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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 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), 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

JULY

18 **CLE Committee's Trial Practice Skills" Series**
RCBA Gabbert Gallery – Noon
Topic: "Opening Statements"
Speakers: John Aki, Esq. & Michael Hestrin, Esq.
Office of the District Attorney
Brown Bag
RCBA Members – Free
Non-members - $25
MCLE

23 **Appellate Law Section**
RCBA Gabbert Gallery – Noon
Topic: "Motions and Sanctions in the Court of Appeal"
Speaker: Don Davio, Esq., Court of Appeal
Brown Bag
RCBA Members – Free
Non-members - $25
MCLE

30 **FBA-IE Chapter**
"Tasers & Less Lethal Force:
Recent Developments at the Ninth Circuit"
Speakers: Missy O'Linn & Lieutenant Bruce Blomdahl
George E. Brown Jr. Federal Courthouse
Noon – 1:15 p.m.
RSVP: Julie Cicero @ 951.328-4440

AUGUST

1 **CLE Committee Meeting**

27 **APALIE presents Justice Miller on Appellate Law**
Lotus Garden Restaurant
111 E. Hospitality Lane
San Bernardino
Social 5:30-6:00 pm
Dinner & Lecture – 6:00-7:00 pm
More info – contact Sophia Choi @ Sophiachoi1024@gmail.com

SEPTEMBER

4 **Bar Publications Committee Meeting**

5 **CLE Committee Meeting**

19 **RCBA Annual Installation of Officers Dinner**
Mission Inn, Music Room
Social Hour – 5:30 p.m., Glenwood Tavern
Dinner – 6:30 p.m., Music Room

President's Message

by Christopher B. Harmon

When I first came to town, Louise Biddle seemed to me to be the queen of all things bar-related. She knew everyone, and everyone knew her. She had been involved with the RCBA at nearly every level, organized and run the Inn of Court, and had even served as a JNE Commissioner. Louise personified community involvement and the spirit of working to improve one's community. Louise loved lawyers, she loved the bar, and she loved working for the betterment of our small legal organization. I joined the Inn of Court Board shortly after her passing, and the loss that group felt without her was immense.

Charlotte Butt was another, cut from the same cloth as Louise, who gave vastly of herself to the bar association and to our legal community. Charlotte was the face and leader of the RCBA for decades. She was present at every event, she guided countless presidents through their terms, and she did it all with very little fanfare or attention.

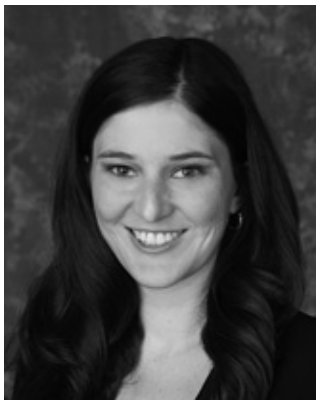
The RCBA and each of its affiliated organizations all depend, not on their boards or presidents, but on the employees who dedicate themselves every day to making them run. It is the people who answer the phones, greet the clients, and organize our events and meetings who are the heart and soul of the bar association.

The RCBA is quite blessed to have a wonderful staff of full and part-time workers who make this organization function so effectively. But we are especially blessed to have at our helm Charlene Nelson. Charlene's job is a constant whirlwind of activity, yet she manages everything without ever missing a beat. Presidents of the RCBA come and go, but Charlene and the rest of the RCBA staff remain, year in and year out, to make sure the organization is always functioning at the highest level and that, above all else, the legal community is being served by the best association possible. Charlene's job is never easy, and, in fact, with each year comes a new president with new goals and "pet projects" that Charlene and the bar staff must work on. Despite having more work added to their already full plates each year, they continue to thrive, and the bar, I believe, only gets better because of their work. I have a tremendous sense of appreciation for Charlene and the staff and all of the work they do for us. The RCBA owes its strength and effectiveness to their hard work and dedication.

Chris Harmon practices exclusively in the area of criminal and DUI defense, representing both private and indigent clients.

Barristers President's Message

by Amanda E. Schneider



I cannot believe that summer is here . . . and that my term as Barristers President is over. Writing this last President's Message, I am so proud of what the Riverside County Barristers Association has accomplished this year. In addition to presenting a battery of MCLE programs, we held a number of networking events and socials and expanded our membership to include not only young attorneys, but law students and others, as well.

In addition, the Barristers are one of 30 recipients of a subgrant from the American Bar Association's Young Lawyer Division. The Barristers are the only organization in California to receive such an award this year. The $800 subgrant will be used to promote and recruit attorneys for IELLA's "PRAISE" program, which encourages volunteers in IELLA's legal aid clinics. Special thanks go to Reina Canale, Barristers Member at Large, for her work on the application and her role as project manager for this prestigious grant.

I am confident that next year's Barristers Board will continue all of the good work of Barristers in the years past and will expand on it with new programs and events. I am honored to have served with the 2012-2013 board and am excited to take on the role of Past President next year. At the time of this writing, elections for the 2013-2014 board have not yet taken place, but I want to congratulate all of the candidates:

President
Kelly Moran

Vice President
Reina Canale

Treasurer
Sarah Compton
Sara Morgan
Scott Talkov

Secretary
Chris Buechler
Arlene Cordoba

Member at Large (two positions)
Chris Buechler
Sarah Compton
Arlene Cordoba
Bernice Espinoza
Alexandra Fong
Rogelio Morales
Scott Talkov

All of the candidates have been very active in Barristers, and any would be welcome additions to the Board. Thank you all for the support you have given me in my year as President. I look forward to working with Kelly, Reina and the rest of next year's board!

Amanda Schneider is the 2012-2013 President of Barristers, as well as an associate attorney at Gresham Savage Nolan & Tilden, where she practices in the areas of land use and mining and natural resources..

2013 Amendments to the Federal Rules of Civil Procedure

by Daniel S. Roberts

In order to practice effectively in federal court, counsel must, of course, know and understand the Federal Rules of Civil Procedure, including amendments as they are periodically approved by the Supreme Court. Barring some intervening congressional action, there will be important changes to the rules effective December 1, 2013.[1] The aim of this article is to highlight and summarize those amendments for you and keep you on the cutting edge of federal practice.[2]

Amendments to Federal Rule of Civil Procedure 45: The 2013 amendments to Rule 45 fall into four categories: (1) changes to the procedure for subpoenaing information outside the district in which an action is pending, (2) resolution of disputes about out-of-district subpoenas, (3) clarification of the application of the place-of-compliance provisions to parties and party officers, and (4) reiteration and buttressing of the requirement to provide notice of a "documents-only" subpoena to all parties in the case.

1. Changes to the Procedure for Out-of-District Subpoenas: Currently, if a party wishes to subpoena evidence (testimony, documents, or both) from a nonparty who is located outside the district in which the case is pending, the procedure is to issue a subpoena from the district in which the nonparty is located (and hence where the deposition will take place).[3] Thus, if a party to an action pending in the Central District of California desires to depose a nonparty who lives in Seattle, the party would issue the subpoena from the Western District of Washington. The subpoena would then be served on the nonparty in Seattle, i.e., within the district of the issuing court, and the deposition would occur there.

   This procedure will change substantially with the 2013 amendments to Rule 45. Effective December 1, 2013, all subpoenas are to be issued from the court in which the case is pending, regardless of where the witness is located and where the deposition will occur. That subpoena may then be served at any place within the United States. The substantive provisions governing the place of compliance with the subpoena (e.g., where the nonparty must appear for deposition) remain intact, but are moved to subdivision (c) of the amended rule. Thus, taking our example above about the nonparty deposition of the Seattle resident, after December 1, counsel would issue the subpoena from the Central District of California and have it served on the witness in Seattle (or anywhere in the U.S. where he or she may be found). The deposition, however, still may be held only within 100 miles of where the witness resides, is employed, or regularly transacts business in person.

2. Resolution of Subpoena Disputes: Although all subpoenas will now be issued from the court in which a case is pending, disputes over compliance – both via motion to quash and motion to compel – will still be heard in the court for the district where the deposition is set to occur, at least in most circumstances. The amended rule does recognize, however, that in some circumstances it may be better for the court presiding over the case to decide such disputes. Thus, new subdivision (f) provides that the district court in which the deposition is set to occur may transfer a motion to compel or quash to the court in which the case is pending if either (1) the nonparty witness consents, or (2) "the court finds exceptional circumstances" justifying such a transfer.

3. Place of Compliance Limitations Apply to Parties as Well: The 2013 amendments to Rule 45 also resolve a dispute over the interpretation of the prior rule as it applied to trial subpoenas to parties and party officers. The amended rule makes

1 There are also amendments to the Federal Rules of Criminal Procedure, Bankruptcy Procedure, Appellate Procedure, and Evidence (as applied to criminal cases), which are also scheduled to take effect on December 1, 2013, but which are beyond the scope of this article. Specialists in those areas may find those amended rules and the accompanying advisory committee notes at uscourts.gov/RulesAndPolicies/rules/pending-rules.aspx.

2 A complete copy of the amended rules and accompanying committee reports may be found at gpo.gov/fdsys/pkg/CDOC-113hdoc29/pdf/CDOC-113hdoc29.pdf.

3 See Schwarzer, et al., Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group) ¶ 11:2262-2263 (2013).

it clear that the geographic limitations for subpoenas apply both to parties and nonparties. This amendment abrogates the interpretation of the prior rule in *In re Vioxx Product Liability Litigation*, 438 F.Supp.2d 664 (E.D. La. 2006) requiring an officer of defendant corporation living in New Jersey to travel to New Orleans pursuant to a trial subpoena.

4. Reiteration of Requirement to Serve Notice of Documents-Only Subpoena: Since 1991, the rules have required that notice of a "documents-only" subpoena be provided to all parties. Nevertheless, the advisory committee noted that "experience has shown that many lawyers do not comply with the notice requirement." The 2013 amendments, therefore, move the requirement to a more prominent position and require that the notice include a copy of the subpoena.

