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MAGAZINE

SPECIALTY COURTS

In This Issue

The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER
MAGAZINE

CONTENTS

Columns:

COVER STORIES:

Features:

Departments:

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.

The 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 the* Riverside Lawyer.

The material printed in the 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

June

10 **Criminal Law Section**
Noon – 1:15 p.m.
RCBA Building – Gabbert Gallery
Speakers: Marek Kasprzyk, Victor Torres, Enrique Tira
Topic: "The Role of Private Investigators in Criminal Cases"
Lunch sponsored by Breathe Easy Solutions
MCLE

12 **General Membership Meeting**
Noon – 1:15 p.m.
RCBA Building - Gabbert Gallery
Speaker: Steven Harmon, Riverside County Public Defender
Topic: "Reflections of a Trial Lawyer"
MCLE

16 **Family Law Section Meeting**
Noon – 1:30 p.m.
RCBA Building – Gabbert Gallery
Speaker: Raymond Goldstein
Topic: "Enforcement of Support, Attorney Fee Awards and Equalization Orders"
Lunch sponsored by Law Offices of David T. Ruegg
MCLE

24 **Appellate Law Section**
Noon – 1:15 p.m.
RCBA Building-Gabbert Gallery
Speaker: Carmela Simoncini, Esq.
Topic: "Saying Ouch: Avoiding Issue Forfeiture in Juvenile and Criminal Appeals"
MCLE

July

23 **CLE Event**
12:00 p.m. – 2:15 p.m.
11:45 a.m. – Check in
RCBA Building – Gabbert Gallery
Speaker: Ken Matejka, J.D., LL.M
Topic: "Your Law Firm's Web Presence, Online Content Creation and Related Ethical Issues"
MCLE – 1 hour Ethics, 1 hour General
Brown bag – Please bring your lunch!!!

Save the Date!!!

RCBA Annual Installation of Officers Dinner
September 24, 2015
Mission Inn – Music Room
Social Hour – 5:30 p.m./Dinner – 6:30 p.m.

President's Message

by Chad W. Firetag

Specialty Courts

In my role as the President of the Bar Association and as one of the Assistant Public Defenders for Riverside County, I get to attend many events related to our justice system. One of the more enjoyable events I attended was a Veteran's Court graduation, presided over by the Hon. Mark Johnson. The *Riverside Lawyer* has written about this wonderful program several times, but for those who do not know what it is about, here is a brief description. Brian Cosgrove, a Deputy Public Defender and Marine, wrote the following in May of 2012 when the Veteran's Court opened:

> "The purpose behind Veterans' Court is to assist military veterans who suffer from a mental illness related to their military service. Commonly, veterans who have been diagnosed with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), or other mental health problems will qualify for Veterans' Court. Drug and alcohol abuse are also qualifying conditions. … Once the case is returned to the court, the Veterans' Court Team will again be briefed on the full status of the case and the veteran. The ultimate decision whether or not an individual is accepted into the program rests with Judge Johnson.
>
> If accepted, the defendant veteran will enter a plea to a probation-eligible crime. He or she will then be placed on formal probation and released into treatment by the Veteran's Administration, supervised by the Probation Department. Treatment and supervision will consist of group counseling, drug and alcohol testing, mental health treatment, support meetings, and regular progress hearings in court.
>
> The program is divided into four phases of treatment, ending with a graduation ceremony. The full process is intended to last 18 months, with the final goal of restoring the defendant veteran to a productive place in society."

Essentially the goal of this court is to serve the Veteran community by recognizing the tremendous sacrifices they made for our freedom. It recognizes that the rule of law would mean nothing without their sacrifices to our country to ensure those freedoms.

The graduation ceremony was well attended by elected officials, members of our bench and bar, and the general public. I was touched to see the sincere respect and honor everyone showed to these men and women. It brought me great joy to know that the Riverside County Superior Court cared enough about these Veterans to devote valuable resources to restoring their name and record.

Veteran's Court has now been in operation for over three years and is working well. It has helped and changed many deserving lives. But Veteran's Court is not the only specialty court in the criminal courts of Riverside County. Indeed, Riverside County supports a number of other specialty courts (including our drug and mental health courts). This makes logical sense as research shows that specific and targeted risk-assessment probation terms significantly decrease rates of recidivism. I believe that all involved realize it is simply not only the right thing to do, but the smart thing to do as well.

In my opinion, specialty courts work because they target the needs of the offender. We in the Criminal Justice system have realized that we cannot just keep incarcerating individuals to solve our problems. That is why all of the Public Safety Justice Partners, from the Sheriff to the DA to Probation, have taken tremendous steps in re-evaluating how we approach the prison population. Jails and punishment are of course a necessary component, but a rehabilitated offender is far more cost-effective in the long run than a repeat offender. Thus, while the cost of treatment and rehabilitative programs may at first glance appear to be high, the cost of not having these programs is far higher.

In this month's edition of the *Riverside Lawyer*, the focus is not just on specialty courts in the criminal justice system but other areas of law as well. Our collective justice system is comprised of many different types of specialty courts, from tribal courts to administrative and worker's compensation courts. All of these systems of justice work because they target the specific needs of the litigants. Research shows that targeting specific needs oftentimes produces better, more lasting results.

