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MAGAZINE

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a "Broad Array of Disputes"

Conflict Resolution and You

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The Central District's ADR Program

Privatization of Dispute Resolution

The Court of Appeal's Settlement Conference Program

Preparing for Your Next Mediation

The RCBA Fee Arbitration Program



The official publication of the Riverside County Bar Association

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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 our members, our communities and our legal system.

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

CALENDAR

MARCH

- 6 Civil Litigation Section**
RCBA Gabbert Gallery – Noon – 1:15 p.m.
“A Multi-Decade View from the Trenches:
The Evolution of Civil Litigation in Riverside”
Speaker: David G. Moore, Esq.
MCLE
- 7 Bar Publications Committee Meeting**
RCBA Boardroom – Noon
- 9 Federal Bar Association**
George E. Brown, Jr. Federal Courthouse
Noon – 1:15 p.m.
“Riding the Inland Empire Foreclosure Tsunami:
Foreclosure Litigation in Federal Court”
Featuring: Judge Virginia A. Phillips, Richard D.
McCune, Esq., Valentine Hoy, Esq.
Information: Emily Montgomery @
951.328.2245
- Family Law Section/Riverside Superior Court**
RCBA 3rd Floor
Minors’ Counsel Training
8:30 a.m. – 4:30 p.m.
MCLE
- 13 PSLC Board of Directors Meeting**
RCBA Boardroom – Noon
- RCBA Board of Directors Meeting**
RCBA – 5:00 p.m.
- Landlord-Tenant Section**
Napoli’s in Loma Linda – 6:00 – 8:00 p.m.
“Dept. 31 Procedures & Policies on UDs”
Speaker: Judge Wilfred Schneider
MCLE
- 16 General Membership Meeting**
RCBA Gabbert Gallery – Noon
“The Un-Merry-Go-Round:
Mental Health & Substance Abuse”
Speaker: Kirby Palmer, MSW, LCSW
MCLE
- Formal Enrobenment Ceremony –
Judge John Vineyard**
Historic Courthouse – 4:00 p.m.
- 20 Family Law Section**
RCBA Gabbert Gallery – Noon
- 21 Estate Planning, Probate & Elder Law Section**
RCBA John Gabbert Gallery – Noon – 1:15 p.m.
“Updates on Estate Planning for Medi-Cal and VA
Aid and Attendance Eligibility”
Speaker: Dennis Sandoval, Esq.
MCLE
- 23 RCBA Gabbert Gallery – 9:00 a.m. – Noon**
“Social Security Benefits & Special Needs
Trusts: Everything a PI Attorney Should Know
But Is Afraid to Ask”
Speaker: Dennis Sandoval, Esq.
MCLE
- 27 Business Law Section**
RCBA John Gabbert Gallery - Noon
- 29 PSLC/ICLS Wine and Cheese Benefit**
4:30 p.m.
Riverside City Hall – Grier Pavilion, 7th Floor
- 30 Court Holiday – Cesar Chavez Day**
RCBA Offices Closed



President's Message

by Robyn A. Lewis

2012 is shaping up to be a very exciting year for the Riverside County Bar Association. Our membership level is at the highest that it has ever been. The sections have been extremely active, putting on incredibly valuable programs for our entire membership, thanks to the hard work of all of the section chairs. We have had wonderfully attended general membership meetings, which is due, in large part, to the caliber of speakers that our Vice President, Jacqueline Carey-Wilson, has secured for each meeting.

I am pleased to announce that the RCBA will be hosting a Riverside County Leadership Summit in early May, which I am hoping will become an annual event. The goal is to create a forum for leaders of the various bar associations, government agencies (such as the District Attorney's office, the Public Defender's office, the City Attorney's office, and County Counsel's office), and the judiciary, as well as other leaders in our legal community, to get together to discuss pertinent issues that affect the practice of law and the administration of justice in Riverside County. We may do different things and practice different types of law or play unique roles, but we are all part of the legal community in Riverside County.

The RCBA Executive Board has formed a Technology Committee, which is currently working to improve our organization's website, which I am very excited about. The committee is also researching whether we can provide webcasts of our general membership meetings or possibly of some of our other events, which will enable more of our members to enjoy all of the resources that the RCBA has to offer. The ability to offer webcasts would enable those in other parts of

Riverside County to participate, as well. So keep an eye out for upcoming technological developments in the RCBA!

As a reminder, Justice Goodwin Liu will be visiting the Inland Empire on April 3, 2012 for a dinner, which is being co-hosted by the Joseph B. Campbell Inn of Court of San Bernardino, the Leo A. Deegan Inn of Court of Riverside, and the Warren E. Slaughter Inn of Court of the desert communities. Justice Liu is an Associate Justice with the California Supreme Court, and we are honored to have him come and speak. The dinner is open to the public by reservation only on a first-come, first-served basis. If you are interested in attending, please contact Lisa DeLorme at (626) 302-6889 or lisa.delorme@sce.com.

On a statewide level, the RCBA is still working with the State Bar and assisting with its efforts to ensure that there is proper court funding this year once the budget is passed. As I already announced via email as a special message to the membership at large, the RCBA has joined the Open Courts Coalition in its fight to make sure that our judicial branch has a voice in budget discussions. It is my intent that the RCBA, in the next several months, will organize a legislative advocacy outreach committee, to be in contact with our local legislators in order to keep the importance of a properly funded judicial branch in the forefront of our representatives' priorities.

In my final comments for this month's message, I did want to follow up on my previous comments regarding the contested election for the judicial seat that is currently held by the Honorable Craig Riemer. I have publicly endorsed Judge Riemer and have already noted my concern over the ramifications of challenging a sitting judge in a contested election. As many of you already know, Riverside County has not had this type of election in years. Now, not only is Judge Riemer being challenged, but there are three additional bench officers who will face challenges to their positions: the Honorable Gary Tranbarger, the Honorable James A. Cox, and the Honorable Victoria Cameron. I urge each of you to educate yourselves on the issues that surround these elections, as they will prove to be important.

Robyn Lewis, president of the Riverside County Bar Association, is with the firm of J. Lewis and Associates.



BARRISTERS PRESIDENT'S MESSAGE

by Scott H. Talkov



Building a Niche Practice Through Barristers

Perhaps the best advice I was given in law school at Washington University in St. Louis was from an adjunct professor and partner at a major law firm who insisted that young attorneys develop a niche practice. "I don't care if you specialize in trash law – you have to specialize in something," Professor Joseph Colagiovanni stressed.

The downside of avoiding a niche practice cannot be understated. "It is almost impossible to compete in the legal profession without an emphasis on a specialized area of law," proclaimed Reid & Hellyer President Mike Kerbs, a business lawyer since he joined the firm after graduating from law school in 1987. Indeed, "dabbling" in various practice areas means your opposing counsel and the judge may have learned every intricacy in that practice area over years, if not decades. As your relative expertise dwindles, so do your chances of a client victory.

On the upside, niche practices provide increased efficiency and a more profitable practice. Let's take, for example, the drafting of a complaint for a breach of contract. As merely a third-year attorney developing a real estate and business litigation practice, I've already drafted a half-dozen such complaints, usually in a few hours, depending upon the complexity of the case.

However, let's suppose a general practitioner, who, just yesterday, was defending a DUI and assisting a workers' compensation claimant, is now drafting a complaint for breach of contract. If it takes them twice as long, should they bill the client for that time? If they decide to write off the additional time, will they be staying late at the office to bill just as many hours as that niche practitioner? Even if that general practitioner spends twice as long, will their work product be as good as the work product of a lawyer who has drafted several such complaints?

Numerous attorneys in our legal community are so famous for their niche practices that the mere mention of their name evokes that practice area. Take, for example, Barry O'Conner, whose name has become synonymous with residential unlawful detainers. Despite Reid & Hellyer's reputation for real estate litigation, the firm regularly refers cases to Barry O'Conner due to his expertise. But if Barry was in a car accident on the way to court for an unlawful detainer appearance, or if a Reid & Hellyer client asked for a personal injury attorney, we'd probably recommend calling Jim Heiting or his trusted associate and former Barrister President Jean-Simon Serrano, due to their niche practice in personal injury.