Amendment to Federal Rule of Civil Procedure 37: Finally, Rule 37 is amended to conform to the new provisions of Rule 45. It provides that if a motion related to an out-of-district subpoena is transferred to the court where the case is pending, failure to comply with an order on that motion may be treated as contempt of either the issuing court (i.e., the court where the action is pending) or of the court for the district in which the deposition is to be held.

Dan Roberts is a partner in the Ontario office of Cota Cole LLP and a member of the Board of Directors of the Inland Empire Chapter of the Federal Bar Association.

Past Presidents' Annual Dinner

The past presidents of the RCBA, spanning 63 years of bar leadership, together with current president Chris Harmon and guest Presiding Judge Mark Cope, met for their annual dinner on May 15. Participants spent the evening renewing acquaintances, catching up on news, and discussing the state of law practice and the courts.

(front row, left to right) – Justice James Ward (Ret.)-1973, Justice John Gabbert (Ret.)-1949, Art Littleworth-1971, Riverside Superior Court Presiding Judge Mark Cope, Robyn Lewis-2011; (middle row, left to right) Judge Stephen Cunnison (Ret.)-1981, David Moore-1984, Geoffrey Hopper -1994, Diane Roth – 1998, Boyd Briskin-1986, Sandra Leer-1991, Judge Irma Asberry-1997, Richard Swan-1977; (last row, left to right) Judge David Bristow-2006, Chris Harmon-2012, Steve Harmon-1995, Judge Craig Riemer-2000, Dan Hantman-2007, Justice Bart Gaut (Ret.)-1979, Michael Clepper-1983, Jim Heiting-1996, Judge Dallas Holmes (Ret.)-1982.

Appellate Savvy: Tips for the Circuit Court Practitioner

by Kira L. Klatchko

Appeals can be tricky. They are expensive to litigate and difficult to win. They also take time, particularly in the Ninth Circuit, which is the busiest court of appeals in the United States. But appellate practice can be rewarding, particularly if you can avoid common pitfalls and understand your chances on appeal before you get started.

Before you appeal, or advise your client to appeal, confirm that the unfavorable ruling you want to challenge is in fact appealable. Although this sounds obvious, and incredibly easy, it is one of the most overlooked issues on appeal. Under Rule 4 of the Federal Rules of Appellate Procedure, an appellant has 30 days to file a notice of appeal after a judgment or appealable order is entered. Compared to California's Rule of Court 8.104, which requires an in-depth analysis of what constitutes "notice of entry," and how that differs from a "file-stamped copy of the judgment" – both of which phrases have been the subject of litigation and heated debate – the federal rules are relatively straightforward. That said, because filing the notice of appeal confers jurisdiction upon the reviewing court, failure to file a timely notice ends the appellate process before it starts. If that doesn't terrorize you, try deciphering the appealability rules involving collateral (also called *Cohen*) orders or the "death knell" doctrine. (If "death" is in the title, it cannot be good.) When in doubt about appealability, research. When still in doubt, consider whether you should file a petition for writ of mandate or prohibition at the same time as you file your notice of appeal. Be warned, if you think it is difficult to obtain a writ from the California courts of appeal, obtaining a writ from the Ninth Circuit may coincide with the appearance of a blue moon.

Once you figure out if you *can* appeal, figure out if you *should* appeal. Consider the basic question first: does the benefit of a favorable appellate outcome outweigh the burden of attorney fees, court costs, supersedeas bonds, and record preparation? And consider, too, that in the Ninth Circuit, the most recent statistics, from 2011, show that the median time to complete an appeal was more than 17 months, compared to the circuit court average of 11 months.

If you have the time and money to go forward, consider how likely it is that you will be successful on appeal – and what it means to be successful. Though statistics vary, most suggest that appellants are successful in obtaining a complete reversal 25% of the time or less. Those statistics do not account for all of the different ways you can win on appeal without a complete reversal. They also do not account for the fact that a "win" on appeal may mean a retrial or years more of litigation at the district court level, nor do they differentiate between different types of cases. Often, your likelihood of success is closely tied to the applicable standard of review and the quality of the district court record, two things that usually cannot be improved at the appellate level.

To help you determine what standard of review applies, the Ninth Circuit publishes several useful guides, all of which are available on the court's website at ca9.uscourts.gov. Though these guides will not answer all of your questions, they are often a good starting point. In many cases, however, the applicable standard of review will be a matter of debate, particularly as many standards have subtle differences or layers. Generally, for appellants, the most favorable standard of review is de novo, or independent, meaning the reviewing court will examine the order or judgment without giving much, if any, weight to the district court's reasoning. Issues subject to de novo review are typically legal questions, involving the interpretation of statutes or contracts or the application of law to undisputed facts. When your issues involve disputed facts, they are typically reviewed for clear error, which is similar to California's "substantial evidence" review and requires that an appellant demonstrate that the district court committed "clear error" in making a particular factual finding. This is similar to the "abuse of discretion" standard, which requires an appellant to establish that no reasonable judge could have reached the same conclusion that the district court reached in the matter at hand.

You should consider the applicable standard of review before you file your appeal, and you should do so while looking at the record. Look to see if the issues you want to raise on appeal were "preserved" for review, meaning that they were raised below and not waived or forfeited. If your issues are not purely legal, look to see if you can realistically establish clear error or an abuse of discretion. Neither of those standards is easy on appellants, particularly given the strong preference for affirming the district court.

The most difficult part of appellate practice is recognizing how greatly it differs from trial practice; the dead-

lines, issues, and briefing style are different, and the procedural rules are less forgiving. But understanding those differences prior to filing your appeal will make the process easier and increase your chances of success.

Kira Klatchko is a partner at Best Best & Krieger and the only Certified Appellate Specialist in Riverside County. She currently serves as the Chief Financial Officer on the RCBA Board of Directors.

Shelby County, Alabama v. Holder

by Dean Erwin Chemerinsky

For the first time since the late 19th century, the Supreme Court has declared unconstitutional a major civil rights statute. In *Shelby County, Alabama v. Holder* (2013) ___ U.S. ___ [2013 WL 3184629], the Court held that Section 4 of the Voting Rights Act of 1965 is unconstitutional as exceeding the scope of Congress's powers and an impermissible intrusion on state sovereignty.

The Voting Rights Act of 1965 is a landmark civil rights law. Section 2 prohibits state and local governments from having election practices that discriminate against, or have a discriminatory impact on, minority voters. It authorizes lawsuits to enforce this prohibition.

Congress, though, was concerned that this was not sufficient. Litigation is expensive and time-consuming. Also, Congress was aware that many jurisdictions, especially in the South, were repeatedly changing their election practices to discriminate against minority voters.

Congress, therefore, included a preventative measure: Section 5 says that jurisdictions with a history of race discrimination in voting must get "preclearance" from the Attorney-General or a three-judge court before significantly changing their election systems. Section 4(b) defines those jurisdictions that must get preclearance. These include nine states, mostly in the south, and many localities throughout the country.

In *South Carolina v. Katzenbach* (1966) 383 U.S. 301, the Supreme Court upheld the constitutionality of Section 5 of the Voting Rights Act and spoke of the "blight of racial discrimination in voting." Congress has repeatedly extended Section 5, including for five years in 1970, for seven years in 1975, and for 25 years in 1982. After each reauthorization, the Court again upheld the constitutionality of Section 5. (*Georgia v. United States* (1973) 411 U.S. 526; *City of Rome v. United States* (1980) 446 U.S. 156; *Lopez v. Monterey County* (1999) 525 U.S. 266.)

In 2006, Congress voted overwhelmingly – 98-0 in the Senate and 390-33 in the House – to extend Section 5 for another 25 years, and President George W. Bush signed this into law. Congress found that "without the continuation of the [Voting Rights Act's] protections, racial and language minority citizens will be deprived of their opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minority voters in the last 40 years."

On Tuesday, June 25, the Supreme Court, in a 5-4 decision, held that the coverage formula in Section 4(b) of the Voting Rights Act is unconstitutional. Chief Justice Roberts wrote the opinion for the Court and said that the coverage formula is based on voting patterns from the 1960s and 1970s. He said that it made sense in "theory and practice" when it was adopted, but in the last 50 years, things have changed dramatically and the coverage formula is unconstitutional under current conditions. Coverage today is based on decades-old data and practices.

The Court said that the requirement for preclearance is an intrusion on state sovereignty. It requires that covered states and localities "beseech" the Attorney-General for approval of a change in their election system. It exceeds Congress's powers and violates the Tenth Amendment for Congress to impose this on the states based on the decades-old formula.

Justice Ginsburg wrote the dissenting opinion, joined by Justices Breyer, Sotomayor, and Kagan. For the dissent, the key question is who should decide what jurisdictions should be covered and whether preclearance should be required: Congress or the courts? The dissent argued it should be Congress and criticized the majority for invalidating this key statutory civil rights provision.

Although the Court did not rule on the constitutionality of Section 5, the effect of this decision is, at least for now, to nullify it. Section 5 requires preclearance for those jurisdictions identified in Section 4. Once Section 4 is struck down, there are no jurisdictions that need to get preclearance.

Congress, in theory, can reenact Section 4 based on new data and a new formula. There is a real question, though, whether this is possible and whether Congress ever could agree as to how to identify those jurisdictions that must get preclearance. Congress used the old formula precisely to avoid having to do this, and it seems unlikely, at least now, that Congress can or will act to adopt a new version of Section 4.

The bottom line is that a major civil rights statute has been struck down and there is little likelihood that it will be reenacted.

Dean Erwin Chemerinsky is Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law of the University of California, Irvine School of Law.

Camera Shy: Should the Supreme Court Allow Cameras in the Courtroom?

by Abram S. Feuerstein

Although not with the energy or frequency of Yellowstone's Old Faithful Geyser, the issue of whether the Supreme Court should allow live video transmissions of its proceedings continues to bubble to the surface.