That leads me back to the graduation I attended. One of the young men who was a former U.S. Army combat engineer who had graduated from the Veteran's Court program spoke openly about his drug addiction. In front of his friends and families, the attorneys who represented him and the judicial officers who presided over his case, he told the crowd that "if it wasn't for these people (referring to the Veteran's Court personnel), I'd probably be dead. I wouldn't be standing here."

The graduate then went on to say, "… ever since I admitted I had a problem it's like my whole life has turned around. I wasn't afraid to share those deep, dark secrets. I didn't have anything to hide anymore. It got my family back together. It got my life together. I owe my life to this program."

I cannot think of a better outcome.

Chad Firetag is an Assistant Public Defender for the Law Offices of the Public Defender, Riverside County.

Barristers' Message

by Christopher Marin

A Call to Leadership

Leadership is the capacity to translate vision into reality.

-Warren Bennis

Back in my community college days, I had the good fortune of taking classes in two departments that formed the professional etiquette that has served me well to this day: Theater and Fashion. (Yes, I am the Elle Woods of the RCBA). Orange Coast College, my alma mater, had a student-run repertory theatre where the students ran practically all aspects of putting on a live theater production and the faculty supervisors had only one grading criteria: If by the end of the semester they know your name (in a good way) you get an A. The fashion department had as much of a focus on professional networking as it did on constructing clothes. We were fortunate enough to be located in the heart of Orange County's garment district and students got to interact with professionals from Hurley, St. John Knits, and Paul Frank (the person and the company). The key lessons imparted there were to never burn bridges and to form a connection with just about everyone.

I bring this up because even though my current career as a lawyer was many years away, these experiences gave me the confidence to assert that my skills are of value to the world and worth sharing. And if I am able to connect with people and pool our collective skills together, then I have what it takes to be a leader.

As I enter my sixth year as a member of the RCBA, I have come to be recognized as a leader in this community of lawyers, not because of my experience as a lawyer, but as a young attorney with energy and creativity. I have served on the Publications Committee and proposed themes and articles for some of *Riverside Lawyer*'s most popular editions. I headed an effort to redevelop the RCBA's website into its current form and was one of the decision makers when we had to evaluate design proposals. And, most recently, I was invited to sit on the founding committee for the New Attorney Academy and help develop a curriculum that would guide new attorneys into the practice of law here in Riverside.

It may seem like a lot, but none of it was done alone. I have had the pleasure of working alongside other RCBA leaders like Jackie Carey-Wilson, Robyn Lewis, Jean Serrano, and many of Riverside's past bar presidents and distinguished bench officers. Working with these people made these projects not only easier, but downright enjoyable. And it fills me with joy and pride as I see some of these colleagues make the move from respected attorney to respected bench officer in recognition for their service to the community.

Now I would like to extend the invitation to my fellow Barristers to join me and take up the mantle as a leader in this community. I can tell you from my experience that serving on the Barristers board is less work than mounting a stage production, although it is more work than constructing a garment. There is a great opportunity to experience this firsthand as we prepare to have elections for Barristers officers for the 2015-2016 year. We are currently accepting nominations to fill officer positions for the upcoming year's Barristers board, including Vice President, Secretary, Treasurer and Member-at-Large (nominations for the office of President is restricted to current board members only per our bylaws). If you are interested in running for a board position, please contact Scott Talkov, Arlene Cordoba, or Kelly Moran.

We will be holding our general membership meeting on June 11, 2015 at Cask n' Cleaver Steakhouse in Riverside. Eli Underwood and Kevin Abbott will present an MCLE panel on Eminent Domain and the 91 Expansion. Also, Barristers will vote for officers for the coming year. JAMS has generously agreed to provide a bar tab for the event. Social hour starts at 5:30 p.m. and the MCLE presentation starts at 6:30. So please come and get your name out there, network with other young attorneys, and support your Barristers board members – future and present.

Christopher Marin, a member of the bar publications committee, is a sole practitioner based in Riverside, currently interning with the Riverside County Office of the Public Defender. He is also Secretary for the RCBA Barristers 2014-2015 Board of Directors. He can be reached at christopher@riversidecafamilylaw.com.

DMV Administrative Hearings

by Daniel J. Tripathi

Imagine you are a nurse and a private hospital has offered you an administrative position, where you approve or disapprove doctor requested surgeries for the uninsured. They offer you a tremendous compensation package and you graciously accept. How hard could the position be, you think to yourself?

On your first day the management team of the small private hospital meets with you. They inform you the requests involve self-pay patients (or "no-pay" patients as the management team refers to them). The team explains that the last person in the position was extremely charitable, which ultimately affected the private hospital's financial health. Because of the volume of non-paying patient surgeries last year, the hospital can't afford the new equipment it needs to stay competitive. Additionally, the hospital has not been able to perform some desperately needed maintenance. You are told to closely monitor costs and only to approve the vital requests.

When you return to your office, there are stacks of files on your desk, each containing a request. Your calendar indicates that you have eight teleconferences with doctors today. By lunch you are worried about the new job. You wish you had more time to review the requests, to perform investigation, and mostly you wish you had as much training in the science as the doctors have. You think to yourself there should be someone from the hospital in the teleconferences representing the hospital's interests. Both could state his or her case and then you could be judge. Unfortunately, you have to attempt to argue for the benefit of the hospital (your employer), and to try to make a fair decision. After suffering through your first day and denying as many requests as possible, you wonder if you made the right choices.