How did these attorneys end up in this network where they regularly receive referrals for cases that they are able to handle efficiently and competently? The secret requires two simple steps. First, a young attorney should pick a niche and practice in that area to develop expertise. Second, a young attorney needs to become known for that area of practice. This latter element generally

requires networking, which means both giving and receiving referrals. As young attorneys will quickly figure out, the upside of referring out a potential case in a practice area unrelated to their niche will be more enticing once they see the benefits of receiving referrals in their niche practice.

If you'd like to start developing your skills and reputation in a particular niche, come to our next Barristers meeting – check RiversideBarristers.org. You may quickly find that your fellow young attorneys don't already have a particular attorney in your practice area that they send referrals to. Moreover, your clients will thank you when you become their go-to attorney to refer them to a reputable lawyer for any practice area in our legal community.

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



COURT'S MEDIATION PROGRAMS RESOLVE A "BROAD ARRAY OF DISPUTES"

by *Barrie J. Roberts,*

When you walk by the statue of Gandhi on Riverside's downtown mall, what comes to mind? For me, even a quick glance brings to mind Mr. Gandhi, lawyer, describing his "boundless joy" after helping a client resolve a commercial dispute:

"I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul."¹

While the court's mediation programs may not always provide "boundless joy," they do offer opportunities to practice one "true function of a lawyer." And the court offers these opportunities in an increasingly "broad array of disputes," a phrase from the Judicial Council's standing resolution, "Recognizing the Third Week of March as Mediation Week."²

Countywide Family Law Mediation Panel

The new Family Law Mediation Panel will be available to family law litigants throughout the county by early April. Panel mediators will be local court-approved family law lawyers with significant mediation training. Each mediator will post a profile on the court's ADR web page describing his or her education, experience, mediation style, fees and location. Attorneys and litigants may search for mediators by name or by other search options and then simply contact the mediators of their choice without court involvement. This panel and new family law mediation programs are being developed under the direction and guidance of Judge Asberry and Judge Wells.

Court-Ordered Mediation for General Civil Cases Under \$50,000

This program provides the best features of mandatory and voluntary mediation. At the first case management

1 Mohandas K. Gandhi (BN Publishing 2008) *An Autobiography: The Story of My Experiments with Truth*, 117.

2 "Whereas during the past several decades, California trial and appellate courts have increasingly encouraged, offered, and provided mediation to assist litigants in resolving a broad array of disputes that are filed with the courts, including civil, family, juvenile, and criminal matters . . ."

conference, parties in general civil cases valued at \$50,000 or less may be ordered to mediation or judicial arbitration. If the case is eligible and the parties agree to mediation, they receive an order with instructions on selecting their mediator and scheduling the mediation. They may select any mediator they wish, but there is no cost for the first three hours of mediation services with a Civil Mediation Panel mediator, who, according to mediation surveys about panel mediators, may well actually provide the "boundless joy" of "uniting parties riven asunder." This may be news to out-of-county attorneys with superiority complexes about court-connected mediators. But this attitude quickly changes after a review of the outstanding mediator profiles on the court's website. The benefits of working with Riverside attorney-mediators on Riverside cases are available both for court-ordered and private mediations of cases well over the \$50,000 limit.

Value Mediation Program for General Civil and Probate Cases

This voluntary reduced-cost mediation program fills the gap for civil cases that are over the \$50,000 limit for court-ordered mediation but for which market-rate mediation is not cost-effective. Several mediators also provide probate mediations in this program. See riverside.courts.ca.gov/adr/valuemediation_infosheet.pdf.

DRS & DRPA

Thanks to the generosity of mediators from Dispute Resolution Services (DRS), the leadership of Chris Jensen, the administrative skills of Vickie Moneymaker, and funding provided through the county by the Dispute Resolution Program Act (DRPA), the court can offer three mediation programs at no cost to parties:

Day of Trial – Trial Assignment Mediation (TAM): This program gives parties one last chance to settle their cases before being sent to a trial department. This program began under the leadership of Judge Gloria Trask in 2008 and continues under the leadership of Judge Mac Fisher, who, at every Friday trial calendar, introduces the mediators and encourages a "glimmer of hope" for settlement in both counsel and self-represented parties alike.

Probate Mediation: Thanks to the leadership of Judge Cahraman, Judge Cox and Commissioner Burgess, and the efforts of Supervising Probate Attorney Tom Johnson, the

court and DRS have partnered to provide probate mediations for selected court-referred cases. See riverside.courts.ca.gov/adr/probatemediation_infosheet.pdf.

Family Law VSCs for Self-Represented Parties: This program was designed by the court's ADR and Self-Help Departments, with Susan Ryan, Self-Help's Managing Attorney, taking the lead in partnership with DRS. Twice a month, dedicated DRS family law mediators provide voluntary settlement conferences to the county's numerous self-represented family law litigants, at no charge. In November, the VSC program celebrated a very successful first year under the leadership of Judge Lucky and Judge Asberry. Thanks to the new countywide Family Law Mediation Panel, plans are underway to bring this program to Indio and Hemet. See riverside.courts.ca.gov/adr/1112_newsletter.pdf.

Chapman University School of Law & DRPA

Thanks once again to DRPA funds provided through the county, as well as to the dedicated efforts of Chapman University's Mediation Clinic Director, Professor David Dowling, the court can offer several outstanding mediation programs at no charge to litigants, while helping to cultivate the next generation of attorneys:

Civil Harassment Mediation: This program, under the direction of Commissioner Thatcher, made local and national news on February 9, when Chapman mediators helped two fourth-graders and their parents resolve their dispute. See washingtonpost.com/national/extension-of-restraining-order-against-4th-grader-avoided-after-deal-reached-in-calif-court/2012/02/08/gIQAmLZyzQ_story.html.

However, even on days when no reporters are present, Chapman mediators fearlessly resolve – or at least bring calmness and new perspectives to – highly charged disputes among relatives, neighbors, former friends, business associates, and current and former spouses, girlfriends and boyfriends. One reason for this program's success is the way Commissioner Thatcher starts each calendar with an explanation of the petitioner's burden of proof, the serious consequences to the respondent if the petitioner meets that burden, and the benefits of using mediation to find a sustainable resolution for all concerned.

Collections MSCs: Judge Riemer proposed and has guided this new and successful calendar, now being heard on Thursday mornings by Commissioner Thatcher. Instead of setting case management conferences and trial setting conferences for limited civil collections cases, the court now simply sets a settlement conference when a defendant files an answer. Both sides must complete a form "MSC Statement" setting forth the facts and settlement proposals, and pro per defendants are encouraged to get help during free weekly workshops that immediately precede their settlement conference.

Trained Chapman mediators provide the workshops and the settlement conferences. And once again, Commissioner Thatcher starts each calendar with a presentation about the benefits of using mediation to settle the case that same day. See riverside.courts.ca.gov/adr/collectionsmsc.pdf.

ADR Partnerships

As the Judicial Council's standing resolution points out, ". . . the availability and success of court mediation programs are largely attributable to the efforts of judicial officers, court staff, and justice partners, including community dispute resolution organizations, local government agencies, state and local bar associations, mediation organizations, and individual mediators, many of whom contribute significant time and resources toward conducting mediations"

Riverside is certainly a prime example of this statement, from the strong support of Presiding Judge Ellsworth, who has instituted "PJ Settlement Day" to help settle cases on the day of trial and who is a strong supporter of all of the court's ADR programs, to all of the judicial officers, who encourage ADR at case management conferences and other hearings, to court staff, who provide the considerable operational support required to run our ADR programs, to the mediators described above, and to the one and only Judge "Woody" Rich, who is the best example of the "boundless joy" attainable by settling hundreds of cases.