Most recently, in late June, Illinois Democratic Senator Richard Durbin and Iowa Republican Senator Chuck Grassley introduced Senate Bill 1207, the Cameras in the Courtroom Act. The measure would place cameras at all open sessions of the Supreme Court unless a majority of justices believes that doing so would violate a party's due process rights.[1]

Currently, the court posts online audio recordings of the prior week's proceedings at week's end, and transcripts are released daily when the court is in public session. Folks in the legal community who try to follow the Supreme Court when it is considering important legal arguments typically have had to settle for a delayed audio broadcast accompanied by what Ohio Supreme Court Chief Justice Maureen O'Connor calls "comical courtroom sketches of the proceedings."[2]

In an advisory letter sent by Senator Durbin to Chief Justice John Roberts,[3] timed for the introduction of the Senate bill, Durbin asserted that "real time access to audio . . . would greatly expand the court's accessibility to average Americans," and "[t]he enhanced transparency that would come from live audio broadcasts . . . would allow the public to more closely track the important cases that the Court decides." In particular, Senator Durbin noted that the court was in the process of deciding several high-profile cases, including cases on marriage equality and affirmative action. He wrote: "The Court's opinions in these cases will impact millions of individuals and the collective fabric of American life. Accordingly, it is not unreasonable for the American people to have an opportunity to hear firsthand the arguments and opinions that will shape their society for years to come."

Some History

In 1946, the Supreme Court adopted Federal Rule of Criminal Procedure 53, which states: "Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom."

In 1972, the Judicial Conference of the United States expanded the rule to include a ban on "broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto" in both criminal and civil cases. In 1990, the Judicial Conference adopted a new policy allowing cameras for limited purposes, including ceremonial photography and recordings for security purposes. The policy also acknowledged pilot programs around the country experimenting with the use of cameras during courtroom proceedings. In 1996, the Judicial Conference authorized each court of appeals to decide for itself whether to permit appellate arguments to be televised – which the Second and Ninth Circuits did.[4]

Arguments in Favor of Cameras

Arguments in favor of televising Supreme Court proceedings fall into three categories. The first is a strong and simple one – taxpayers pay for it and, absent compelling reasons, are entitled to view arguments in real time.[5]

A second argument embraces the use of the televised proceedings as a learning tool. As Chief Justice O'Connor notes, "[T]he public's expectations about how they acquire knowledge and understand the world have undergone a radical metamorphosis. The impact of video and audio has no equal, and absent really being there, there is no substitute."[6] This argument stresses the benefits to lawyers, law students, and historians of being able to see the proceedings. But it also emphasizes the "civics lesson" benefit for the greater public, contending that real-time video access is crucial to responsible self-government.

Finally, there is an accountability argument. Given that justices do not face election but are appointed to life-time positions, this view elevates transparency while opining that

1 A similar bill, H.R. 96, had been introduced in the House by Representative Gerald Connolly (D-Va.) on January 3, 2013.

2 O'Connor, "U.S. Supreme Court Should Allow Cameras," *Columbus Dispatch*, Apr. 7, 2013, available at dispatch.com/content/stories/editorials/2013/04/07/1-us-supreme-court-should-allow-cameras.html.

3 vailable at durbin.senate.gov/public/index.cfm/pressreleases?ID=86bf376a-55ad-43d6-850e-c6f3a77670a4.

4 History of Cameras in the Federal Courts, uscourts.gov/Multimedia/Cameras/history.aspx.

5 One example of this view was expressed in a December 7, 2011 letter to the editor of the *New York Times* by Eric Segall, a constitutional law professor at Georgia State University College of Law. He noted: "Supreme Court justices are governmental officials whose salaries are paid by taxpayer dollars. . . . [T]he American people should be allowed to see them at work."

6 O'Connor, "U.S. Supreme Court Should Allow Cameras," *supra*.

privacy and secrecy can erode public confidence in the institution.[7]

Arguments Against Cameras

Most of the arguments against broadcasting the Supreme Court center on the distorting effects of cameras. Some of the commentators are concerned about the harmful effect on the majesty and authority of the court. Others believe that if the justices know that a camera will be present, they may alter which cases they decide to take up. Oral arguments are intended to allow justices to test party positions – particularly at the edges – through vigorous and spirited questioning. In an age of sound bites and viral videos, observers worry that justices and lawyers will grandstand for the camera or even censor themselves, altering the dynamics of the current process. "You think it won't affect you, your questioning," Associate Justice Stephen Breyer told a House committee, but the "first time you see on prime time television somebody taking a picture of you and really using it in a way that you think is completely unfair . . . in order to caricature [your position] . . . the first time you see that, you will watch a lot more carefully what you say."[8]

McCulloch v. Maryland

Aside from the pro-and-con public policy arguments, the constitutionality of legislation requiring cameras in the Supreme Court is unclear and has been the subject of scholarly debate.[9] The Constitution affords Congress broad authority to legislate under the Commerce, Spending, and Necessary and Proper Clauses. And largely under the authority of the Necessary and Proper Clause, which enables Congress to enact laws regulating federal courts, Congress has legislated the number of justices on the Supreme Court, the requisite quorum to conduct Supreme Court business, and even the opening date of the court's term. But this power is not unlimited. Under the doctrine announced 200 years ago in *McCulloch v. Maryland*, Congressional action must be "appropriate" and "plainly adapted" to the pursuit of "legitimate" ends. Can the real or perceived benefits of televising the Supreme Court stand scrutiny under this standard?

The television age undoubtedly has had widespread effects – positive and negative – on how our political campaigns are conducted, on how our leaders lead, and on how we govern ourselves. Few would dispute that, in elevating transparency and openness, TV creates celebrityhood and undercuts deliberation – effects we would not want it to have on the Supreme Court. Other countries and many states televise proceedings of their high courts, however. Although audiences are likely to be small and ratings low, introducing cameras into the Supreme Court will have important consequences. And we should move slowly and try to understand those consequences before the cameras start to roll.

The author is an Assistant United States Trustee employed by the United States Department of Justice (USDOJ) as part of the United States Trustee Program (USTP), the agency which serves as a watchdog charged with protecting the integrity of the nation's bankruptcy system. Any views expressed in this article belong solely to the author and should not in any way be attributed to the United States Trustee, the Office of the United States Trustee, the USTP, or the USDOJ.

7 One example of this view was expressed by Brian P. Lamb, the chairman of C-Span: "If you can't do this in public and you're doing the public's business, then something is wrong with this picture." Liptak, "Supreme Court TV? Nice Idea, but Still Not Likely," *New York Times*, Sidebar, Nov. 28, 2011.

8 Quoted in Stephen C. Webster, "Senators hope to force Supreme Court's acceptance of television cameras," www.rawstory.com/rs/2013/06/20/senators-hope-to-force-supreme-courts-acceptance-of-television-cameras. Many of the current justices have made their positions known publicly. A terrific compilation of these views appears at c-span.org/The-Courts/Cameras-in-The-Court.

9 See, e.g., Bruce G. Peabody and Scott E. Gant, Debate, "Congress's Power to Compel the Televising of Supreme Court Proceedings," 156 PENNumbra 46 (2007).

California Supreme Court Decision Recognizes Constitutional Police Power of Local Government in the Regulation of Medical Marijuana Dispensaries

by Kristina Robb

On May 6, 2013, the California Supreme Court issued its long-awaited opinion determining the fate of many local ordinances regulating or prohibiting medical marijuana dispensaries (MMDs) through the use of zoning. (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729 (*City of Riverside*).) The case arose from a City of Riverside ordinance that declared a "medical marijuana facility" to be a prohibited use and declared any such use to be a public nuisance. The defendant, Inland Empire Patients Health and Wellness Center, Inc., and other individual defendants operated a "medical marijuana facility" in violation of the ordinance. The city obtained a preliminary injunction at the trial court level, which was upheld in a published decision by the Fourth District Court of Appeal, Division Two in November 2011. The California Supreme Court granted review shortly thereafter.

As other cities and counties across the state enacted similar bans or stringent regulations on the location of MMDs, a split among the courts of appeal began to arise as to the proper application of the state medical marijuana laws – the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMP) – to the police powers of local governments. In addition to the Fourth District, Division Two finding in favor of broad police powers of local governments, the Second District, Division Eight upheld a City of Los Angeles ordinance restricting collectives. (420 *Caregivers, LLC v. City of Los Angeles* (2012) 207 Cal.App.4th 703.) Conversely, the Fourth District, Division Three, in *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, determined the City of Lake Forest's ban on MMDs directly contradicted state law and thus was preempted. The Second District, Division One, in *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2013) 207 Cal.App.4th 601, reached a similar result and overturned a County of Los Angeles ban on MMDs. The Supreme Court granted review in all four cases. The decision in *City of Riverside* was the first time the Supreme Court had squarely addressed whether California's medical marijuana statutes preempt a local ban on MMDs. The court concluded that they do not.

In *City of Riverside*, the court began with the firm premise that local governments are constitutionally vested with the authority to make and enforce within their borders "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (*City of Riverside*, *supra*, 56 Cal.4th at p. 738.) The court stressed that this is an *inherent power* and not a delegation of authority from the state; thus, absent a clear indication of preemptive intent from the Legislature, there is a presumption that local land use regulation is not preempted by state statute. (*Id*. at pp. 742-743.) However, if the local legislation is in conflict with state law – meaning it duplicates, contradicts or enters an area fully occupied by general law, either expressly or impliedly – it is void. (*Id*. at p. 743.)

Walking through the express and implied preemption analysis as to the medical marijuana statutes, the court first recognized the limited nature of both the CUA and the MMP. Despite attempts to stretch the effect of both statutes beyond their substantive provisions, the court reiterated repeatedly that the CUA and MMP are limited in scope. Both the CUA and the MMP grant specified persons and groups, when engaged in specified conduct, immunity from prosecution under specified state criminal and nuisance laws pertaining to marijuana, and no more. (*City of Riverside*, *supra*, 56 Cal.4th at p. 753.) Neither created a broad right to use medical marijuana without hindrance or inconvenience. (*Id*. at p. 754.)

Based on the narrow scope of both statutes, the court concluded that neither preempted, either expressly or impliedly, a local government's ability to prohibit MMDs. The court highlighted the fact that "there was no attempt by the Legislature to fully occupy the field of medical marijuana regulation as a matter of statewide concern, or even to partially occupy the field under circumstances indicating that further local regulation would not be tolerated." (*City of Riverside*, *supra*, 56 Cal.4th at p. 755.)