This position I described is very similar to the position of a hearing officer at the California Department of Motor Vehicles (DMV). The hearing officer's job is to prosecute **and** adjudicate an administrative proceeding regarding the suspension or revocation of a licensee's driving privilege. Both our State and Federal Constitutions provide that no person shall be deprived of property without due process of law. Due process of law entitles licensees to a notice of the action DMV intends to take against a driving privilege and an opportunity to be heard.

At the administrative proceeding, in most cases, the hearing officer must decide the following:

1) Did the peace officer have reasonable cause to believe the licensee was driving a motor vehicle in violation of Vehicle Code Sections 23140, 23152, or 23153?
2) Was the licensee placed under lawful arrest?
3) Was the licensee driving a motor vehicle with a blood alcohol content (BAC) of 0.08% or more by weight?

Much like the nurse described above, the hearing officer determines whether all of these facts are proven by a preponderance of the evidence, only without the benefits of a law degree. The hearing officer utilizes the police report and possibly testimony from the officer or a witness to adjudicate. If elements are not proven by a preponderance of the evidence, then the department shall rescind the order of suspension.

I tell my clients there are two different sets of train tracks, one leads to the DMV and the other to the superior court. In order for you to keep your license, you need to win both cases. The DMV hearing is an administrative proceeding regarding the licensee's driving privilege and the circumstances surrounding the arrest, not whether the licensee is innocent or guilty of a criminal act.

A client or attorney has ten days to contact the Driver Safety Division of the DMV to request a hearing. For alcohol cases with results above a

In Memoriam

JUDGE ELWOOD M. RICH

(1920 – 2015)

0.08% BAC, if no hearing is requested, the license will almost always be suspended. The Driver Safety Division does not usually suspend for drug or prescription drug cases; however, if the client is convicted, then Sacramento will suspend the license based on the conviction.

All clients and potential clients should request a hearing. At a minimum, we as attorneys should force all agencies to cross every "t" and dot every "i." The DMV hearing can be used to begin discovery and it is a good way to begin to learn the case. Also, the DMV hearing often occurs weeks or months before the initial court date, so the attorney is able to obtain the police report prior to court.

Having the client testify at the hearing should be reserved for the rare circumstances when it cannot be avoided. His or her testimony could be used against him or her in the criminal case. A hearing brief is recommended prior to the hearing to highlight any powerful arguments and cite any relevant case law. If there are no significant issues, then having a telephone hearing and waiving the client's presence may be an option.

Title 17 of the California Code of Regulations establishes the protocol for California law enforcement to administer, collect, and store chemical blood and breath tests. Title 17 requirements make DUI tests as reliable and accurate as possible.

Look to see whether a licensed laboratory technician drew blood using an alcohol-based sterilizing agent to sterilize the defendant's skin. Often on retest, attorneys learn the wrong amount of anticoagulant or preservative was found in the vial of blood. Insufficient preservative causes the blood test results to rise because of the effects of bacteria while being stored. An error in the administration or storage of the blood sample can make for a successful motion to exclude in a trial brief or during a California Evidence code 402 hearing.

Title 17 breath test violations are also common. Title 17 requires that the air must come from what is known as alveolar, or deep lung breath. The subject must blow fairly hard into the machine to get a reliable BAC reading. Title 17 also requires that police must make sure that the defendant does not eat, drink, smoke, vomit, burp, or regurgitate for an uninterrupted fifteen-minute period before taking the breath test. Also, the breathalyzer must be calibrated every ten days or every 150 uses, whichever occurs first. Heartburn, gastroesophageal reflux disease (GERD), or acid reflux can also affect results and may be used to request a California Evidence Code section 403 hearing prior to trial. An unreliable BAC reading may result because of alcohol that sits in the mouth from these conditions. Mouth alcohol can contaminate breath samples.

Much like the nurse scenario, the hearing officer's employer, the DMV, is more concerned with removing any potentially dangerous drivers from the road, as opposed to adhering to lawful constitutional principles. This makes presenting legal arguments difficult and each premise should be raised in the simplest form possible. In my experience, the hearing officers are courteous, professional, and would like to be just. The problem is the internal conflict inherent in the position.

The Law Offices of Daniel J. Tripathi has successfully defended over 1000 clients. He handles all criminal matters as well as the underlying civil suits and professional license defense. The National Trial Lawyers named Daniel J. Tripathi as one of the Top 100 Trial Lawyers in the U.S. and Super Lawyers nominated Daniel as a "Rising Star" in 2014 and 2015. In 2015, Martindale Hubbell awarded Mr. Tripathi with their highest rating of AV.

Protecting Your Client's Right To Refuse Antipsychotic Medications

by Monica Nguyen

Working with the incompetent to stand trial accused in Riverside Superior Court has exposed me to the complications of the human mind. In the past two and a half years of this work, I've seen clients rendered mute from profound mental illness, clients who haven't cleaned themselves for weeks, and clients who have taken such extreme measures to harm themselves that parts of their bodies are mutilated. I've heard these clients exclaim that they are millionaires, heard them scream uncontrollably in open court, and heard them explain to me that they know that I am colluding with the District Attorney's Office, the C.I.A., the F.B.I., and the Attorney General to work against them. On a few occasions, I have had clients who genuinely believed that I was trying to cause them physical harm.

These experiences all come with the job of working with the most severely mentally ill accused that walk through Riverside Superior Court. The work is truly fascinating.