A Lawyer's True Function

The simplest way for attorneys to join the court and its justice partners in our ADR efforts – and to comply with Local Rule 3218, which requires parties to meet and confer about ADR before the case management conference – is to review the court's ADR Information Sheet with clients early in the case. This opens the door to reality-checking discussions about the costs, risks and benefits of litigation and settlement, and the identification of the client's true interests and goals. See riverside.courts.ca.gov/adr/adrciv.pdf. Just that much could provide a taste of the "true practice of law."

Barrie J. Roberts received a J.D. from UC Hastings College of the Law and an LL.M. in Dispute Resolution from the Pepperdine University School of Law (Straus Institute). She practiced law for 14 years in Northern California and became the court's first ADR Director in March 2008. She can be contacted at Barrie.Roberts@riverside.courts.ca.gov. Additional information about ADR in Riverside Superior Court is available at riverside.courts.ca.gov/adr/adr.shtml.



CONFLICT RESOLUTION AND YOU

by Richard Pershing

The questions asked in the mediation community today surprise many attorneys. Can attorneys be effective mediators? Are non-attorneys more effective at mediation than attorneys? Are retired judges too direct in their mediation style to create settlements that are really owned by the parties? Is mediation just another way for the man to suppress the little people? These questions reveal the dynamics of mediation today, but what about this question: Are attorneys utilizing the field of conflict resolution to enhance their practice? Their personal life? Their community life?

Thanks to the *Daily Journal*, attorneys receive daily exposure to mediation and mediators, but the discussion regarding mediation rarely touches on how the skills required of a mediator might apply to an attorney's office relationships, family life, or community activities. These thoughts seem surprising to some attorneys, because they still think that mediation is just about splitting the baby. They remain unaware of the relationship of the mediator's skill sets to other forms of conflict resolution that inform all aspects of the attorney's daily life. While the attorney may be unaware of the skill sets that often bring resolution to conflict, the rest of the community assumes that the attorney has these skills and that the attorney is ready to provide these skills in forms of conflict resolution other than mediation. As a result, circumstance forces the attorney to evolve these skills, yet the attorney remains unaware of them and unable to define them.

Mediation represents but one band of several in the conflict resolution spectrum. Negotiation, in the context of conflict resolution, represents negotiating one's own conflict, with no assistance from a third-party neutral. Four other forms rely on the use of a neutral: Conflict coaching, mediation, facilitation, and restorative justice. Conflict coaching emerged as a subset of personal coaching, and some institutions now offer a certification in conflict coaching. Conflict coaching involves the neutral coaching one party in a conflict through the conflict. Facilitation refers to the use of a neutral to assist a group working through a conflict. Restorative justice, sometimes referred to as reconciliation, describes the role of neutral assisting parties to a resolved conflict now working on the reintegration of the parties into the community.

Attorneys find themselves doing all of these things without any formal training, both in the practice and outside the practice. Attorneys must negotiate for themselves with respect to the conflicts in their own business arrangements, family life, or community life. Clients expect attorneys to negotiate on their behalf or often expect to be pre-

pared to negotiate by the attorney, i.e., coached. Employers expect their attorneys to coach them through a problem with an employee without losing the employee. A plaintiffs' labor lawyer finds the client asking for guidance on how to keep the job while addressing a difficult problem with the employer. A partner in a business expects the attorney to provide guidance for dealing with a problematic co-owner without destroying the business. Directors and shareholders in a closely held corporation look to the corporate attorney to facilitate their contentious meeting without destroying the company. Husbands and wives, parents and children, blended families, all look to the estate planning attorney to guide them through a disagreement on the allocation of the estate or continuity plans for the family business without destroying the family or the business. Attorneys in all fields hear questions about how to deal with people after a conflict is over, e.g., the physician who just fired an employee but is still the employee's personal physician.

In all of the foregoing cases, the attorney technically gives legal advice only on the remedies at law – if they fire, you can sue; if they breach, you can sue; if they usurp the corporate opportunity, you can sue; if the physician abandons the patient, you can sue. True, clients in those situations want an assessment of a potential law suit, its cost, and its likely outcome, but, more often than not, they don't want the law suit and seek counsel on how to find an acceptable alternative.

According to the Judicial Council, some 97% or more of all cases filed in California courts settle before judgment. Consider also the huge number of cases vetted by attorneys every year that are resolved without filing a lawsuit or even threatening to file a lawsuit. In light of the enormous number of conflicts resolved every year by attorneys without a court judgment, suit or even threat of suit, one can only conclude that something more than just legal advice is at work. Pundits pillory California for having the highest ratio of attorneys to population in the world. I propose that California is the ninth largest economy in the world because it has attorneys who work hard every day resolving conflicts in and out of court!

Legal advice constitutes only one part of the risk assessment, or counsel, provided by the counselor at law. California counselors at law have demonstrated skill at dealing with the dynamics of human beings in conflict and, thereby, make the difference. Even when clients enter the office asking to sue, the counselor at law often finds that the client doesn't really want to sue or, perhaps,

shouldn't sue. While the client has appreciation for the attorney's knowledge of the law and research, it ranks second to the client's appreciation for the counselor at law who really listened, reframed key ideas, offered heartfelt empathy, clarified concerns, and shifted the conflict from pure emotion to cognition, thereby helping the client find options for resolving the conflict. Proof of this value added occurs every time the attorney discovers the client's real concerns, moving from bargaining positions to the real interests, such as the quality of the client's life or the need of the client to remain in community with people for whom the client cares deeply. Unfortunately, attorneys may be unaware of their service as a counselor at law, unaware of what it is they are doing right, and, therefore, unable to recognize how to further refine these skills.

At the end of the day, these very skills can enhance the counselor at law's daily life, reduce stress, improve physical and mental health, and build healthier relationships with colleagues, clients and loved ones. La Sierra University, School of Business, has opened the Center for Conflict Resolution

and is now offering noncredit courses in conflict resolution to attorneys and the community. You are invited to consider refining the skills you already have, moving them from the intuitive to the intentional. We invite you to consider allowing these skills to become life skills that will benefit you and the people for whom you care deeply. You can find us at the following link: lasierra.edu/index.php?id=conflict.

Richard Pershing is Director of the Center for Conflict Resolution, La Sierra University, School of Business, and a Partner in Reynolds Jensen & Swan LLP.



CREATING A SUCCESSFUL MEDIATION PRACTICE BEFORE THE BABY BOOMER ONSLAUGHT

by Shirish Gupta



Shirish Gupta

Mediation is a highly competitive field, and it is about to get a lot more crowded. In the next few years, baby boomer attorneys will start to retire, and, rather than give up the law entirely, many will try their hand at mediation. Why not? They've practiced for 30-plus years and are experts in their field. And many of them will likely be volunteering their time. Faced with that incoming wave, it is crucial to build your practice now.

I had a bit of head start by leaving big firm life and opening my own mediation and litigation practice in 2008. I'm happy to share what I've learned in the past four years in the hope that you can apply them to your mediation practice. Although this article is designed for neutrals just starting out, it also applies to people considering becoming neutrals.

Success

For me, a successful mediation practice is one where I'm consistently getting interesting disputes and getting paid for my services. I don't have visions of world domination or creating the next AAA. I simply want to help people resolve their disputes while making a living.

Geography

When I started out, keeping costs down was crucial, so I operated from an office near my home. I've since expanded my practice to include mediation centers in Irvine, San Mateo and Sacramento. This leads to increased travel, marketing, networking and localization costs, but it opens up a lot of opportunities. For example, but for the Sacramento location, I wouldn't be considered by parties in the Central Valley. The Irvine office allows me to cover all of Southern California, and the San Mateo office straddles the border of Silicon Valley and San Francisco.

What I'm trying to say is, choose your office location based on the clientele you plan to service. For example, for family law matters, parties and counsel balk at traveling 30 miles, so you might need to have multiple locations in a tight geographic area, such as one in Riverside, another in Corona and a third in Moreno Valley. Again, this costs money, but see if you can pool your resources with other neutrals or, alternatively, rent conference room space as needed. The Riverside County Bar Association's offices are available, and they're centrally located – that's where I conduct all my county fee arbitrations.