The court provided the best and most succinct summary of the current state of medical marijuana laws in California: "[T]he CUA and the MMP are careful and limited forays into the subject of medical marijuana, aimed at striking a delicate balance in an area that remains

controversial, and involves sensitivity to federal-state relations. We must take these laws as we find them, and their purposes and provisions are modest. They remove state-level criminal and civil sanctions from specified medical marijuana activities, but they do not establish a comprehensive state system of legalizing medical marijuana; or grant a 'right' of convenient access to marijuana for medicinal use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries." (*City of Riverside*, *supra*, 56 Cal.4th at pp. 763-764.) Thus, the Supreme Court provided the long awaited answer: the CUA and the MMP do not prevent local governments from regulating or prohibiting MMDs.

Kristina Robb is a Deputy County Counsel for San Bernardino County and represents the Land Use Department in civil actions by and against medical marijuana dispensaries.

The photo above was taken of a medical marijuana dispensary in the Rubidoux area in the City of Jurupa Valley before the California Supreme Court's decision in the City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc. *(2013) 56 Cal.4th 719. The photo below was taken after the decision, which indicates the dispensary was closed, or is it? (Please note the "Open" and "ATM" signs visible through the window.)*

Judge Terry H. Hatter is Honored with the Erwin Chemerinsky Defender of the Constitution Award

by Honorable Virginia A. Phillips
Judge of the United States District Court for the Central District of California

On May 15, 2013, the Inland Empire Chapter of the Federal Bar Association hosted Dean Erwin Chemerinsky's annual "Supreme Court Round-Up" lecture at the Mission Inn. For a sold-out audience of practitioners and judges, Dean Chemerinsky examined the impact of many Supreme Court Fourth Amendment decisions and provided, in characteristic detail, his invaluable insight into the potential impact of the Supreme Court's decisions on California's Proposition 8, affirmative action in college admissions, the Defense of Marriage Act, and the Voting Rights Act. As always, his critical perspective was highly informative, engaging, and tremendously valuable to legal practitioners and judicial officers alike.

(L-R) District Judge Jesus G. Bernal and District Judge Terry J. Hatter, Jr.

During this event, on behalf of the chapter, U.S. District Judge Jesus Bernal proudly presented the Erwin Chemerinsky "Defender of the Constitution" Award to the Honorable Terry J. Hatter, Senior United States District Judge and Chief Judge Emeritus. Judge Hatter received the award in recognition of his extensive contributions to the legal community as both an attorney and a judge.

Judge Hatter received his bachelor's degree from Wesleyan University in 1954 and, upon receiving his J.D. from the University of Chicago in 1960, became a third-generation lawyer in his family. In the years following, he laid the foundations for what would become a robust and diverse legal career. Initially, he worked simultaneously in private practice and as an Assistant Public Defender in Illinois. Later, he became both an Assistant United States Attorney for the Northern District of California and a Special Assistant United States Attorney for the Eastern District, positions that he held until 1966. Judge Hatter has served as a law professor at USC's Gould School of Law and Loyola Law School, Chief Counsel of the San Francisco Neighborhood Legal Assistance Foundation, and the Executive Director of the Western Center on Law and Poverty in Los Angeles. He also lent his expertise to the city of Los Angeles as a Special Assistant to Mayor Tom Bradley, as the Director of Criminal Justice Planning from 1974 to 1975, and as the Director of Urban Development from 1975 to 1977.

In 1979, after two years as a judge on the Los Angeles Superior Court, Judge Hatter was appointed as a United States District Judge for the Central District of California by President Jimmy Carter. He served as Chief Judge of the Central District from 1998 to 2001 and assumed senior status in 2005.

In the Eastern Division, we have a particularly strong sense of gratitude for Judge Hatter's dedication to his judicial office and to the federal courts. In addition to his contributions from the bench, he was fundamental in establishing our division, has attended and participated in many events in the Riverside and San Bernardino legal communities, and voluntarily takes case assignments from the Eastern Division on a regular basis.

(L-R) District Judge Virginia Phillips, Dean Erwin Chemerinsky, and District Judge Terry J. Hatter

(L-R) District Judge Jesus G. Bernal and District Judge Terry J. Hatter, Jr.

The title "Defender of the Constitution" is one befitting Judge Hatter. Few have accomplished so much in city, state, and federal positions or have demonstrated such a steadfast commitment to the work of the courts and the integrity of the justice system. We feel very fortunate to have benefited so greatly from his principled judicial career, engagement with the community, and deeply held sense of responsibility. We congratulate Judge Hatter on receiving the Erwin Chemerinsky Defender of the Constitution Award for 2013.

photos courtesy of Jacqueline Carey-Wilson

(L-R) District Judge Michael W. Fitzgerald, Magistrate Judge Alicia G. Rosenberg, District Judge Manuel L. Real

(L-R) District Judge Audrey B. Collins, District Judge Virginia A. Phillips, District Judge Gary A. Feess, Chief District Judge George H. King

(L-R) Chief District Judge George H. King, District Judge Philip S. Gutierrez, Senior District Judge Terry J. Hatter, Jr., District Judge Audrey B. Collins, District Judge Gary A. Feess.

Brush up on Your Legal Research

Those wanting to refine their legal research skills are in luck! The Riverside County Law Library (RCLL) has extended its Legal Research classes to the Indio and Temecula areas. Legal Research 101 is a six-class series being held on the second Wednesday of every month from July through December, at 12 noon at the Indio Branch and 7 p.m. at the Temecula Public Library. The topics discussed in the classes include the print and digital resources available for use at each RCLL location.

Those in the Desert Region of Riverside County can attend the classes at RCLL's Indio Branch in the new facility at 46-900A Monroe Street, Indio, CA 92201. Those in the Southwest Region of Riverside County can attend the classes at the Temecula Public Library located at 30600 Pauba Road, Temecula, CA 92592. RCLL has established a satellite branch known as the Law Resource Center inside the Temecula Public Library. It includes a carefully selected print collection of materials specific to California law as well as access to electronic legal databases.

Upcoming classes:

July 10, 2013 – Find and Use Secondary Authority

August 14, 2013 – Find and Use Online Resources at the Law Library

September 11, 2013 – Find and Use Legal Forms at the Law Library

October 9, 2013 – Find and Use Free Legal Websites

November 13, 2013 – How to Conduct an Online California Legislative Intent Search

December 11, 2013 – Best Legal Workshop You'll Ever Attend

Legal Research 101 is presented by Public Services Librarian Bret Christensen. Classes run for approximately one hour. Preregistration is encouraged; cost per class is $5. For more information, please see the "Upcoming Library Events" calendar on rclawlibrary.org or call (951) 368-0368.

New Case Law on Standing (Oh, and Gays Can Marry, Too)!

by Christopher J. Buechler

June 26, 2013. Ten years to the day after handing down a ruling that had a sweeping impact on the lives of gays and lesbians across the nation in *Lawrence v. Texas* (2003) 539 U.S. 558, the Supreme Court announces two rulings that will again mark a major turning point in the fight for LGBT equality under the law. Or, rather, one of them will – *Windsor v. United States*. The other case, *Hollingsworth v. Perry*, will mark a major turning point in the fight to establish Article III standing required in federal courts. To be fair to Hollingsworth, though, it does conclude a long chapter in the fight for LGBT equality under the law of California.

The Facts

Windsor: Edith Windsor and Thea Spyer were in a committed same-sex relationship from 1963 until Spyer's passing in 2009. In 2007, with Spyer's health on the decline, the couple went to Canada to get married.[1] When Spyer passed, she left her entire estate to Windsor. However, because the federal Defense of Marriage Act (DOMA) prevented Windsor's recognition as Spyer's spouse for purposes of federal estate tax exemption, Windsor wound up paying a $363,053 estate tax bill. Windsor promptly sought a refund of the tax paid, which the Internal Revenue Service denied. Windsor brought suit in the U.S. District Court for the Southern District of New York, which found that section 3 of DOMA – barring the federal government from recognizing an otherwise lawful state-sanctioned marriage – was unconstitutional. That decision was later affirmed by the Second Circuit.

Meanwhile, the Department of Justice notified Congress that the Department would no longer defend the constitutionality of DOMA, although it would still continue to enforce its provisions. Congress, then, through the Bipartisan Legal Advisory Group (BLAG), sought to intervene in the case to uphold section 3 in the federal courts. The court was therefore faced with not only the issue of the merits of DOMA, but also whether BLAG had standing to appeal when the executive branch declines to do so.

Hollingsworth: I have covered the facts of *Hollingsworth* in its other iterations – *Perry v. Schwarzenegger* and *Perry v. Brown* – in previous issues of the *Riverside Lawyer*.[2] Basically, this was a challenge to 2008's Proposition 8 (Prop. 8) in the U.S. District Court for the Northern District of California. Prop. 8 was struck down in that court and at the Ninth Circuit, but in both cases, the governor and attorney-general declined to defend the proposition; Prop. 8's proponents intervened on behalf of the state, which is allowed under these circumstances according to the California Supreme Court.[3]

The Holdings

Windsor: The court (Justice Kennedy writing for a 5-4 majority) discussed the standing issue at length. The court found this case especially difficult because of the executive branch's refusal to challenge Windsor on the constitutional issue while still continuing to enforce the statute in question and refusing to refund her money. The court viewed this in terms of Article III not only having a justiciability requirement, but also a prudential requirement. It is not prudent, in the court's view, to give the executive branch the option to repeal an unfavorable law by walking it up to the Supreme Court without a challenge the court can use to sharpen its focus on the issues, rather than by the preferred method of appealing to Congress to amend or repeal that law. But in this case, the executive branch was still enforcing the law, and the fact that Windsor had yet to get her money back created a controversy that the court had to settle.

As to the merits of the constitutional challenge, the court ruled that DOMA, and particularly section 3, violated the Fifth Amendment's guarantees of equal protection and due process of law. The law was designed to create separate classes of married couples within states that have marriage equality, frustrating the states' fundamental right to design marriage laws to protect all married couples within the state equally.