I begin my representation of the clients by seeking a finding of incompetence, and a commitment to an appropriate treatment setting. The next issue that arises is whether the court should order the involuntary administration of antipsychotic medications. Some clients are willing to take medications, which makes such an order unnecessary. Others have never accepted that they suffer from mental illness, and thus, do not see any need for medications.

The simple answer here seems to be to give these clients the medications, whether they want them or not. Involuntary administration of antipsychotic medications is allowable for competency purposes in the following circumstances: (1) the accused lacks the capacity to make medication decisions, and if he is not given antipsychotic medications, it is probable that serious harm to his physical or mental health will result; (2) the accused is a danger to himself, or others as a result of his mental disorder; and (3) the accused is charged with a very serious crime, and antipsychotic medications are the only medically safe road to competence.[1]

1 See Cal. Penal Code §1370(a)(2)(B)(i)

If the prosecution asks the court to order the involuntary administration of medications, it must prove through substantial evidence that one of these three circumstances exist. The argument over whether the prosecution has provided substantial evidence presents an interesting area of litigation.

A recurring problem in this litigation is that the evaluating psychiatrist doesn't know enough information to provide substantial evidence to the court. The psychiatrist usually spends anywhere from fifteen to forty-five minutes with the accused in a medication interview. This isn't enough time to learn about the accused's medical history to know whether medications are medically appropriate. It's not enough time to observe the accused to learn whether his psychotic symptoms are related to drug use, or organic mental illness. It's not enough time to educate the accused about his mental illness and attempt to obtain his consent to take the medications.

When I oppose prosecution requests for involuntary medication orders, it is because I do not believe that the psychiatric data provides substantial evidence to support the orders. I have noticed two positive side effects to this litigation.

First, the clients appreciate watching me advocate for their interests. Many do not understand what is said in court, but they understand that I am trying to protect their interest in remaining free from unwanted medications. Whether I win or lose, the clients appreciate the fight. That advocacy sparks the client's trust in my dedication to his interests. This is crucial to my relationship with the client when his competency is restored. If the client's competence is restored, and he is eligible for probation, I usually offer him a mental health program. The client is more likely to accept my recommendation, if he trusts me. Everyone wins when I place clients in mental health programs that keep them medication-compliant in the community.

The second positive side effect of advocating against the involuntary medication orders is that, if I am successful, the client maintains the right to decide whether to ingest the medications. This right necessitates the hospital staff to spend more time with my clients to

educate them about their mental illness, and the need for the medications. When my clients are part of the decision-making process, they feel empowered to take control of their mental illness. This feeling persists with them when they return to court. I have found that my clients who went to the hospital without a forced medication order returned to court with a better understanding of their mental illness. They learn how to remain stable on medications without being forced to take them.

This is a huge benefit to the client and the community, because this education makes it much more likely that they will remain medication-compliant when they are released to the community.

Alternatively, I have been appalled at some of the records that I have reviewed that document the involuntary administration of medications. I will never forget one client who was strapped down in restraints for five straight days to ensure that he received the involuntary medications. When I questioned the doctor about the length of time, he told me that he thought that it was only three days. When that client returned from the state hospital, it was extremely difficult to help him to understand the positive aspect to taking his medications. He had a genuine fear of mental health workers, and I expect that he is much less likely to go to a psychiatric hospital in the community, if he is ever in an acute crisis.

The predictable thing about this work is that there isn't any predictability with these clients. They are all unique, and all need specialized representation to help them become successful in managing their mental illness. In objecting to the forced medication orders when the evidence doesn't support them, I protect their rights to be free from unwanted medications, I gain their trust, and I assist them in remaining medication-compliant in the community.

Monica Nguyen has been a public defender since 2007 and is assigned to Mental Health Court.

The Worthy Client and the Small Claims Referral

*by Donald B. Cripe**

Almost every lawyer has encountered a situation in which a client or potential client approaches them with a matter, while meritorious on the facts and law, will return damages to the winner insufficient to pay the cost of even a limited superior court action. We do not want to turn the client away with bad economic news, so we must be able to offer guidance that will provide a path to recovery. The California courts provide such a path: small claims court.

Unlike the upper divisions of the superior court, small claims courts have very strict and specific limitations for the amount one may seek. The most one can ask for is $10,000 (*businesses can only ask for up to $5,000*); however, a party is limited to filing no more than two claims anywhere in the State of California for over $2,500 in one calendar year. He may file an unlimited amount of claims for $2,500 or less. It may be difficult to decline spending an existing client's money unwisely but counsel should explain small claims court is intended to provide an accessible forum to resolve minor civil disputes expeditiously, inexpensively, and fairly.

Small claims courts are a fundamental element in the administration of justice and the protection of individuals' rights and property.[1] Counsel should also be aware of the provisions of Code of Civil Procedure (C.C.P.) section 1033, subdivision (b)(1): "When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper." Subsection 2 of that section may be used to impose other conditional limitations on the recovery of costs if the action should have been tried in small claims court.

Though sitting judges occasionally preside in small claims court, litigants will usually appear before a commissioner, hearings officer, or temporary judge. Your client can expect the small claims judge to be able to issue orders and judgments on almost every area available to other superior court judges. There are no juries, ordinarily no attorneys at trial, and no formal pleadings, formal discovery, rules of evidence, or findings in small claims actions. Parties may limit the presentation of evidence and complete the proceedings in a short time, bearing in mind that the parties have a right to their day in court.