Alternatively, focusing just on one geographic area and practice group can greatly reduce your overhead and market-

ing costs – it's a lot easier to get known by all the real estate litigators in Palm Springs than county-wide.

Shadowing

Soon after I began mediating, I shadowed an experienced mediator. Watching him manage the parties and their attorneys, using not only his subject-matter knowledge but also his soft skills, was eye-opening. Just sitting back and watching a master at work can be invaluable. The other benefit is that, depending on how you hit it off, that person can serve as a mentor or sounding board in the future.

Volunteer

Another option is to volunteer and apply for mediation panels. Again, there are several panels (e.g., OCBA, BASF) that won't even consider you if you don't have at least ten mediations. Many other panels are simply closed, including the Riverside Superior Court's Civil Mediation panel. On a personal note, my wife and I financially supported a community dispute resolution service for ten years, so I thought it shouldn't be too hard to get on their panel. Not only was their panel full, they were culling it because there weren't enough cases for everyone on the panel. Another service said they'd consider my application only after I took their \$600 training course – it didn't matter that I had already completed a 40-hour course offered by a stellar provider.

However, there are always opportunities. For example, I happily donate my services to the Riverside County Bar Association's Fee Arbitration program. They're looking for more fee arbitrators, especially family law arbitrators. While it isn't mediation, many of the soft skills are the same – evaluating the veracity of the witnesses/parties and gaining their trust and confidence so that they feel that the process is fair, regardless of the result. Also, it takes a while to get comfortable wearing a neutral's skin. Fee arbitrations are a good way to get that experience. You don't get paid for fee arbitrations and will incur out-of-pocket costs, but it's a small price to pay for the experience. Also, you get to work with unrepresented parties, which is a valuable skill in itself.

I started out getting on one fee arbitration panel. From there, I've been accepted to 12 arbitration and mediation panels. In sum, the fee arbitration panels are a great way to grow your mediation practice, especially before the baby boomer wave hits.

Shirish Gupta is a mediator with Flashpoint Mediation (flashpointmediation.com) and has mediation centers in Orange County, Silicon Valley and Sacramento. He is the only Super Lawyers Rising Star in ADR in all of California. He is an alumnus of Corona High School.



RCBA Dispute Resolution Services, Inc.

by Chris Jensen

Our own non-profit arm of the RCBA Dispute Resolution Services, Inc. (DRS) continues to grow. DRS continues to provide a variety of services for the Riverside County Superior Courts as well as mediation and arbitration services for private contract.

Mediation Services currently offered by the Riverside County Superior Court is the Court's program whereby it provides the first three (3) hours of a mediation at no cost to participants provided it is a case for damages of \$50,000.00 or less and is otherwise qualified as determined by a judicial officer. Then there is DRS.

Under contract with the County of Riverside, DRS provides mediation services for matters over \$50,000.00. The majority of DRS' current services are being provided to Family law matters under a program instituted by Judge Lucky. Judge Lucky determined that the largest volume of troublesome cases were pro per driven and DRS responded to the call. The DRS family law mediators have gone far beyond the call of duty in volunteering their time for the system and deserve mention by name. They are Tom Allert, Soheila Azizi, James Bauchert, Sherry Collins, Donald Cripe, T.W. Ronald Danieri, Robert Deller, Donald Dench, William Edgar, Harry Histen, Luis Lopez, John Marcus, Conway Morris, Delilah Knox-Rios, Thomas Watts, James Wiley, Dennis Wojs, and Therese Zartman. This team of mediators is lead by Don Cripe with, per the latest statistics, Tom Allert and Luis Lopez, leading the pack in services volunteered. Luis further adds his bilingual ability making him, fortunately for the system, that much more the champion. It does not take an economist to appreciate the countless hours and money saved by this team. Their efforts have achieved a phenomenal success rate of greater than 80%; not only do they deserve our admiration but our gratitude.

DRS is also providing mediation services for the Probate Court, as well as some civil litigation matters. The number of DRS cases available to the judicial officers is limited so when a judicial officer advises that his or her allotment has been filled for the month it is an unfortunate truth.

One does not need to have a Riverside County Superior Court case and otherwise

qualify for the use of DRS to gain the benefit of DRS. As always, DRS is still providing private mediations and arbitrations for the incredibly low rate of \$200.00 per hour shared by all (there is a sliding scale increase if more than four parties are involved). To chose a mediator, visit DRS' new website page at rcbadrs.org for all of our forms, contract requirements, and more importantly a list of our mediators and arbitrators. We have over eighty-five (85) mediators or arbitrators. Visit the general mediator list under "Forms" or click the mediation tab for a list of mediators who have added a biography. If you would like to schedule a mediation, contact Vickie at DRS and she will make all the necessary administrative arrangements for your mediation or arbitration.

As to the website, such was created by Mill Creek Network under the guidance of Jeffrey Schaefer. The technological dinosaurs on the DRS board were grateful for the simple explanations and directions by Mr. Schaefer. The development of the webpage was so smooth that Board Members Harry Histen and Chris Jensen retained Mr. Schaefer for the creation of their own firm websites. Visit their websites for an additional example of the work Jeff Schaefer provides and if you are interested contact him at (800) 360-9025. Jeff does not waste your time with a long sales pitch. He is there to help and being related to lawyers, he is not scared off.

Should you have any questions about DRS such as, what services it provides or how it operates, and the web page does not answer your question, contact Vickie at DRS (951) 682-2132 or Christopher G. Jensen, Chairman and President of DRS.

Please see Mr. Jensen's profile on page 20.



FINAL DRAWING of the Riverside Historic Courthouse by Judy Field

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VOLUNTARY SETTLEMENT CONFERENCE: A NEW ROAD TO TAKE

by Patricia Rich and Larry Maloney

The Family Law Division of the Riverside Superior Court has created a new road toward successful resolution of family law cases. The court began a pilot program in 2010 wherein the court, in partnership with Dispute Resolution Services of the bar association, would provide free mediation services to self-represented litigants as an alternative to the traditional mandatory settlement conference program. The court recognized that self-represented litigants often fail to complete their cases because they can't operate the system, they get lost in the litigation maze, or they get frustrated by continued failed attempts to move forward with no guidance on the proper route to take. While the court cannot take the wheel and control the litigation, the Voluntary Settlement Conference (VSC) Program was designed to provide a roadmap to help the litigants navigate the system with ease.

Self-represented litigants are placed on the road to the VSC either through direct scheduling by the judge or family law facilitator or by filing an at-issue memorandum. Once in this program, the litigants are guided through the process by attending a VSC/MSM workshop. In this workshop, the litigants are shown the importance of the disclosure documents and are then given directions on how to properly complete pre-settlement papers, including the schedule of assets and debts, income and expense declaration, and settlement conference brief. Through this process, the litigants can plan their own route toward settlement, and they can better identify their own potential alternatives to trial.

Once the litigants have crafted their roadmap toward settlement, they are introduced to the settlement process by one of the judiciary, who delineates the merits of settlement and the roadblocks that may occur in trial. Prior to the self-represented litigants even arriving at the VSC, court personnel have reviewed each of the cases, ensured that all necessary documents have been prepared, and, if necessary, provided captioned disclosure documents to be filled out on the day of the VSC. The self-represented litigants are then assigned to a volunteer mediator, who conducts them through the settlement process. The mediators are committed to helping even the most difficult cases. They will spend as much time as necessary to help the parties reach their goal of a full settlement.

The mediators traverse the rocky road of marital negotiation with tremendous success. However, they are not the only guides available for a successful journey toward judgment: Family facilitators provide workshops to assist in the preparation of the necessary documents; custody

and visitation mediators are available to assist litigants on issues related to custody and visitation of children; representatives of the Department of Child Support Services are available to sign agreements on the day they are executed; and a Riverside superior court judge is available to put the settlement on the record and, in many instances, to execute the judgment that very day. Those litigants who successfully navigate through this process toward settlement drive away from the trip with a judgment in their hands and a smile on their faces.

