000) on the western side of the state. She is the oldest of five children and frequently returns to the Midwest to visit her family. In high school, she ran track and cross country and also used her six foot, two inch height on the basketball court, although back then, most of the high school girls' basketball teams in Iowa (including Amy's) were still playing the old-fashioned six-on-six "half court" type of game. Amy also participated in speech and debate, student government, choir – you name it. She did not grow up on a farm, but many of her friends and family members lived on farms. Of course, that means she had a plethora of interesting jobs growing up; you'll have to ask her what corn detasseling is!

After high school, Amy moved to Omaha, Nebraska and attended Creighton University, where she participated in intramural sports, speech and student government. She graduated summa cum laude in 1993 with a double major in psychology and organizational communication. Although her extracurricular activities seem to suggest she was preparing herself for law school, when she graduated, she really was not sure what career she wanted to pursue. Not knowing what to do with her life at that point, she decided to attend the University of Iowa School of Law, where she was an associate editor of the Iowa Law Review, received the American Jurisprudence award for Civil Procedure and was named "Best Advocate" as a member of the Moot Court Competition's National Finalist Team. She obtained her Juris Doctorate with high distinction in 1996.

After law school, Amy joined Snell & Wilmer LLP, and she practiced health care litigation in their Phoenix, Arizona office from 1996-2000. When she



Amy Leinen Guldner

accepted the position, she knew how hot summers in Phoenix were, but she figured it beat the Iowa snow and humidity. It turned out to be a good decision, as it was a great office to work in, and another new associate introduced her to his brother, who was attending Stanford Medical School. They began dating, and I guess are a testament to successful long distance relationships (her now-husband has even published a book on the subject). When her long-distance fiancé was offered his dream job with the Loma Linda University Medical

Center's Emergency Medicine Residency Program, Amy made the ultimate sacrifice of love – taking the California Bar Examination – and transferred to Snell & Wilmer's Orange County office. To split the distance, Amy and her husband moved to Corona in May 2000, and they have resided there ever since. Amy was elected to the position of Senior Attorney and practiced in the product liability litigation group until 2009. At Snell & Wilmer, she defended a wide range of clients, from individuals and small businesses to Fortune 500 companies. These clients included physicians, hospitals, pharmaceutical and medical device manufacturers and automobile manufacturers. She second-chaired several jury trials, took hundreds of depositions of parties and experts as well as fact witnesses, conducted complex discovery, and prepared and argued numerous motions in state and federal court. Then, in March 2009, she joined Morgan Lewis & Bockius LLP in Irvine as a staff associate in their nationally acclaimed labor and employment practice group, where her practice was focused on defending employers in a wide variety of single-plaintiff and class action cases.

When she returned to work after her first maternity leave, Amy requested and received a "reduced hour" arrangement and billed about 75% of the normal associate billable amount for about five and a half years. The pull to spend more time at home and be more involved with her children kept growing stronger, and Amy had the fabulous opportunity in January 2010 to

become a part of Montage Legal Group, a network of experienced freelance/contract attorneys who left law firms in search of more work-life balance. Montage attorneys serve all types of law firms that are in need of quality legal work on a temporary basis. With her civil litigation background, Amy does a wide variety of projects, but most of her freelance attorney work to date has consisted of taking and defending depositions, doing legal research, and writing and arguing motions. Montage Legal Group currently includes freelance attorneys who graduated from top law schools like Harvard and UC Berkeley, as well as attorneys who previously worked at firms like Latham & Watkins, Allen Matkins, and Gibson Dunn & Crutcher. Although she misses the camaraderie and paycheck from law firm life, Amy greatly appreciates the extra time and flexibility freelancing gives her to spend as mom to two happy, healthy and rambunctious children (Gavin, age 7, and McKenna, age 5), including helping in their classrooms and with their sports teams.

In addition to her legal work, Amy is a volunteer Court-Appointed Special Advocate with CASA of Orange County, mentoring and advocating in court on

behalf of abused and neglected children. She is also a member of the Riverside County Bar Association, and she currently serves on the Publications Committee. In the past, Amy has been involved with other bar associations and has been a volunteer with mock trial, moot court, peer court, an HIV/Aids legal clinic and a volunteer lawyer program.

In her “spare” time, Amy loves taking dance lessons with her husband Greg, working out (especially with Stroller Strides), wine-tasting, and hiking with her family. Amy’s husband is an emergency room physician at Riverside Community Hospital.

Amy is admitted to practice in California and Arizona and before the U.S. Supreme Court, the U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California, and the U.S. District Court for the District of Arizona.