Justice Scalia dissented on the standing issue, taking the position that there was no controversy once Windsor

1 Canada legalized marriage for same-sex couples in 2005.

2 "*Perry v. Brown*: An Update on Same-Sex Marriage Cases," *Riverside Lawyer,* February 2012; "*Perry v. Schwarzenegger* and Marriage Equality: Where Do We Stand?," *Riverside Lawyer,* July 2011.

3 *Perry v. Brown* (2011) 52 Cal.4th 1116.

got the judgment in the lower courts that everyone agreed on. It was the executive branch's job to comply with that judgment, not keep filing appeals so that the court can make new law. Despite Justice Scalia's objection, the intervention of BLAG appeared to put forward the United States' interest in upholding DOMA so as to make the court's ruling prudent.

Justice Scalia also addressed the merits issue in *Windsor*, attacking the court's contortions to achieve a ruling on Fifth Amendment grounds. He points out (correctly, I believe) that the court did not set a level of scrutiny to apply to gays and lesbians. However, he acknowledges that at the very least the standard is rational basis review, and then goes on to establish his rational basis.

Hollingsworth: The court (Chief Justice Roberts writing for a 5-4 majority) remanded this case to be dismissed in the Ninth Circuit for lack of Article III standing. Specifically, Article III requires that in order to have standing, a litigant must have a "concrete and particularized injury that is fairly traceable to the challenged conduct." In this case, ballot proponents have only a "generalized grievance" because the district court did not enjoin the proponents from any conduct; rather, they merely sought to "vindicate the constitutional validity of a generally applicable California law." It is all well and good if California wants to confer standing on initiative proponents to defend in California appellate courts, but federal law is different from state law, and cases like this do not meet the injury requirement for Article III standing.

In his dissent, Justice Kennedy noted that the injured party here is the State of California, and it is within the state's sovereign authority to designate its agents for federal appellate challenges. Justice Kennedy also addressed the concern raised in the Ninth Circuit that denying initiative proponents standing effectively gives the governor and attorney-general a special "veto power" over initiatives struck down in federal district courts.

The Aftermath

With Prop. 8's repeal, California will join 11 other states and the District of Columbia in recognizing marriage equality. However, we still must wait for the Ninth Circuit's stay of the district court's judgment to be lifted. Meanwhile, the executive branches at both our state and federal levels are reviewing regulations and preparing staff for the expected influx of same-sex married couples applying for the rights and responsibilities attached to marriage.

That said, there are still 38 other states that do not recognize same-sex marriage at the state level, and so we should expect to see further court challenges on this issue in the future. Already, there are questions about federal benefits, some of which recognize the legal status of married couples based on the state of residence and some based on the state the couple was married in.

As to the legacy of these rulings, Justice Scalia – in his *Windsor* dissent – criticizing what he sees as the court's twisted logic, sees it as such:

"Some will rejoice in today's decision, and some will despair at it; that is the nature of a controversy that matters so much to so many. But the Court has cheated both sides, robbing the winners of an honest victory, and the losers of the peace that comes from a fair defeat. We owed both of them better. I dissent."

He may be right (although I disagree), but at least I will finally be able to marry my partner.

Christopher J. Buechler, a member of the RCBA Publications Committee, is a sole practitioner based in Riverside with a focus on family law. He is also a Member-at-Large of the RCBA Barristers 2013-14 Board of Directors. He can be reached at christopher@riversidecafamilylaw.com.

Using the First Amendment to "Stay" out of Trouble

by Michael Bujold

Introduction

To paraphrase the poet Ogden Nash, even though some debts are fun when you are acquiring them, none are fun when you set about retiring them. When a particular borrower becomes unable or unwilling to meet his or her obligations, it is easy to imagine that the lending relationship becomes mutually unpleasant. If such a dispute boils over into bankruptcy, creditors would be wise to heed the proverb, "When anger rises, think of the consequences."

The Automatic Stay, Explained

In such a situation, creditors should know that the filing of the bankruptcy case triggered an "automatic stay" designed to curtail debt collection and related activities. Specifically, Section 362 of the Bankruptcy Code imposes a stay of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced" before the bankruptcy case. 11 U.S.C. § 362(a)(1). Similarly, the filing of a bankruptcy petition stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement" of the case. 11 U.S.C. § 362(a)(6).

For bankruptcy lawyers, the automatic stay is considered one of the most fundamental aspects of the Bankruptcy Code. It is intended to serve several purposes.[1] A primary purpose of the automatic stay is to relieve a debtor of financial pressures such as those that drove the debtor into bankruptcy in the first place.[2] The stay is intended to give a debtor the opportunity to reorganize or repay debts, if at all possible.[3] As a result, when the automatic stay applies, the burden is on a creditor to request relief from the stay from the bankruptcy court.

Free Speech Protections Do Not Appear Absolute

Knowing that outright collection attempts are stayed by a bankruptcy filing, creditors may wonder if they can publicly vent their frustration, perhaps in an attempt to "encourage" voluntary repayment. The answer is probably not, at least when the repayment request is overt. Courts recognize that the automatic stay provisions are "designed to prohibit conduct which may include speech components."[4] In deciding whether the First Amendment permits such a speech restriction, courts have reached differing conclusions.

In one of the earliest published decisions on point, the Fifth Circuit Court of Appeals ruled that the First Amendment protected a provider of outdoor billboards from the automatic stay when it posted a series of billboards about a bankrupt plumbing company that stated "Beware, This Company Does Not Pay Its Bills" and "Beware, This Company Is In Bankruptcy."[5] *In re National Service Corp.*, 742 F.2d 859 (5th Cir. 1984). In order to resolve the dilemma, the court answered two questions. As an initial matter, the court needed to characterize the nature of the speech itself. In this case, the lower courts had held that the billboard statements were a form of "commercial speech" and were thus not entitled to a high level of constitutional protection. In rejecting these conclusions, the Fifth Circuit noted that the statements were not intended to sell a particular product or service, but instead were more akin to a "public service message." Viewed in this light, the court held that the statements were "an expression of pure speech entitled to unfettered first amendment protection." *Id.* at 861-62. After determining the scope of constitutional protection, the Fifth Circuit had "little difficulty reaching the conclusion that the bankruptcy court's [order enjoining the billboard statements] constituted an improper prior restraint on first amendment expression." *Id.* In other words, the First Amendment prevailed over the automatic stay.

Not all billboard content is entitled to such broad protection, however. In *Collier v. Hill (In re Collier)*, 410 B.R. 464 (Bankr. E.D. Tex. 2009), the bankruptcy court was compelled to determine whether a store owner was subject to sanctions for posting a billboard stating: "BRAD

1 *See Kenoyer v. Cardinale (In re Kenoyer)*, 489 B.R. 103, 112 (Bankr. N.D. Cal. 2013).

2 *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992).

3 *Boucher v. Shaw*, 572 F.3d 1087, 1092 (9th Cir. 2009).

4 *In re Stonegate Sec. Services, Ltd.*, 56 B.R. 1014, 1018 (N.D. Ill. 1986).

5 The plumbing company used the automatic stay and obtained an injunction from the bankruptcy court preventing the installation of the billboards with these messages.

COLLIER OWES ME $ 984.23 WILL YOU PLEASE COME AND PAY ME!" In defending his conduct and claiming that he was entitled to the same protections received by the billboard advertiser in *National Service Corp.*, the store owner claimed that his sign's purpose was "to inform the public that Collier wouldn't pay his debts and not to give him any credit." *Id.* at 473. In rejecting this argument, the court noted that the store owner's direct repayment request went beyond any "public service message" in *National Service Corp.* and undermined the debtor's "legitimate efforts" to reorganize his financial affairs. Accordingly, the court determined that the automatic stay was necessary to ensure "the effective implementation of the bankruptcy system" and that it did not infringe on the store owner's free speech rights. *Id.* at 475-76. As a result, the court sanctioned the store owner for his violation of the automatic stay.

Conclusion

While it may seem counterintuitive, the above cases highlight that free speech protection may depend on the content of the speech itself. As a general rule, creditors wishing to take a debtor to task in a public setting might want to "stay" away from anything that could be construed as a debt collection attempt.

Michael Bujold currently serves as a Trial Attorney for Peter C. Anderson, the United States Trustee for the Central District of California, Region 16. The United States Trustee Program is a component of the Department of Justice that protects the integrity of the bankruptcy system by overseeing the administration of bankruptcy cases.

SUPREME COURT OF THE UNITED STATES

No.11-9335

ALLEN RYAN ALLEYNE, PETITIONER v. UNITED STATES
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[June 17, 2013]

Justice Alito, dissenting.

"The Court's decision creates a precedent about precedent that may have greater precedential effect than the dubious decisions on which it relies."

Admission to the U.S. Supreme Court Bar: You, Too, Can Become a Member of Its Ranks

by Stefanie G. Field

Nestled on First Street, NE, across from the Capitol, stands the bastion that seeks to uphold our constitution, the U.S. Supreme Court. In a city that is home to a vast array of beautiful monuments and grandiose buildings, the U.S. Supreme Court holds its own. Its marble visage inspires awe and reverence for its beauty as well as for the importance of the decisions that come from within its hallowed halls. The building is set on a large scale, from its grand marble columns to its towering ceilings. The workmanship is a piece of art. Who could not want to be a part of that tradition and history?

In 2010, I was given the opportunity to join the ranks of those admitted to the Supreme Court bar, and I took it. To get admitted, you do not have to actually go to the Supreme Court, but the experience is a once-in-a-lifetime event that is well worth the trip. My admission was hosted by my alma mater, Georgetown University Law Center. I provided them with the proper paperwork, including a certificate of good standing from the California State Bar, and they took care of the rest.

Several Georgetown alumni and I gathered for the event, many with significant others in tow. We converged at the Supreme Court, where we met with Professor Richard Lazarus, who was sponsoring our admission. We stood in line with many others waiting to be allowed into the courtroom. Because we were part of a prearranged group, seating was reserved for us. We were ushered into the courtroom to await the arrival of the justices. The courtroom itself was as beautiful as the rest of the building.