The journey to assist self-represented litigants is not complete. Riverside Superior Court is expanding the VSC program to the Hemet and Indio districts. The VSC Program has now been in existence for one year. Statistics bear out the success of the program. There have been a total of 150 cases mediated through the program. In only four instances did the litigants refuse to participate. 72% (108 cases) resulted in full settlement of all issues and complete resolution of the case on the date of the VSC. While 12% (18 cases) were continued, many of those ultimately resulted in complete resolution, and in only 6% (9 cases) were only partial settlements completed. Those partial settlements, however, cleared the path for greater ease in entering the trial arena because the parties were able to resolve major issues during the mediation and were left with limited issues to present to the judge.

Riverside Superior Court also provides other avenues toward resolution of litigation. We offer a default judgment workshop that can assist the petitioner when the other side has not filed a response. In addition, in cases where the parties begin their journey knowing the route they want to take, they can enter into what is called a default by settlement. The petitioner is allowed to take the default of the respondent; however, the respondent is allowed to sign the judgment, without a first appearance fee, turning it into a settlement agreement. The parties need not wait until a VSC is scheduled to conclude their case, as the facilitators are available to assist them in fine-tuning their agreement and drafting the necessary paperwork.

Regardless of the twists and turns litigation may bring into litigants' lives, Riverside Superior Court has way to straighten out the course and provide a Garmin guide to completion of their case.

Patricia Rich and Larry Maloney are Family Law Facilitators at the Riverside Superior Court. Larry Maloney is also a Certified Family Law Specialist.



THE CENTRAL DISTRICT'S ADR PROGRAM

by Gail Killefer

At this time last year, in the *Riverside Lawyer*, we noted that the Central District's ADR program was underutilized – a condition we hoped to change.

I'm happy to report that 2011 was a year of growth and innovation for the ADR program in the Central District:

- The court adopted a new ADR general order, amended local rules pertaining to ADR, and revised ADR forms;
- Panel members were added to the court's Mediation Panel; and
- The number of mediations conducted by the court's Mediation Panel nearly doubled.

Several of you offered excellent input that was put to good use as we revamped the program. Thank you.

We are still working toward having the parties and counsel use the ADR program more often and more effectively. In this article, I discuss the new ADR procedures, the Mediation Panel, and the outlook for 2012.

New ADR Procedures

The Central District offers three ADR options: (1) a settlement proceeding before the district judge or magistrate judge assigned to the case; (2) a mediation with a neutral selected from the Mediation Panel; and (3) private mediation. (See Civil L.R. 16-15.4.)

Unless exempted by the trial judge, the parties in every civil case must participate in some form of ADR. (See Civil L.R. 16-15.1.)

The new ADR General Order 11-10, which took effect December 1, 2011, streamlines the ADR procedures. Now, almost all civil cases assigned to judges participating in the "Court-Directed ADR Program" are presumptively referred to the Mediation Panel or to private mediation. A settlement conference with a magistrate judge is generally not available for these cases. (See Civil L.R. 26-1(c).)

Twenty-five district judges participate in the Court-Directed ADR Program, including the Hon. Virginia A. Phillips, the district judge in the Riverside courthouse. The full list of participating judges can be found on the court website, www.cacd.uscourts.gov, on the "ADR" page.

Under the new ADR procedures, counsel must include their shared or separate views regarding a preference for the Mediation Panel or private mediation and when the mediation should occur in their Joint 26(f) Report. Counsel are no longer required to complete the ADR Questionnaire.

After reviewing the Joint 26(f) Report and discussing ADR with counsel at the initial scheduling conference, the court will file an Order/Referral to ADR (form ADR-12) or, with a minute order, order the case to ADR.

When a case is ordered to the Mediation Panel, counsel have 21 days to select a Panel Mediator. Once they agree on a mediator and obtain the mediator's consent to conduct the mediation before the court deadline, counsel file a Stipulation Regarding Selection of Panel Mediator (form ADR-02).

After the Stipulation is filed, the ADR Program files a Notice of Assignment of Panel Mediator. If counsel do not make a selection, or if they request that the court make an assignment, the ADR Program staff will assign someone with expertise in the subject matter of the case.

Once a Panel Mediator is assigned, he or she will work with counsel to schedule a mediation "for the earliest possible date after the parties have had reasonable time to evaluate the case, thus minimizing the expense of the litigation." (General Order 11-10, § 8.2.)

After a mediation, the Panel Mediator will file a Mediation Report (form ADR-03), advising the court: when the mediation took place; whether the parties, counsel, and party representatives appeared as required; whether the case settled; and, if not, whether and when the mediator intends to follow up with the parties.

The parties, counsel, and the Panel Mediator are also asked to return a completed survey to the ADR Program, evaluating the process. (See Participant Survey (form ADR-15) and Survey for Mediators and Report of Payment (form ADR-16).)

Court Mediation Panel

Last winter, the court recruited candidates in Riverside for appointment to the Mediation Panel. Panel mediators who live or practice in other counties also volunteered to mediate in Riverside. To date, 192 attorneys serve on the court's Mediation Panel; of these, 39 volunteer to mediate in Riverside County.

Panel mediators each have at least 10 years of legal experience; collectively, they possess substantive experience in 22 areas of law. Their profiles are available on the "ADR" page of the court website and can be searched alphabetically, by county, and by area of legal specialization.

Panel mediators generously volunteer their preparation time and the first three hours of a mediation session. They can request their market rate if the parties choose to continue the mediation beyond their hours.

One new addition to the panel in Riverside is Jeb Brown of the City Attorney's office. Jeb mediated numerous cases with the panel as an advocate; now, he has settled his first case as a neutral. Jeb believes that serving on the panel is an excellent way to serve both the court and the legal communi-

ty. He also found that his experience as a mediator improved his skills as an advocate.

The court offered numerous MCLE programs on mediation topics to panel mediators. In Riverside, in April, the court sponsored a basic mediation training for new panel mediators. In November, one of the panel's long-time, distinguished mediators, Terry Bridges, gave a much appreciated presentation on "Best Practices in Mediating Cases Referred to the Panel."

The year ended with an Appreciation Reception for the Panel Mediators in Riverside, graciously hosted by the Hon. Virginia A. Phillips.

Looking to 2012

With the new ADR General Order in place and more panel members available to mediate in Riverside, the number of cases referred to the Mediation Panel should show significant growth. The Mediation Panel offers a valuable and cost-effective way for parties to explore potential avenues of resolution. If you have not yet mediated with a panel mediator in Riverside, give the Mediation Panel a try!

For more information about the court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the court website, www.cacd.uscourts.gov, under "ADR."

Gail Killefer is the ADR Program Director for the U.S. District Court, Central District of California.



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Thursday, March 29, 2012

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PRIVATIZATION OF DISPUTE RESOLUTION

by Tim Corcoran and Karen Feld (Contributing Editor)

Over the past four years, the California state budget for the courts has been reduced by more than \$650 million, which includes \$350 million for this fiscal year. When the most recent cuts were announced last July, panic went through the various counties, and there were reports that nearly all of the civil courts in the San Francisco superior court system were closing. Similar rumors surfaced relative to other court systems throughout the state. Budget cuts will not change over the next several years. Richard DeAtley of the Riverside Press-Enterprise recently reported that Riverside and San Bernardino Counties each suffered approximately \$6 million budget decreases for the present year. Riverside and San Bernardino have only half of the recommended allotment of judges. Court personnel are being laid off and work days reduced. Satellite courts have been nearly eliminated, and some of the specialized courts handling domestic violence and drug offenders have been eliminated. Court administrators for the counties have indicated that “we are down to the bone now” relative to the cuts that have been made in their departments. These cuts are signs of the times. Our governmental entities are in debt and their budgets are spiraling out of control. How dangerous is this problem, and is there a solution?