The spirit of compromise and conciliation should prevail which is a reason that community mediators are provided by the court. Awards, although made in accordance with substantive law, are ideally based on the application of common sense. Small claims courts are not "courts of record" (no court reporter) though most small claims courts are recorded on tape for the use of the Court Administration.[2] Because parties are unrepresented by counsel in small claims court, the judge must protect the rights of the parties by raising technical issues such as jurisdiction, venue, statute of limitations, or special consumer defenses when they may apply but are not apparent to the parties. The judge determines all factual and legal issues. The volume of small claims cases requires the judicial officer to balance the parties' rights and the speed with which the cases must be properly decided.

It is also important to know that although California prohibits corporations and some other entities from appearing as "pro per" or "self-represented," that is not the case in small claims court. An appointed non-attorney employee whose responsibility it is to collect or handle matters that are being litigated, may appear on behalf of the entity. In small claims court, a "person" is an individual, a corporation, a partnership, a limited liability partnership, a limited liability company, a firm, an association, or another entity.[3] One may determine who may appear on behalf of entities by looking at C.C.P., section 116.410, subdivision (b). If the plaintiff does business under a fictitious business name[4] and the claim relates to that business, the claim must be accompanied by a declaration[5] stating that the plaintiff has complied with the fictitious business name laws by executing, filing, and publishing a fictitious business name statement.[6]

If your client will be the plaintiff, she should be aware that since the plaintiff chooses the court and venue, she will be held to that choice. Generally, a plaintiff with a claim under the jurisdictional limit may choose to bring his action in small claims court rather than superior court.[7] A plaintiff who elects to proceed in small claims court may not appeal a judgment entered against him.[8] A

1 Code of Civ. Proc. § 116.120.

2 *Sanderson v Niemann* (1941) 17 C2d 563, 573.
3 C.C.P., § 116.410, subd. (a); C.C.P., § 116.130.
4 *see* Bus. & Prof. Code, § 17900
5 *see* Bus. & Prof. Code, § 17918
6 C.C.P., § 116.430, subd. (a); CRC 3.2100.
7 C.C.P., §§ 116.220, subd. (a), 116.320, subd. (a).
8 C.C.P., § 116.710, subd. (a).

small claims defendant has no right to remove the action to superior court. However, a small claims defendant may appeal to the superior court a small claims judgment entered against him.[9] In other words, if a plaintiff is dissatisfied with the decision of the judge, she has no right to appeal. On the other hand, the defendant retains that right. An appeal from a small claims judgment is sent to the superior court to be heard, De Novo, by a sitting judge in a trial department. With some exception, collateral estoppel effect is afforded to claims litigated and decided against a small claims plaintiff, and thus a plaintiff in a small claims court action may not relitigate, in a subsequent related action, *an issue litigated and expressly decided against him in the small claims action, where the record is sufficiently clear as to the issue actually litigated and decided in the small claims court*.[10]

Lawyers should explain the process and procedures in small claims court to the client. Pleadings are on mandatory court forms, generally available on court websites. The form requires the identities of the parties, the relief sought, and a short statement of the facts upon which the action is brought. Small claims judges will normally pay close attention to the named parties to ensure due process. Lay persons often do not know who the proper defendant should be or that they do not have a right to sue a party improperly named, so the court will typically make rulings on the pleadings, perhaps dismissing the claim without prejudice to allow the plaintiff to pursue the proper party. To avoid this problem, the plaintiff should seek the assistance of the Small Claims Advisor or his attorney before filing the claim.

Probably the most frequent reason for small claims actions to be dismissed or delayed is defective service of process. In small claims, the plaintiff may elect to have the clerk serve the claim on the defendant via certified, return receipt, mail. There will be little problem if the defendant appears at the hearing, but since the proof of service is the signature on the receipt that no one may be able to authenticate, small claims judges routinely dismiss actions in which the mail receipt is the only proof of service. More frequently, the judge will continue the hearing to give the claimant another opportunity to perfect service. The client should be cautioned that while costs are recoverable, the court observes a cost schedule for service. So even if the claimant spends a lot of money to affect service, with few exceptions, she will be limited to the schedule fee ($35.00 within the county).

The public is given a terrible impression of how small claims courts operate by infamous television shows purporting to show small claims trials. Though some judges (temporary or otherwise) sometimes push the envelope of propriety, if a real life small claims court treated litigants the way they are treated on the "reality" shows, that judge would probably be removed from the small claims bench. If the client feels that the judge exceeded the bounds of propriety, she or he should complain to the presiding judge.

Small claims calendars are usually quite crowded when the parties arrive. But the crowd does not necessarily reflect the way the calendar will be handled. Some of the people who report will be sent away because of some procedural defect, in many cases, the defendant will not appear and the matter will go by default. In others, the parties will settle during mediation leaving the number of cases to be tried relatively few. Most hearings take 10 minutes or less.

After the parties are finished presenting their evidence it is up to the judge whether to issue the ruling from the bench or to notify the parties post hearing by mail. The Courtroom Assistant (Clerk) will mail the judgment within a few days of the hearing.

In sum, if your client has a serious claim for which you believe relief is warranted, but not substantial enough to justify even a limited civil action, you should be prepared to have a serious discussion with your client about pursuing her claim in a small claims action.