Associate Justice Sonia Sotomayer (center) with Stefanie G. Field (2nd from Justice Sotomayer on the right, bottom row) and the other new admittees to the United States Supreme Court Bar.

No oral argument was scheduled for the day of our admission, June 10, 2010. Instead, we would be hearing the justices read several opinions from the bench. Our group had some treats in store. We got to hear Justice Stevens read a dissent from the bench, a rare occurrence. That was likely the last dissent that Justice Stevens ever read from the bench; he retired a couple of weeks later, on June 29. Then one of the opinions read was from a case that Professor Lazarus had argued before the court. (It was by no means his first oral argument before the Supreme Court. His face was a familiar one to the justices, and when he requested that we be admitted, the justices welcomed his return.) Afterwards, he spoke with us about the case and the impact of the ruling. To cap off our morning, after being sworn in, we were led to a private reception room, where Justice Kennedy stopped to say "Hello" and Justice Sotomayor gave us a brief speech and posed for pictures with us.

The experience was fantastic, and it is not one limited to Georgetown graduates. Many schools host such events for their alumni, as do some bar associations. Every year, the Federal Bar Association, Young Lawyers Division, hosts a similar event in May. It is open to all members of the Federal Bar Association and includes a similar reception, which is traditionally attended by some of the justices. If you decide to participate, after being admitted, take advantage of your new status and visit the law library, a hushed enclave, richly paneled in dark woods. It is not open to members of the general public, but can be accessed by members of the Supreme Court bar.

To be admitted, you need only have practiced law for three years and be a member in good standing of the California State Bar. You also must be sponsored by a member of the Supreme Court bar, who is not related to you by either blood or marriage, and pay a fee. When you are admitted through a group event, that group typically provides the sponsorship.

For anyone who is not already admitted to the U.S. Supreme Court bar, I urge you to take the opportunity and be admitted in person. It is an experience that you will not regret.

Stefanie G. Field, a member of the RCBA Publications Committee, is a Senior Counsel with the law firm of Gresham Savage Nolan & Tilden.

Municipal Bankruptcy: An Overview

by Franklin C. Adams

There has been a fair amount of press coverage of the bankruptcy proceedings of the beleaguered cities of Stockton and San Bernardino. Once rare and considered almost unthinkable, municipal bankruptcy has become more common. The most well-known cases in California began with the Orange County bankruptcy, followed many years later by the Vallejo case. Vallejo, along with a more austere economy, prompted changes to California law found in Government Code sections 53760 et seq. regarding eligibility to file, adding additional requirements to those already found in the United States Bankruptcy Code.

Municipal bankruptcy, or "Chapter 9," incorporates much of Chapter 11's requirements. Indeed, Chapter 9 incorporates many sections of Chapter 11 (see 11 U.S.C. § 901(a)), but is available only to a "municipality" as defined in the Bankruptcy Code, which essentially means that the debtor must be an "instrumentality" of the state.

As under Chapter 11, a plan of reorganization is proposed, but it is called a "plan of adjustment." Confirmation of the plan requires a favorable vote of creditors, and the plan becomes the governing contract between the parties upon termination of bankruptcy. The automatic stay, which so many of us are familiar with, still applies on the filing of the petition in bankruptcy. But in many ways, that is where the similarities end.

Chapter 9 eligibility requirements are much more restrictive. Under the Bankruptcy Code, the proposed debtor must demonstrate that:

1. It is a municipality;
2. It is authorized under state law to file;
3. It is insolvent;
4. It desires to effect a plan to adjust its debts; and
5. It has obtained the agreement of its creditors, or it has negotiated in good faith with them and has not been able to reach agreement. It may also demonstrate that negotiations would be futile.

In addition to the above requirements, a California municipality must do one of two things: It must either participate in a neutral evaluation process for a period of not more than 60 days or declare a fiscal emergency, thereby avoiding the neutral evaluation.

Most of the litigation that has occurred in Vallejo, Stockton and San Bernardino has related to the issue of eligibility. In Vallejo, the hotly litigated issue was insolvency. The creditors argued that the city had sufficient funds in other accounts to continue to pay its obligations. However, the court found that the funds that the creditors alleged were available for use were, in fact, restricted and could not be used without violating state or municipal statutes or ordinances. In the Stockton and San Bernardino cases, the issues of eligibility were focused more on good faith rather than insolvency. In both cases, creditors have alleged that these cities "managed their way into insolvency," implying an element of knowledge of what they were doing when they failed to rein in their spending pre-bankruptcy. In the Stockton case, the bankruptcy judge has ruled that Stockton is eligible. As of the date of this writing, that decision has not yet been made in the San Bernardino case.

One of the other distinctions between Chapters 9 and 11 is power of the court to compel behavior. Under Chapter 9, the court may not interfere with the governmental functions of the debtor city. The only real coercive power the court has is to dismiss the case or to not allow the city into bankruptcy in the first place.

Another heavily litigated area in municipal bankruptcies is personnel costs and benefits, especially retirement benefits. Because personnel costs typically comprise about 70 to 75% of a city's budget, these costs are a prime target for reduction in order to achieve some financial relief. Indeed, as part of pendency plans (interim plans in contemplation of a formal plan of adjustment), cities have unilaterally cut pay and benefits in order to balance their interim budgets. In the Vallejo case, some of the employee groups reached settlement agreements, but others did not. In the latter situation, the city sought to reject those benefit agreements as permitted under bankruptcy law. Ultimately, Vallejo reached a point where it dismissed the case rather than reaching plan confirmation due to the enormous costs of bankruptcy. It never got to the larger issue of payments to CalPers. Those same issues are being hotly litigated in both San Bernardino and Stockton and have yet to be addressed.

Needless to say, there is much more to municipal bankruptcies. It is one of the areas where there is not a lot of case law to guide the way. As a result, watching all of the interested parties forming their legal strategies, and ultimately making law, is a fascinating topic of study.

Franklin C. Adams is a partner in Best Best & Krieger LLP's Business Services practice group in Riverside, where he serves as the chief bankruptcy counsel within the firm. During his 34 years of bankruptcy experience, he has represented Chapter 11 debtors and creditors, bankruptcy trustees, and Chapter 11 committees. Mr. Adams is one of the founding board members of the Inland Empire Bankruptcy Forum and often participates as a panelist, speaker, and presenter on bankruptcy and insolvency topics. In addition, he has served as a member of the Mediation Panel for the Central District of California since 1996. Mr. Adams can be reached at Franklin.Adams@bbklaw.com.

Fifth Annual Celebration of Equal Access to Justice Wine and Culinary Benefit

by Jennifer Jilk

Welcoming remarks were given by Councilman Andy Melendrez, pictured left with Neil Okazaki, Councilman Kenneth Gutierrez and District Attorney Paul Zellerbach

Judge Helios "Joe" Hernandez II gave a speech on justice

Diane Catran Roth, RLA Program Director, and Irene C. Morales, ICLS Executive Director

The Fifth Annual Celebration of Equal Access to Justice Wine and Culinary Benefit, hosted by Inland Counties Legal Services (ICLS) and Riverside Legal Aid (RLA, formerly known as Public Service Law Corporation of the Riverside County Bar Association) and held on May 9 at the Grier Pavilion at Riverside City Hall, was a wonderful success.

Volunteer attorneys from ICLS and RLA were honored that evening with Outstanding Service Awards for their volunteer efforts. RLA recognized two stand-out volunteers, Ryan S. Carrigan and Manfred Schroer, who committed a significant number of pro bono hours in 2012-13.

ICLS recognized two of its managing attorneys, Dianne Woodcroft and Ugochi Anaebere-Nicholson, for their leadership and success in launching a new program initiative to develop strategies to encourage pro bono legal assistance, including creative methods and delivery models to enhance and increase volunteer attorney resources to represent and assist clients at ICLS offices. ICLS also recognized all of its volunteer attorneys who provided pro bono legal assistance in the past year.

The benefit raised much-needed funds for ICLS and RLA to be able to provide quality free civil legal services to low-income and elderly persons in Riverside and San Bernardino Counties. In 2012, ICLS closed 6,968 cases, providing legal advice, limited pro se assistance, as well as aggressive legal advocacy in litigation and administrative law cases. RLA's volunteer attorney program closed 792 cases, and its outstanding Guardianship Program assisted in stabilizing 234 families.

ICLS and the PSLC would like to thank those who made the event so successful:

Photography was provided by TK Jones Photography. Music was provided by Dwayna Green-Wade and Napoleon Wade.

Wine, Beer and Culinary Vendors

Big Papa's Pit BBQ • Canyon Crest Winery • Chris Kern's Forgotten Grapes • Hangar 24 • Simple Simon's Bakery & Bistro
Starbucks-Canyon Crest • The Old Spaghetti Factory • The Tamale Factory • Tin Lizzy's Cookie Café • Panera Bread-Riverside Plaza

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Judicial Profile: District Judge Jesus Bernal

by Kay Otani

Newly appointed District Judge Jesus Bernal is an American success story, but as with all American success stories, there were people who gave him the help he needed to succeed. In Judge Bernal's case, these were his family, his parents, his siblings, and his own wife and children.

District Judge Jesus Bernal

Judge Bernal was born in Sinaloa, Mexico. Following the promise of a better life, his family came to the United States and moved into Boyle Heights when he was still in elementary school. Like others before them, the family learned that the opportunity was real but required hard work to achieve. Judge Bernal's father, who had a sixth-grade education and could not speak English at the time, commuted to Fullerton to work as a packer in a food-processing plant. His mother, who had graduated from high school but also did not speak English at the time, worked in a garment factory, sewing and ironing.