The message is clear. In order to maximize the resources available to the judicial system, there is a need to find alternative approaches to fill the gaps where budgetary constraints have limited or eliminated resources. There is a need to be creative in trying to assist the courts in saving resources that can be used for other judicial purposes. Lawyers coming together and donating their time, talents and efforts have been somewhat helpful to the courts. However, long-term changes need to be contemplated, and we need to rethink the traditional use of the courthouse.

One major change in thinking about our court system has to do with the use of private sources of dispute resolution. We have been acclimated through books, movies, television and law school to the idea that the courthouse is the means to resolve all disputes. Lawyers are taught and trained in the art of trial practice and sold on the concept that disputes are resolved only through the use of the judicial system. Commercial and transactional lawyers see things differently and generally cannot understand why all this litigation has to take place. Conflicts do arise, and clients want to resolve them. We

need to remember that we became lawyers to help our clients, and we need to think of ways of helping them achieve what they are looking for through means other than going to court.

Private dispute resolution makes more sense when there is a lot of money at stake. For most commercial cases, as well as larger personal injury cases with claims in excess of \$50,000, the disputants should consider alternatives. Privately paid lawyers and their privately paid consultants and experts can resolve their cases earlier and less expensively through use of private dispute resolution services.

The alternative dispute resolution formats available include private court or jury trials, administrative law hearings, discovery referees, arbitration, mediation and an early neutral evaluation. The use of private trials is on the rise, and large panels such as JAMS, Judicate West and ADR Services have been providing private judges to adjudicate commercial disputes since the late 80s. Retired judges are accustomed to making decisions and enjoy the opportunity to sit in the private sector and still make decisions for other people. They can also serve as discovery referees, administrative law judges, and special masters and handle family and probate matters.

Arbitrations, too, are on the rise and have been handled effectively by retired judicial officers and attorneys for more than 30 years.

Mediation is a process for dispute resolution through negotiation. Mediators are specially trained in conflict management and help facilitate resolution through negotiation. Mediation has become a very specialized process and is by far the most widely accepted format for dispute resolution, as most experienced mediators help the parties create a “win-win” outcome.

Increased use of private dispute resolution providers would free up scarce and valuable judicial resources for handling probate, family law, criminal, and smaller civil claims, as well as those claims that really do require judicial determination. While traditional thinking tells us that judges and juries need to dispense justice in criminal cases, there is evidence that such a notion is changing in our country. There is no reason why probate, family law, or criminal cases cannot be resolved through the negotiation process. If the parties in these cases need to put a judicial blessing on a resolution that has been negotiated, then that process will still be substantially

less time-consuming than if that judicial officer had been burdened with having to do all of the work to get to that point.

Simply stated, we have to be more proactive to achieve the results that clients are seeking. These positive results can be achieved when the parties seek to collaboratively work to resolve a conflict and focus less on the competitive, aggressive and argumentative approach to dispute resolution. In the end, they will achieve their goals while reducing the courts' burden.



Tim Corcoran is a neutral with RAMS and Judicate West. He is a Distinguished Fellow of the International Academy of Mediators and a Fellow of the American College of Civil Trial Mediators and serves on the California

State Bar Committee for Alternative Dispute Resolution.



Karen Feld is a partner with Lewis, Brisbois, Bisgaard & Smith, LLP and represents public entities in litigation, transactional and municipal law. She is also the Vice President of the Inland Empire Legal Association of

Women and on the Board of Directors of the San Bernardino City Library Foundation. Ms. Feld was named one of California's Top Women Lawyers in 2011 and a California Super Lawyer in 2012.



THE COURT OF APPEAL'S SETTLEMENT CONFERENCE PROGRAM

*by Presiding Justice Manuel A. Ramirez; Managing Attorney Donald A. Davio
and Settlement Coordinator Jacqueline Hoar, co-authors*

The Volunteer Attorney Mediator Mandatory Settlement Conference Program at the California State Court of Appeal, Fourth District, Division Two, located in Riverside, settles civil appeals with a minimal use of judicial resources. The attorney mediators and parties on appeal are notified, assigned, and scheduled by Settlement Coordinator Jackie Hoar under my supervision, and I ultimately decide which appeals will be placed in the settlement program. The procedure has been formalized in the Local Rules of the Courts of Appeal of California, Fourth Appellate District, Rule 4.

The program was born of necessity in 1991, as the court faced a mounting backlog of civil appeals generated by three years of record-breaking filings from Riverside, San Bernardino, and Inyo County superior courts. While the justices of the court devoted all their time to resolving appeals and original proceedings on the merits, the volunteer attorney mediators succeeded in settling approximately 220 appeals by the end of 1996. This successful effort greatly assisted the court in reducing its backlog and becoming current, at little additional cost to the taxpayer. Chief Justice Ronald M. George recognized the mediators' dedication and success by awarding the program the prestigious Ralph N. Kleps Award for Improvement in the Administration of the Courts in January 1997. The program has continued its success throughout its 20-year history, maintaining a settlement rate close to 50 percent. The program is currently approaching nearly 1,000 settlements worth approximately \$800 million.

The settlement process may be initiated by counsel or the court anytime after the notice of appeal is filed. The court-initiated process begins with a review of all civil case information statements by the settlement coordinator to determine whether the cases should be considered for settlement. As a result of this evaluation, a Settlement Conference Information Form (SCIF) is mailed to counsel in approximately 50% of civil appeals 40 to 50 days after the notice of appeal is filed. I then screen out another 25% of the cases based on an evaluation of the SCIFs approximately 80 days after the filing of the notice of appeal. The significance of the 80-day time period is that the records in civil cases are generally filed between 80 and 110 days after the filing of the notice of appeal, and the settlement

coordinator's goal is to finish screening out appeals before the record is filed to avoid delaying appeals that are not placed in the settlement program.

In the remaining 25%, briefing is stayed, a mediator is selected based on area of expertise and settlement experience, and a settlement conference is scheduled, with at least 30 days advance notice to counsel. A Settlement Conference Statement is required 15 days after the date of the notice, and all parties and counsel are required to attend the settlement conference unless excused for good cause. The first settlement conference is usually held approximately 120 days after the notice of appeal is filed, but additional settlement conferences may be held if the mediator believes that settlement is possible. Of the remaining 25% of cases, about one-half will settle or be dismissed, and the remainder will be briefed and decided by opinion.

The 40 volunteer attorneys who currently serve as mediators emulate the ideal of the "peacemaker" articulated by then-lawyer Abraham Lincoln. During a July 1850 lecture to a group of lawyers regarding their duties and responsibilities as members of an esteemed profession, he said, "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough." In the Inland Empire, we are very fortunate, indeed, to have volunteer lawyer mediators who are dedicated to the ideal of the law and who throw their efforts into persuading neighbors to compromise so there will be no losers, only winners — in fees, expenses, and time. They are men and women who have acted with honor and dignity and who have served as "peacemakers" on behalf of the Court of Appeal and the citizens of this state, and I am extremely grateful for their service to our Court of Appeal and to the state at large.

If any attorney is interested in being a part of this court's settlement conference program, please contact Settlement Coordinator Jackie Hoar at (951) 782-2495.



OPPOSING COUNSEL: CHRISTOPHER JENSEN

by L. Alexandra Fong

Taking the Right Turn

Christopher Jensen, a second-generation Southern Californian, is the son of a retired Los Angeles County Marshall/Sheriff/District Attorney Investigator/Marine/Coast Guard Warrant Officer father and a staunch farm-raised homemaker mother. After he earned an Associate of Arts degree from Mt. San Antonio College and a Bachelor of Arts Degree in History from California State University, Fullerton, it was an internship as an investigator for the Los Angeles County District Attorney's office that cemented his decision to make a career in the field of law.

After graduating from Western State College of Law, Chris moved to Riverside in 1987, joining the firm of Blumenthal & Milliken, first as a certified law clerk, then as an associate. Under the tutelage of E. Martin Blumenthal, or as Chris puts it, "being thrown to the wolves," Chris learned civil litigation quickly, dealing with business and real property disputes. Chris credits Mr. Blumenthal and this "trial by fire" for his ability to step into any issue without hesitation.