**(Note: I heavily borrowed text from the AOC Temporary Judge Training course on Small Claims and from the cited authority).*

Donald B. Cripe is a retired trial lawyer and full time ADR professional and founding member of the California Arbitration & Mediation Services.

9 C.C.P., § 116.710, subd. (b).

10 *Pitzen v. The Superior Court of San Diego Court (Garcia)* (2004) 120 Cal.App.4th 1374, disagreed with in *Sanders v. Walsh* (2013) 219 Cal.App.4th 855.

Social Security/SSI Hearings

by Amy Stump

Social Security Disability (SSDI) and Supplemental Security Income (SSI) hearings are held before Federal Administrative Law Judges (ALJs) at the Office of Disability Adjudication and Review (ODAR). Hearings are held to resolve a variety of issues, but for the purpose of this discussion we will focus on the most common one: disability.

The only difference in the process between a claimant applying for SSDI or for SSI is the fund of money from which the benefits will be paid. SSDI comes out of monies paid by the employer and employee and SSI comes out of the General Fund. Both programs are administered by the Social Security Administration (SSA). The criteria for finding an individual disabled are identical. The amount of an SSDI benefit is determined by the income received by the individual during his or her working career. With a few exceptions, SSI is a set amount for all adults. For 2015, the SSI amount in California is $889.40 per month.

Once an individual determines that he or she cannot work, their first step is to apply for benefits. This includes providing the names of all doctors, hospitals, clinics and therapists who treat the claimant as well as all medications taken, both prescription and over-the-counter. Approximately 30 percent of initial applications are approved. The remainder of claimants must file a Request for Reconsideration (Recon) within 60 days of receipt of the denial. This Recon may be filed in hardcopy or on the SSA.gov website. Only about 15 percent of Recons result in a granting of benefits and the remaining applicants must submit a Request for Hearing within 60 days of receipt of the denial of Reconsideration. This appeal may also be submitted in hardcopy or online.

Once a Request for Hearing is submitted, it can take anywhere from 6 to 24 months for the hearing to be scheduled.

ODAR hearings are informal and private, complying with HIPAA requirements. The ALJ will be present, with a hearing monitor who is responsible for taking notes and making sure the testimony is recorded. There is usually a vocational expert (VE) present to give testimony regarding the claimant's past jobs and ability to perform those and/or other jobs in the national economy. Occasionally, there will be a medical expert (ME) present to testify as to the claimant's diagnoses, restrictions, and ability to perform work. The claimant will be there and may be represented; however, there is no requirement that the representative be an attorney. A professional authorized hearing representative (AR), a family member, or a friend may act in that capacity, or the claimant may self-represent. The claimant is permitted to bring witnesses to testify as well.

All individuals who will testify are sworn in and the ALJ usually begins the hearing with a brief explanation of the hearing process and his or her own questions to the claimant. If an ME is present, the ALJ will usually turn to the doctor next to ask his or her opinions, based upon the record. The hearing will then be turned over to the AR to more thoroughly question the claimant about how the medical and/or psychological impairments prevent work activities, affect the activities of daily life, and what side effects of medications are present, if any.

Last, in most instances, the ALJ will turn to the VE and will present hypothetical questions based upon the claimant, his or her previous work, age, and levels of impairment. The VE may only use the facts presented in the hypothetical to answer the questions regarding whether that hypothetical person can work.

The AR or the claimant may question the experts after their testimony to challenge or clarify their answers and to point out anything in the records that might make a difference to their testimony.

In the majority of cases, the ALJ will not give a decision at the time of the hearing but will send it out in writing. It takes anywhere from a few weeks to several months for the written decision to be mailed. If the claimant disagrees with the decision, an appeal may be filed with the Social Security Appeals Council. As is the norm with appeals, there must be some judicial error in order for the appeal to be successful. If the Appeals Council agrees that there was any error made by the ALJ, they will remand the case with specific instructions.

While receiving benefits, a claimant must continue to receive medical treatment for the impairment(s) because the SSA will conduct continuing disability reviews (CDRs) every two to three years to determine if his or her condition has substantially improved. If it appears that the condition has improved, then the claimant will be found no longer eligible for benefits and may have to start the process all over again.

Amy L. Stump is a Paralegal III with Inland Counties Legal Services. She is an advocate for low-income individuals in public benefits hearings for SSI, CalWorks, CalFresh, Medi-Cal, and In-Home Supportive Service cases.

Occupational Safety & Health Appeals Board

by Christopher Marin

During my 1L summer, I had the good fortune of interning for the California Division of Occupational Safety and Health (DOSH) Appeals Unit in their Downtown L.A. office. The Unit was responsible for representing the Division in front of the Occupational Safety & Health Appeals Board (OSHAB) by defending citations issued by the Division to employers throughout the state found to be in violation of California Occupational Safety and Health Regulations.

The OSHAB Appeals Process

When an employer is cited by DOSH for a workplace safety violation, they can appeal the citation by filing a written appeal with OSHAB within 15 days of the citation.[1] That starts what is essentially the first level of review for the citation. Once an appeal is docketed, the employer has to notify employees of the appeal and their right to participate as third parties.