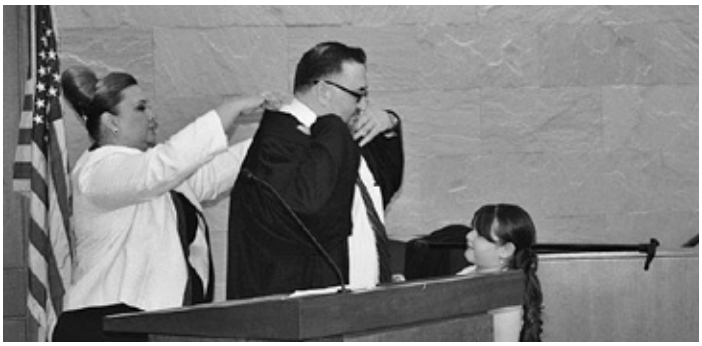
The early years were tough economically, and culturally as well. As the oldest of the children, with both parents working, Judge Bernal had to look after his brothers and sisters, as well as learning English and doing schoolwork. Their parents always emphasized the importance of education and tried to help with schoolwork, but while still in elementary school, Judge Bernal became the family's translator and the tutor for his little brothers and sisters. Although he was a gifted student, because he was adjusting to English, he did not stand out during his elementary school years.

Eventually, the family's hard work began to pay off. Their lives became better because of the education and opportunities available in the United States. Judge Bernal's father continued to work at the same plant but was able to move into less physically demanding positions. His mother also moved on to other jobs and eventually became an assistant in the clothing design department. As for Judge Bernal and his brothers and sisters, once they became adjusted to English and their new schools, they began to shine academically. From junior high school onward, Judge Bernal was at the top of the class, and his little brothers and sisters followed suit. Although they all went to public schools, they all graduated from private universities. Judge Bernal graduated from Yale as an undergraduate with a degree in economics, and from Stanford Law School. His brothers and sisters all graduated from college, including such schools as Stanford and Occidental.

Judge Bernal's father eventually decided to step down from the his job at the food-processing plant, but rather than retire, he decided to stay on as a maintenance man. Unfortunately, he passed away before Judge Bernal became a district judge, but both Judge Bernal's mother and father were so proud of their children. Their sons worked in law, in a government housing agency, and in teaching, and their daughters decided to become full-time mothers who stressed the importance of education to their own children.

After law school, Judge Bernal clerked for District Judge David V. Kenyon and then joined Heller Ehrman LLP, where he practiced large and complex business litigation. In 1996, he left private practice for the Office of the Federal Public Defender. He had always been interested in criminal law and wanted to be in court more often. He had observed deputy federal public defenders in court and thought highly of them. Thanks to his upbringing, he was

District Judge Virginia A. Phillips giving the oath of office to District Judge Jesus G. Bernal on May 3, 2013



Judge Jesus G. Bernal being assisted with his enrobing by his wife and daughter.

Bankruptcy Judge Mark D. Houle and District Judge Manuel L. Real

Autumn Spaeth, Bankruptcy Chief Judge Peter H. Carroll, and Bankruptcy Judge Mark D. Houle

Kenneth MacVey, John Holcomb, and Professor Charles Doskow

(L-R): André Birotte Jr. (United States Attorney), Judge Sheri Pym, Assistant U.S. Attorney Dorothy Kim and Assistant U.S. Attorney Dennise Willett

able to leave the money of private practice behind, because he was more interested in satisfaction with his life than in just making money. He eventually became the Directing Attorney of the Riverside Branch Office of the Federal Public Defender and then the Chief of Trials for the entire office.

As an attorney, Judge Bernal was known for combining an incredibly sharp legal intellect with a very low-key and easy-going demeanor. As a supervisor, he not only assisted his line attorneys with technical legal issues, but also was able to take the weight from their shoulders by showing them how to break a problem down into manageable pieces. As an opponent, he was always courteous and forthright. He fought hard, but never dirty.

In keeping with his down-to-earth lifestyle, he married a woman from his hometown in Sinaloa, and they have two children, a son and a daughter.

Judge Bernal became a judge on December 12, 2012. While he wishes that his father could have celebrated with him, his mother is as proud as a peacock, as are his brothers and sisters.

Judge Bernal took the bench in Riverside on April 1, 2013. He is a judge who has experience in civil and criminal matters and is respected by prosecutors, criminal defense attorneys, and civil practitioners. His presence will help give the people of the Inland Empire the access to justice they deserve. The judges, attorneys, and bar associations of the Inland Empire welcome Judge Bernal back to Riverside and celebrate a truly inspiring, truly American story.

Kay Otani is treasurer of the Inland Empire Chapter of the Federal Bar Association.

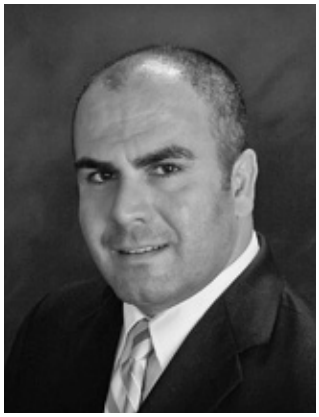
The photos were taken by Jacqueline Carey-Wilson at the Investiture of United States District Judge Jesus G. Bernal on May 3, 2013.

Opposing Counsel: Assistant U.S. Attorney Antoine F. "Tony" Raphael

by Sophia Choi

Chief of the United States Attorney's Office, Eastern Division: Antoine F. "Tony" Raphael

What is zealous advocacy on behalf of the United States of America? For an attorney whose "client" is the United States of America, there is definitely a great amount of responsibility. Tony Raphael exudes the qualities of a true advocate for the United States of America as a federal prosecutor and as Chief of the United States Attorney's Office, Eastern Division: sense of responsibility, belief in justice for all, and perseverance.



Antoine F. "Tony" Raphael

Tony was born in Beirut, the capital of Lebanon. After losing his father in the Lebanese civil war, he moved to the United States as a teenager in 1985 to live with his two older brothers, who were attending college in California. Tony's two sisters and his mother remained in Lebanon. When he enrolled in the 11th grade, he was assigned to a class in English as a Second Language ("ESL"), as he spoke very little English. However, by his senior year, he was moved to Advanced Placement English. In 1987, he graduated from San Dimas High School and went to Cal Poly Pomona, in pursuit of becoming an engineer. He graduated with a B.S. in Mechanical Engineering and a minor in Mathematics in 1994. During college, he was a member of Pi Tau Sigma, a National Mechanical Engineering Honor Society, and he subsequently became a registered professional mechanical engineer.

With his passion for science, mathematics, and design, Tony worked for the City of Los Angeles Department of Public Works for more than 10 years, from January 1990 to August 2001, becoming a program manager of the Solid Resources Division in 1996. His environmental projects prompted him to work with several attorneys, which led to his interest in the legal profession. Tony attended Loyola Law School, working full-time during the day and going to law school at night. Law school is difficult to go through even when it is the only full-time job we have. However, even with an alternate full-time job, Tony excelled, earning his J.D. cum laude in 2001. Tony was a member of the Order of the Coif, an honor society for law school graduates, graduating in the top 5%. He was the Articles Editors of the Loyola of Los Angeles Law Review and the Chief Justice of the Scott Moot Court Honors Board, along with many other notable affiliations and honors. One may wonder what superpowers Tony possesses to achieve all this during law school, *while having another full-time job*.

After graduation from law school, Tony worked for a large law firm in Los Angeles before he began his clerkship for the Honorable Lourdes G. Baird (now retired) of the U.S. District Court for the Central District of California in Los Angeles. This was the beginning of Tony's growth as a federal attorney. After his clerkship, he was hired by the United States Attorney's Office as an Assistant United States Attorney ("AUSA") in 2003. In 2008, Tony received the U.S. Attorney's "Outstanding Victim Advocacy Award," in addition to numerous other commendations from federal law enforcement agencies throughout the years, including the FBI, the IRS, the Health & Human Services Department, the Secret Service, and the DEA. He was thereafter selected by the U.S. Attorney to lead the Riverside Branch Office, i.e. the Eastern Division (Riverside and San Bernardino Counties), in March 2011. As the division has a population of 4.5 million, Tony's responsibilities are immense; he directs significant investigations and prosecutions involving all types of federal crimes, including public corruption, tax evasion, computer crimes, international drug trafficking, and violent crimes, to name a few. The Eastern Division was featured in a March 2013 article in the *Daily Journal*, highlighting the growth, complexity, sophistication, and impact of federal criminal cases filed in the division.

Just as in law school and other parts of his life, Tony is good at handling multiple tasks at one time; now he is a zealous and responsible federal prosecutor while being involved in other activities. He is a board member and officer of the Federal Bar Association, Inland Empire Chapter, a member of the Leo A. Deegan American Inn of Court, a member of the Joseph B. Campbell American Inn of Court, and a member of the Riverside County Bar Association. Since 2012, he has also been a mentor at John North High School in Riverside, and he was a mentor at Volunteers in Parole in 2009.

Tony's hobbies include mountain and road biking, sailing, skiing, backpacking, and traveling. Central and South America are his favorite destinations. With such a busy schedule, he is able to enjoy the outdoors during his leisure time.

Tony is definitely an overachiever, realizing great success in all he does. It appears that such success is attributable to his perpetual perseverance. Coming to America with limited English and becoming Chief of the United States Attorney's Office, Eastern Division, fighting for the interests of the people of the United States, is a huge accomplishment. One cannot accomplish so much without the perseverance and endurance that Tony possesses. Having been through the Lebanese civil war, he places great significance on liberties and freedoms that we sometimes take for granted. Tony fulfills the duties of his position with a great sense of responsibility and belief in justice, remembering John Charles Rayburn, Jr.'s[1] frequent counsel that zealous advocacy on behalf of the United States of America means seeking the truth as well as protecting the rights of *all*, i.e. both victims and defendants. One of Tony's favorite quotes is "Making shots counts, but not as much as the people who make them," which was said by legendary Duke Basketball Coach Mike Krzyzewski ("Coach K"), someone Tony truly admires. Tony's quote reflects the emphasis he places on the importance of all individuals.

Sophia Choi is a member of the Bar Publications Committee and a deputy county counsel for the County of Riverside.

1 John Charles Rayburn, Jr. was the Chief of the Riverside United States Attorney's Office and later served as a United States Magistrate Judge. He passed away on May 14, 2012.