Within a few years, Chris met Larry K. Reynolds, who had a successful transactional practice. The two realized that they could provide better-rounded representation for their mutual clients, and they have been together ever since, including at the firm's current iteration in the form of Reynolds, Jensen & Swan, LLP, along with Chris' other partners, Barry R. Swan and Richard W.S. Pershing.

In 1992, Chris was fortunate to be included in the formation of an organization called Settlement Now, along with some of the Inland Empire's litigation luminaries. Settlement Now was created to aid an already heavily congested court system. That organization evolved, under the leadership of Geoff Hopper and the Honorable Charles Field, into what is now RCBA Dispute Resolution Services, Inc. (DRS). DRS has grown tremendously since its inception, originally under the presidency of Geoff Hopper, and for the past six years under Chris.



Chris Jensen

DRS is under contract with the Riverside County Superior Court to provide mediation for civil, family law, and probate cases. DRS has over 85 well-experienced attorneys handling mediations in a variety of arenas. Chris is the first to tell anyone who will listen that there is not a finer organization of mediators, and it is the DRS pool of mediators who deserve all the credit for the success of DRS. Because of the mediators' admirable efforts in giving back to our legal community, DRS has been able to keep its rates for a private mediation or

arbitration at \$200 per hour. Compared to other alternative dispute resolution providers in the Southland, this is an incredibly low fee; no one can compete with DRS. Additional information about DRS may be found on its website, rcbadrs.org. The website is currently being updated by Jeffrey Schaefer of Mill Creek Networks, Inc., who is also working on the Reynolds, Jensen & Swan website, rjlaw.com.

Chris is the first to remind others that his relationship with those who give back does not stop with DRS. He fondly notes that his partner Larry K. Reynolds volunteered for many years as a judge pro tem for the Riverside County Superior Court. Another one of Chris' partners, Barry R. Swan, shares pro tem service with Chris in Moreno Valley; he also arbitrates for the court and provides his time as a fee arbitrator with the RCBA. The remaining partner, Richard W.S. Pershing, mediates a tremendous amount of cases pro bono and has been the leader of the La Sierra University Mediation Program. Mr. Pershing also volunteers countless hours of his time for the Riverside County Bar Association and the San Bernardino County Bar Association.

In addition to his participation with DRS, Chris is a professor at California Southern Law School, where he teaches Commercial Code Article 9 secured transactions. He enjoys teaching at California Southern, as this allows him to fulfill his dream of being a professor.¹

¹ The writer would like to mention that Chris was her professor of Sales & Secured Transactions when she attended California Southern Law School.

Chris is also active with many community organizations and currently sits as a board member of the University of California, Riverside, Highlander Athletic Association. He is also a member of the University of California, Riverside, Bagpipe Band. He handles fundraising for the Bagpipe Band, of which his son and daughter are also members. The band's annual fundraising event, the Harry Moore Memorial Solo Pipe & Drumming Competition, will be held at the Canyon Crest Country Club on March 24, 2012. Celebrity judges Peter MacNicol (best known for his roles as John Cage in Fox's *Ally McBeal* and Dr. Larry Fleinhardt in CBS' *Numb3ers*), John Santana from K-Mozart (Southern California's only commercial classical music station, 1260 AM), and Dan Bernstein of the Press-Enterprise will be on hand to select the winners of the competition.

As to the title of this article, it has almost nothing to do with Chris' career choices: it's an inside family joke. If Chris had not decided to become an attorney, he would have continued his studies in history, with the goal of teaching. As an avid history buff, he enjoys genealogy research. In tracing his family back to the early 1500s, he has discovered that his ancestors have always taken the harder branch of the family tree. For example, his 15th great-grandfather was the first owner of Martha's Vineyard and the first governor of that Massachusetts settlement. However, Chris' family is descended from the female line, which, in historical times, was generally not endowed with an inheritance. Other branches of his family from the "right side of the family tree" have invented Tupperware, manufactured Riedel glassware, and owned the Minnesota Vikings, among many entertaining endeavors. But, as Chris states, his branch rowed the boat, while others owned it; someone has to do the work.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.



PREPARING FOR YOUR NEXT MEDIATION

by Jamie E. Wrage

Attorney preparation plays a vital role in reaching a favorable result in mediation. Mediation without adequate preparation is likely to result in a costly waste of time for the attorney, the client, and the opposing side. The following are some suggestions for your preparation for that next mediation.

Investigate the Mediator

Ideally, this step begins before the mediator is selected, but not every situation allows you to select the mediator, so you may have to settle for gathering information after the fact. In either case, locate the mediator's résumé, review any websites that advertise the mediator's services, and talk to fellow lawyers who may have encountered the mediator.

What should you ask your friends and colleagues? Questions such as: What is the mediator's style? Does the mediator ask for opening statements? Does the mediator bring the parties together or keep them separated? Does the mediator keep confidential information to him or herself when asked? What is the mediator's style – will you have to do the dance, will the mediator be hard on both sides to come to a resolution, will the mediator put in the time to come to a resolution when negotiations stall? If you know this information in advance, then you will know how to work with the mediator, what information to share with the mediator, and what to tell your client to expect from the process.

Then think about credentials. Attorneys understand that some of the best mediators do not have the most impressive credentials. There are individuals out there who have little experience formally practicing law who can convince even the most dug-in client to give a little to reach resolution. Others, including many former appellate or trial court judges, may have amazing credentials on paper, but less skill at mediation. While you understand this, your client may not – and some clients cannot be convinced that the person they perceive as the “best mediator for the job” may actually be the worst. Try to understand what type of mediator your client believes would have insight into the case, and if you disagree, explain to the client why (early on in the process). If you cannot convince your client, then be aware of your selection's shortcomings so that you can

do your best to work around the mediator to make the process worthwhile.

Then inquire of the mediator what he or she wants in advance of mediation – a formal brief, a letter brief, and/or copies of the pleadings. And if the mediator claims to want no information at all (a rarity and a red flag), prepare a short statement of facts anyway. It will help prepare you, and it will make things go faster at mediation, whether requested or not.

Gather the Facts

It seems an obvious necessity, but many attorneys heading into mediation do not take the time in advance to gather the facts necessary to mediate the case effectively. Talk to your client to get the facts that you do not already have or to confirm the facts you think you already know. Review all relevant documents. And make sure that the case is ready to mediate – that you have all of the information you need for mediation to be effective. If the case is not ripe, do not waste everybody's time. Postpone the mediation.

Prepare a brief as if you were presenting it at trial. Develop a theme for your case. If something is particularly important, attach it as an exhibit to your brief or bring a copy with you. Some mediators just will not get the point of a legal argument without some tangible evidence in front of them. Once that mediator sees that evidence, he or she should be able to use it to pound on the opposition.

Make sure you have provided the mediator with a timeline of pertinent events, either in the brief or in some other easily useable format at the hearing. If the mediator is not able to talk intelligently about the facts, then that mediator will be less effective in convincing anyone that he or she has enough of an understanding of the case to provide a meaningful opinion. Your client and the opposing side will not want to settle if they do not think the mediator is knowledgeable and trustworthy.

Prepare the Client

Use the information you have gathered about the process to prepare your client about what to expect. Tell your client your theme of the case so that the client can weave it into any information he or she provides during

the mediation. If your client is an actual witness in the case, explain that it is important to present him or herself well during the mediation, to demonstrate to the mediator and the opposing side that he or she will be a good witness at trial.

Spend some time explaining to your client that the nature of mediation is compromise. Each side must compromise, or mediation will not be successful. There will be a lot of back and forth, exchanging arguments, facts, and offers. If your client understands the negotiation “dance,” he or she will be less offended once it begins.

Finally, make certain that your client understands that mediation is a fluid process. For a myriad of reasons, the mediator may present information to you and your client that was not previously considered. Your client must be able to evaluate new information during the mediation and, if the information is relevant, change his or her mediation posture based upon that new information. It is your job to help your client effectively engage in that analysis on the fly. The client will appreciate you for it.