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



JUDICIAL PROFILE: THE HONORABLE JAMES S. HAWKINS

by Eli Underwood

After driving a tow truck on the graveyard shift to put himself through college, the Honorable Jim Hawkins started law school, and he hasn't forgotten that the legal system is made up of real people. Maybe that's why Judge Hawkins says, "My favorite part of being a judge is picking juries; juries notice everything."

Judge Hawkins grew up in East Los Angeles, where he worked his way through Cal State L.A. and Southwestern Law School while supporting his wife and two daughters, Traci and Carie. Though a vocational test told him that he had an aptitude for car design, and his father thought he would make a good engineer, Hawkins attended law school. "I couldn't do math, so I became a lawyer."

Like today, there weren't many jobs for new lawyers when he graduated in 1973, so he joined the LAPD as a detective's assistant and went through the police academy, and he was working there when he discovered – much to his surprise – that he had been offered a position as a deputy district attorney by the Riverside County District Attorney's office. "My friend Bernie Wilson filled out an 'interest postcard' for the position, and that's why I was called to interview in someplace called Indio." He added, "I only knew Indio as a place to get gas on the way to Phoenix."

The desert turned out to be a fertile place for both his personal and professional career. He and his first wife had been divorced shortly after law school; in the desert, Hawkins met and married his present wife, Jan. Together they have two children, Jessica and James. Hawkins worked for seven years at the district attorney's office, prosecuting murders, rapes, and other felonies. Tom Anderson, a civil attorney, was looking for trial attorneys and asked the judges who they thought was good at trying cases. The judges named a couple of lawyers; Hawkins was one of them. As he tells it, "Mr. Anderson asked me if I wanted more money and a Mercedes; I said, 'Sure'."

While working with Anderson, Hawkins participated in lawsuits against the P.T.L., including Jim and Tammy Baker, and AIG, winning \$125 million and \$10 million dollar judgments, respectively. After about seven years



James S. Hawkins

with the Anderson Law Firm, in 1990, Hawkins joined the firm of Hirschi, Clark & Hawkins as a partner. In 1996, Hawkins was hired as a commissioner by the superior court judges, and he immediately began trying felony cases. Only ten months later, Governor Wilson appointed Hawkins to the municipal court bench, and shortly after that, Hawkins was elevated to superior court judge. Throughout his judicial tenure, he has tried hundreds of cases, including death penalty cases, but he has not lost his love for juries. "Serving on a jury is the most intimate experience that most people will have with the

democratic process. Juries almost always get it right."

Eli Underwood is an associate with Redwine & Sherrill and a member of the Bar Publications Committee.



ATTENTION RCBA MEMBERS

If you are not getting email updates/notices from the RCBA and would like to be on our mailing list, visit our website at www.riversidecountybar.com to submit your email address.

The website includes bar events calendar, legal research, office tools, and law links.

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Translator and Interpreter

"To give real service you must add something which cannot be bought or measured with money, and that is sincerity and integrity." (Douglas Adams). I work hard each day to provide the best English-Spanish-English written translation to help you achieve your purpose. UCR graduate. Please call: H. Cecilia Stella, (951) 347-9824.

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.

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 Charlene or Lisa at the RCBA office, (951) 682-1015 or rca@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 September 30, 2011.

Bethanie L. Fanti – Law Offices of Bethanie L. Fanti, Tustin

Scott J. Fruchter – The Dynamic Law Group, Victorville

Chrystal C. Green – Darren Silver & Associates, Los Angeles

Joshua Hanks – Sole Practitioner, Riverside

Kirsten E. Heikaus Weaver – Sole Practitioner, Riverside

Maurice S. Kane, Jr. – Cummings McClorey, et al., Riverside

Yonit M. Kovnator – Best Best & Krieger LLP, Riverside

Laura Ozols – Office of the District Attorney, Riverside

Rebecca Rainwater – Rainwater Family Law APLC, Anaheim Hills

Antoine F. Raphael – U.S. Attorney's Office, Riverside

August B. Sage – Sole Practitioner, Riverside



VOLUNTEERS NEEDED

Family Law and Criminal Law Attorneys

are needed to volunteer their services as arbitrators on the RCBA Fee Arbitration Program.

If you are a member of the RCBA and can help, or for more info,

please contact Lisa
at (951) 682-1015

or feearb@riversidecountybar.com.

2011 Red Mass

Tuesday, October 11, 2011

@ 6 p.m.

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Riverside
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