Law Day at the Plaza

The Riverside County Bar Association would like to thank the following attorneys who donated their time to help with RCBA's annual "Law Day" at the Riverside Plaza on Saturday, May 4. 2013: Chris Buechler, Brooke Elia, Michael Geller, Alison Gomer, John Hamilton, Chris Johnson, Dwight Kealy, Jim Latting, Larry Maloney, John Marcus, John Molina, Rogelio Morales, Joshua Naggar, Mario Rico, Dawn Saenz-Taylor, Jeff Smith.

James Latting & Alison Gomer

Larry Maloney, John Marcus & John Hamilton

Brooke Elia, Rogelio Morales, Joshua Naggar, Dwight Kealy, Jeff Smith & Chris Johnson

Why Is Riverside Legal Aid's Free Federal Pro Se Clinic So Busy and Is It Really Having Any Impact?

by Diane C. Roth

In January 2013, Riverside County had almost twice the national average of bankruptcy filings and approximately 50% more per capita than Los Angeles or Orange County.

In the third quarter of 2012, the Riverside-San Bernardino metropolitan area had the highest foreclosure rate among the 20 most populated metropolitan areas in the country – more than three times the national average.

In the Eastern (Riverside) Division of the Central District, *the Bankruptcy Court judges have twice as many and the District Court judges have three times as many* pro se litigants as their Los Angeles counterparts. Most of those litigants find their way to our clinic.

> *"I have found that the assistance provided by the clinic to our pro se litigants is invaluable to the administration of justice. Pro se debtors who have received assistance tend to file and serve required documents, have a better understanding of the issues before the court, and are able to more successfully navigate the often complex bankruptcy system."*
>
> – Bankruptcy Court Judge Mark D. Houle.

For the 4.2 million residents of Riverside and San Bernardino Counties, our Pro Se Clinic is the only resource for pro bono assistance with bankruptcy or federal civil issues. According to Bankruptcy Judge Mark D. Houle, "[T]he services provided by the Pro Se Clinic are invaluable and, I believe, necessary to allow effective access to the courts by the most vulnerable persons who need the help most."

Thanks to Managing Attorney Bob Simmons, Staff Attorney Shirley Ogata, Paralegal Michelle Lara, and some very dedicated volunteers, the clinic managed to serve 1,825 self-represented litigants in both the Bankruptcy and District Courts in 2012.

We are in need of volunteers for District Court civil cases, bankruptcy and bankruptcy adversary proceedings regarding dischargeability. On the District Court side, most of the litigants just need some advice on general procedural or jurisdictional issues, which any federal litigator is qualified to give. However, we are also looking for volunteers we can call on only when needed for advice on a specific case, particularly for social security, immigration, mortgage foreclosure and employment issues. If you can help, please drop by the clinic during its business hours, email us at publaw@sbcglobal.org, or contact us through our website at riversidelegalaid.org.

The clinic has been funded by the District Court's Attorney Admission Fund. It is located in the Bankruptcy Court Clerk's office and is open on Tuesdays and Thursdays from 10 a.m. to 2 p.m.

Diane C. Roth, a past president of the RCBA, is Program Director of Riverside Legal Aid (also known as Public Service Law Corporation of the Riverside County Bar Association).

In May 2013, volunteer Attorneys Manfred Schroer and Ryan Carrigan were honored at our joint Riverside Legal Aid/Inland Counties Legal Services annual Wine & Culinary Event for the many hours they have donated to the clinic. Thanks to them and other volunteers, an 84-year old disabled World War II vet and his disabled wife saved their home from the auction block, an elderly woman received relief after being scammed by a document preparation service that had caused her to lose her home, and others were given life-altering assistance.

Update on the Central District

by Honorable George H. King
Chief Judge of the United States District Court for the Central District of California

As Chief Judge of the Central District of California, one of my responsibilities is to inform the public and the bar about the challenges and opportunities currently facing the federal judiciary. Unfortunately, at the moment, the challenges we face are quite significant.

In March, President Obama signed the appropriations bill that provides funding for the federal government, including the judiciary, for Fiscal Year (FY) 2013. That bill left in place the government-wide sequestration cuts that were mandated by the Budget Control Act of 2011 – cuts that reduced the federal judiciary's FY 2013 funding by nearly $350 million below FY 2012. This is an unprecedented challenge to the administration of justice in the federal courts.

While the federal judiciary's leadership, including the Judicial Conference of the United States, is doing all it can to meet this challenge, the dramatic reduction in funding is compounded by two factors that are particular to the federal judiciary. First, the judiciary has no control over its workload. It must respond to the cases it receives from the Executive Branch and private litigants. Not surprisingly, that caseload is not declining. Second, unlike most Executive Branch entities, the judiciary has very little flexibility to move funds between appropriations accounts in order to lessen the effects of sequestration. It has no "lower-priority programs" from which to transfer funds to other accounts.

How is this situation affecting the federal court system? To mitigate sequestration's impact on court staffing in the current fiscal year, courts have cut their non-salary budgets (including training, information technology, supplies, and equipment) to an extent not sustainable into future years. Even with these reductions, however, up to 1,000 court employees across the country could be laid off, or thousands of employees could be furloughed, before the end of the year. Those staffing losses will add to the nearly 2,200 probation officers and clerk's office staff already lost since July 2011. Needless to say, such cuts in staffing will result in significantly slower processing of civil and bankruptcy cases – delays that will harm individuals, small businesses, and corporations. Criminal justice will also suffer, as sequestration has reduced funding for probation and pretrial officer staffing throughout the courts. This will mean less deterrence, less detection, and less response to possible resumed criminal activity by federal defendants and offenders in the community.

Sequestration has also severely affected the federal courts' Defender Services program, presenting it with a $51 million shortfall below minimum funding requirements. The Defender Services program has no flexibility to absorb such large cuts, since its expenditures are limited almost exclusively to compensation to federal defenders, rent, case-related expenses (e.g., for expert witnesses or interpreters), and payment to private panel attorneys. The only way to absorb the $51 million shortfall is to reduce staffing or defer payments to private panel attorneys. Faced with these difficult choices, the Executive Committee of the Judicial Conference has approved a spending plan for the Defender Services program that will result in federal defender offices across the country having to cut staff and furlough employees an average of approximately 15 days. The plan would also halt payments to private panel attorneys for the last 15 days of FY 2013, shifting those expenses to FY 2014 and adding to the judiciary's FY 2014 appropriation requirements.

In an attempt to mitigate sequestration's devastating effect on defender services, probation and pretrial services offices, court staffing, court security, and related areas, the judiciary has presented Congress and the Office of Management and Budget with an FY 2013 emergency supplemental request of $72.9 million. At present, the fate of that request is uncertain.

Meanwhile, the Central District of California has already had to implement unprecedented measures to meet the challenges of sequestration. Earlier this year, the court approved seven reduced-service days, to be scheduled between April and the end of August. On those days, most employees are furloughed and court services are narrowly limited, essentially to criminal filings and emergency civil filings. (Additional information is available on the court's website.) As a result of the court's continuing efforts to reduce or suspend expenses in every area possible, however, three of these reduced-service days have been canceled. Currently, two reduced-service days remain scheduled in August.

Unfortunately, after several years of cost-cutting in the Central District, those programs that were susceptible to reduction have already been reduced. There simply is not much left to cut that will not impact essential court operations. Thus, while there may only be two reduced-service days left this year, everyone anticipates that FY 2014 will be at least as difficult as the current fiscal year. The public may therefore soon begin to see other effects of the funding crisis, such as calendar delays or long lines to enter courthouses insufficiently staffed with security officers.

However, one small consolation in the midst of such depressing news is the interest and support demonstrated by members of the bar who are active in federal court. To those of you who have so often stepped up to help the court, I thank you for your past efforts – and for the assistance I have no doubt you will provide when we call on you again in the future.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective July 30, 2013.

Lara T. Abuzeid – Abuzeid Law, Temecula

Marcia L. Campbell (A) – Marcia L. Campbell CPA APC, Riverside

David B. Lark – Sole Practitioner, Corona

Katherine C. Elford – ADR Catalysts, Huntington Beach

Leti Fierro-Garcia – Law Student, Riverside

Angel J. A. Garcia – Law Student, Riverside

Michael Hestrin – Office of the District Attorney, Riverside

Nicholas A. Hutchins – Law Student, Corona

Godofredo "O.G." Magno – Office of the Public Defender, Riverside

Marlyss "Marty" Nicholson – Nicholson Law Firm, Temecula

Samra Roth-Furbush – Office of the Public Defender, San Bernardino

Aniko Marie Rushakoff – Sole Practitioner, Encinitas

Daniel L. Schnebly– Law Office of Thomas W. Sardoni, Riverside

Kalsoom Fatima Tremazi – Sole Practitioner, Highland

Renewal:

David L. Wilkirson – Wilkirson & Associates, Newport Beach

(A) – Designates Affiliate Member

Classified Ads

Office in Rancho Mirage
Nice, large, window office w/ optional secretarial space. Partial law library, conference room, lounge, phone system, built-in cabinets, copier/fax privileges, part-time reception, other amenities. Near Palm Springs & Indio Courts. Thomas A. Grossman, PLC (Desert ADR), (760) 324-3800.

Office Space – Grand Terrace
Halfway between SB Central & Downtown Riverside. 565 to 1130 sq ft., $1.10/sq ft. No cams, ready to move in. Ask for Barry, (951) 689-9644

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

Office Space – Downtown Riverside
Nice office space available for rent located in the Wells Fargo building. Walking distance to the Courts. Full access to conference room. Please contact us today for a tour, (951) 779-0221. Law Office of Rajan Maline.

Inland Southern California Law Firm Seeking Attorneys
Transactional Attorney with 3+ years business and real estate transactions experience. Business Litigation Attorney with 5+ years general business and labor/employment experience. Please email resume to Philippa Jump (phil.jump@varnerbrandt.com) or fax to (951) 823-8967.

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 rcba@riversidecountybar.com.

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 or send an email to lisa@riversidecountybar.com

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.

Riverside County LAWYER

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