Almost every attorney has mediated a case and knows generally how to prepare. Even so, a reminder of the importance of preparation, and some suggestions in that regard, are sometimes helpful. Use your own best judgment, but do not let that judgment substitute for putting time into preparation. It will pay off for your client in the long run and make mediation more than just going through the motions.

Jamie E. Wrage, a member of the Bar Publications Committee, is a shareholder with Gresham Savage in Riverside, focusing on employment, business, and appellate law.



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THE RCBA FEE ARBITRATION PROGRAM

by Richard C. Lorenzi

The Riverside County Bar Association maintains a fee arbitration program utilizing attorney and lay-person volunteers to arbitrate fee disputes between attorneys and their clients.

I am the present chair of the committee and have been involved in fee arbitration at the county level since 1979.

Fee arbitration arose out of consumer-oriented legislation of the 1970s, when the State Bar determined that clients/consumers deserved an opportunity to resolve fee disputes short of suing an attorney. In those days, client accessibility to the “system” was difficult and the bar was considered an “old boy” network. The State Bar of that era had a token disciplinary system.

The legislation (Bus. & Prof. Code, § 6200 et seq.), effective in 1979, came on the heels of the elimination of local bar-imposed fee schedules, the Supreme Court decision allowing attorneys to advertise, and the professional responsibility mandates after Watergate.

The law mandated that the State Bar set up a fee arbitration program at the state level, and that local bar associations could set up their own programs, so long as they conformed to the State Bar guidelines. The RCBA started its program in 1979. The Desert Bar also maintains a local program.

Typically, the local bar associations will handle disputes arising from their counties or regions, while the State Bar will handle disputes arising from areas not served by a local program, as well as conflict cases and some state prison inmate cases. The local bar associations perform the overwhelming majority of fee arbitrations.

Under the law, before suing a client for fees, an attorney must give the client a notice of the right to arbitration, on an approved form (forms are available at calbar.org or riversidecountybar.com).

The client can request arbitration within 30 days of the receipt of notice and loses the right to arbitrate if he or she fails to do so. However, both attorney and client can stipulate to arbitration after the client’s waiver. There will be no arbitration if the client commences an action for judicial resolution of the dispute or files a malpractice action. Also, if the client requests arbitration, almost all judicial actions filed by the attorney are stayed pending arbitration.

The arbitrations are not free. The client must pay a percentage of the disputed amount in order to arbitrate.

As committee chair, I review client requests for free or reduced fee arbitrations. Since the huge majority of arbitration requests involve family law matters, and since the economy has gone sour, I review at least ten per month. However, as part of the arbitration award, the arbitrator or panel may require the attorney to pay the cost of arbitration.

If an arbitration award requires the attorney to disgorge fees, Business and Professions Code section 6203, subdivision (d) empowers the State Bar to enforce the award. The State Bar has the authority to assess administrative penalties and can put the attorney on inactive status if the attorney fails to pay an award. To avoid inactive status, the attorney must show the State Bar compliance with the award, non-responsibility for the award, or inability to pay the award.

We always need fee arbitrators in our program. Most of the arbitrations involve family law matters. All too often, I hear (or RCBA staff hears) from family law attorneys that they don’t want to get involved as arbitrators in family law disputes. They claim that there may be an appearance of bias. Please note, however, that arbitrators have immunity in their official capacity.

It is clear that there can be a perception of bias by a client when the arbitrator is an attorney. However, the grounds for disqualification of an arbitrator for bias are found in Code of Civil Procedure section 170.1. These include that: the arbitrator has personal knowledge of disputed evidentiary facts; the arbitrator served as a lawyer in any other proceeding involving the same issues; the arbitrator served as a lawyer for any party in the proceeding or gave advice to any party in the proceeding upon any matter involved in the proceeding; the arbitrator has a financial interest in the proceeding or in a party to the proceeding; the arbitrator, the arbitrator’s spouse, a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding; a lawyer or the spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the arbitrator or the arbitrator’s spouse; the arbitrator and a lawyer are in practice together; disability; or the arbitrator believes that recusal is in the interests of justice or that there is substantial doubt as to his or her capacity to be impartial. If there are facts that could give rise to an appearance of bias, the arbitrator should disclose them in writing to both parties.

In short, there are few occasions when family law practitioners would be unable to serve as an arbitrator in a family law matter involving a local attorney.

Having done hundreds of arbitrations over the years, these are some observations.

Family law attorneys: *Attention!* True retainers are to ensure the availability of the attorney only. “Non-refundable” retainers don’t really exist. Don’t do them. If you don’t refund unearned fees at conclusion of a representation, expect a fee arbitration, and expect to lose.

Please come to the arbitration prepared. I cannot believe attorneys who come to the arbitration with unorganized files, no billing statements, etc. Arbitrators have a tendency to believe a client who says the attorney was not prepared at court when the attorney is not prepared for the arbitration.

Get it in writing. Always have a written retainer agreement. Always send out monthly statements. Always return phone calls. Always send a copy of all correspondence to the client. Always promptly give the file to the client when client fires you. Always keep a copy of that file.

Finally, try to resolve client disputes before they turn into an arbitration, or worse.

We need fee arbitrators with family law, criminal and civil litigation experience. Even though most of the disputes involve small amounts, I have arbitrated at least 20 cases over \$250,000. We would really appreciate the expertise of big-firm partners in arbitrating these matters.

If you would like to volunteer, please contact Lisa Yang at the RCBA office, (951) 682-1015 or lisa@riversidecountybar.com.

Rick Lorenzi, chair of the RCBA Fee Arbitration Committee, is with the Riverside County Department of Child Support Services.



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KRIEGER AWARD NOMINATIONS SOUGHT

by Judge John Vineyard

In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service. The award, later named for James H. Krieger, has since been presented to James Wortz, Eugene Best, Arthur Swarner, Arthur Littleworth, Justice James Ward, Fred Ryneal, John Babbage, Patrick Maloy, Ray Sullivan, Justice John Gabbert, Jane Carney, Judge Victor Miceli, Justice Manuel Ramirez, Kathleen Gonzales, Terry Bridges, Jim Heiting and Jack Clarke.

The award is not presented every year. Instead, it is given only when the extraordinary accomplishments of particularly deserving individuals come to the attention of the award committee.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who are currently practicing or sitting in Riverside County, or have in the past

practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA Board of Directors are not eligible. Nor are the current members of the award committee.

If you would like to nominate a candidate for this most prestigious of RCBA awards, please submit a nomination to the RCBA office not later than April 6, 2012. The nomination should be in writing and should contain, at a minimum, the name of the nominee and a description of his or her record of community service and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

Judge John Vineyard is the chair of the Krieger Meritorious Service Award Committee and a past president of the RCBA.



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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. You can register for events, make payments and donations, and much more.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2012.

Kevin James Abbott – Best Best & Krieger, Riverside

Mario F. Botkin – Chandler Potter & Associates, Riverside

Taylor M. Bristol – Bristol Haynes & Associates, Claremont

Abram S. Feuerstein – Dept. of Justice Office of U.S. Trustee, Riverside

Alison P. Gomer – Best Best & Krieger, Ontario

Sophia D. Hamilton – Clayson Mann Yaeger & Hansen, Corona

Crista M. Haynes – Bristol Haynes & Associates, Claremont

Constance L. Leftridge (A) – Paralegal Plus Services, Rancho Cucamonga

George Lerew (S) – Law Student, Colton

Thomas J. McAndrews (S) – Independent Financial Group, Riverside

Amy K. Nett – Nett & Nett, Temecula

Mandeep Singh Rupal – Sole Practitioner, Chino Hills

Kiley Schaumleffel (S) – Law Student, Rancho Cucamonga

Clay B. Spiegel (A) – Lorenz Fiduciary Services, Fallbrook

Bonnie J. Wilson – Bruce A. Wilson APLC, Riverside

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