The rest of the appeals process proceeds substantially similar to any other civil litigation with rights to discovery, subpoenas, notice and hearings. Matters are heard by experienced attorneys employed by OSHAB sitting as administrative law judges. Any party has the right to appeal an order or decision by filing a petition to reconsider with the appeals board. Decisions After Reconsideration (DAR) are issued by the board on these petitions and serve as binding precedent on the administrative law judges for future cases. These DARs or denials of reconsideration petition may be further appealed to the California Superior Court for a writ of mandate pursuant to Code of Civil Procedure 1094.5. Most of the OSHAB procedural regulations are contained in Cal. Code of Regs. tit. 8, § 345 et seq.

The Litigator's Perspective

But beyond procedure, working in front of OSHAB is likely to be more of an education in workplace safety than in the practice of law. Parties or representatives before OSHAB are not required to be attorneys, and because of that the board attempts to keep the proceedings as simple and informal as possible. In my summer at DOSH, we took one case to hearing where the employer's representative was an industrial safety consultant who provided an eye opening look into how NOT to conduct a witness examination (the employer ultimately lost the appeal).

The above mentioned case involved a metal stamping factory and an employee who got his hand crushed in the stamp. I also handled a case where a dockworker was crushed to death by a transtainer (workplace deaths also involve DOSH working concurrently with a criminal investigation). According to my supervising attorney at the time, most non-injury cases involved construction excavations where there was inadequate shoring on the excavation walls. Just about any case handled would usually have a regulatory infraction for failing to notify DOSH within 24 hours of any workplace injury. Most employers thought contact with the state Worker's Comp was sufficient or they were notified that their industrial safety consultants would fulfill the requirement, but employers are strictly liable for reporting to DOSH.

Also, OSHAB appeals have an obscure economic calculus from an employer's perspective. I learned this when I reviewed case files that showed citation fines for less than $1000. When I inquired about the reason for going to so much trouble appealing a small fine amount, my supervising attorney told me it is usually because an initial citation will set an employer up for a larger citation in the future when a similar violation can then be cited as willful.

Of course, OSHAB is feeling the pinch, too, or at least they were back in 2006. This was made evident by the lack of administrative law judges or hearing rooms because we could have a case that occurred in Glendale and the OSHAB hearing would be calendared in San Diego.

If you are interested in Workplace Safety, travelling all around California, and litigating in a very small universe of cases, then a practice before the Occupation Safety and Health Appeals Board may be of interest to you. However, in order to keep the lights on in your practice, you may want to expand into the general field of Workplace Safety Consulting. After all, the best workplace safety violation is the one that never occurs.

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1 Deadlines may be subject to change, this information is current as of publication and may be found on the OSHAB website at http://www.dir.ca.gov/oshab/oshabappealpro.html

Personal Reflections about Justice Betty A. Richli

by Yoginee Braslaw

As I write this article about Justice Betty A. Richli, I am saddened that she is retiring from her 20-year tenure at the Fourth District Court of Appeal, Division Two (the Court), but happy she is about to begin exciting and new adventures in her already distinguished career. I still remember my initial meeting with Justice Richli.

Justice Betty A. Richli

She was one of six justices who in 1998 were hiring for temporary "elbow clerks" to help with the already heavy workload of the court. I was one of those "elbow clerks," and after my interview with all of the justices "en banc" so to speak, I did not know whether I had been successful in answering all of the justices' inquiries.

Apparently I had, and when notified by then Clerk Administrator Henry Espinoza of an offer to work for the Court as a research attorney, I was ecstatic. Mr. Espinoza told me it was Justice Richli who had selected me to work for her, and I felt honored and excited to be working for the only woman justice on the Court at that time. As an aside, Justice Richli has been the longest serving woman justice at the Court, and only the second woman to serve on the Court until the appointment of Justice Carol D. Codrington in August 2010.

Justice Richli's career has been diverse and wide ranging. Before and after graduation from college, she worked in several United States Congressional Offices on Capitol Hill in Washington D.C. while at the same time pursuing a graduate degree in American Literature. From 1968 until her acceptance to law school in 1974, Justice Richli taught English and American History classes in senior high schools in Maryland and California. She received her Juris Doctor from Pepperdine University School of Law in 1977 and was admitted to the California State Bar in November of that same year. Afterward, she worked as in-house counsel for the City of Redlands and, in 1978, was hired as a prosecutor for the San Bernardino County District Attorney's Office.

Justice Richli served as a trial deputy from 1978 to 1984 and as a Senior Deputy District Attorney handling high profile assignments. From 1984 until her appointment to the bench in 1985, she served as a supervising deputy district attorney in charge of municipal court operations in the Ontario office. In 1985, Governor George Deukmejian appointed her to the San Bernardino County Municipal Court and then elevated her to the San Bernardino Superior Court in 1990. While serving on the superior court, Justice Richli became the first woman Presiding Judge of the Juvenile Court in San Bernardino County's history. In 1994, Governor Pete Wilson appointed Justice Richli as an associate justice position on the Fourth District Court of Appeal, sitting in Division Two.

Throughout her judicial career, Justice Richli has been a faculty and planning committee member of numerous judicial education programs sponsored by the California Center for Judicial Education and Research (CJER) and the California Judges Association (CJA). She has been actively involved with Pepperdine University Law School as a member of their Board of Visitors, an advisory group to the Dean of the law school. She has for the past nine years served on the Judicial Council's Appellate Indigent Advisory Oversight Committee (AIDOAC) responsible for monitoring the 55 million dollar budget which pays for attorney's representing indigent criminal defendants on appeal. She has also served as a special master for the state Judicial Performance Commission tasked with monitoring the conduct and discipline of all California state jurists. She has also sat as an Associate Justice Pro Tempore on the California Supreme Court. Justice Richli has also taught legal research and writing at the University of California Riverside campus and judged National Law School Moot court finals in a number of different venues.

In 1999, Justice Richli was honored as Alumnus of the Year by Pepperdine University Law School. And in 2001, she became one of the first recipients of the Kaufman-Campbell Distinguished Jurist of the Year by the San Bernardino County Bar Association.

In 2012, Justice Richli received the Inaugural School of Law Waves of Service Award from Pepperdine Law School. I was honored to be invited to attend this award ceremony on the Malibu Campus of the law school. In attendance were all of Justice Richli's colleagues as well as her staff. Presiding Justice Manuel Ramirez spoke of Justice Richli's achievements as a member of the bench and bar as well as her contributions to the legal community. All of these remarks were made in the context of Justice Ramirez's theme "Women and the Law." It was apparent to me that Justice Richli was touched by the remarks made in her honor and equally delighted to see her staff in atten-

dance. Her infectious grin, during and after the ceremony, gave evidence to this.

Justice Richli manifests a strong spirit and is intensely attuned to the rigors of her profession. She is also, however, warm, caring and compassionate where friends, colleagues, and staff are concerned. Her interests beyond the Court and the law are liberal arts centered. She is a student of architecture, design, literature, theater, film, classical music, and all trivia.

Paraphrasing author Imogen Robertson, Justice Ramirez has said his colleague, Justice Richli, is a "fine, fine example of a judge with both a head and a heart." I heartily concur. She is intelligent, thoughtful, precise, and one of the hardest working jurist around. She has, in fact, authored more than 4,000 opinions in her 20 year career on the Court, a number of which have been published.

My temporary "elbow clerk" position morphed into a permanent position and for almost 15 years I have been assigned to work with Justice Richli. She has mentored me and honed my legal skills. She has demanded that I do my best work. She is never shy about discussing the work and is open to the give and take that is required to produce the right decision. She never demands more from her staff than she is willing to demand of herself. Her trust in me has been, in many ways, its own reward.

In working with Justice Richli, I have also seen the personal side of her life. It is obvious that she cherishes her family, her brother and sister and their spouses and children. She has never forgotten her parents and they remain, although now deceased, a presence and influence in her life.

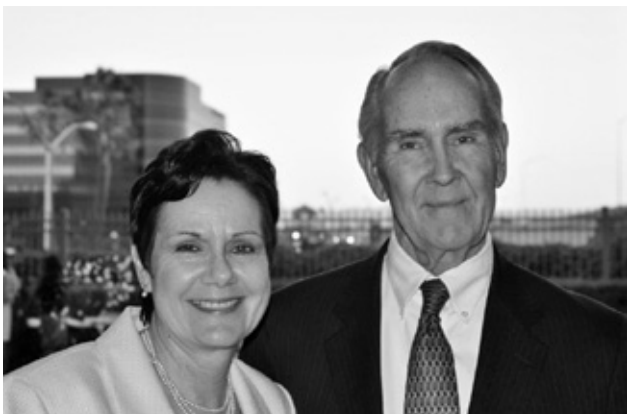
Justice Richli's background is modest, born in Michigan and raised in the environs of New York City, Brooklyn to be specific, until her parents moved the family to the rural Pennsylvania Dutch countryside when she was eight years old. They lived in a hunter's cabin without running water or electricity, until her father remodeled it over the summer before winter snows began falling. She attended a one room school house without indoor plumbing until high school. She attributes her good education to that system (the teachers, not the lack of plumbing).

Bill DeWolfe, Ann DeWolfe, Liz Cunnison, Judge Steve Cunnison (Ret.)

Judge Richard T. Fields, Donna Fields, Judge Keith Davis

Judge Keith Davis, Mary Davis, Justice Eileen C. Moore

Nancy Smoke, Mary Anne Forrest, Jean Landry



Jacqueline Carey-Wilson and Justice George Nicholson
photo by Brenda Nicholson

Her parents whom I had the pleasure of meeting were amazing individuals. Johne, her father, a chemical engineer, also became one of the premier glass artists during his later years. He specialized in making paperweights and his work is exhibited in various museums including the Corning glass museum, which houses and is world renowned for Steuben glass. Justice Richli describes her Italian mother, Anne, as devoted, loving, and a voracious reader and lover of classical music and the fine arts. Both parents were self-made successes. Johne came out of the poverty of Appalachia and was the only member of his family to attend college. He graduated from New York University. Her mother, a first generation Italian American immigrant unable to attend college, educated herself and passed onto her children a love of education and the liberal arts. They inculcated in Justice Richli a sense of right and wrong, hard work, compassion, duty, and loyalty. They did the same thing for her older brother, Dr. John Michael Parsley, dentist, tennis player, and fly fisherman extraordinaire; and her sister Joan Parsley, an early music educator and accomplished performer known (until her own recent retirement) for her creation and leadership of the group Ensemble Musical Offering, an early music band of musicians in the Midwest.

On April 16, 2015, the Court held a Ceremonial Retirement Celebration En Banc in honor of Justice Richli. This ceremony was attended by judicial colleagues from across the state, mentors from her past positions, professional friends from various legal practices public and private, personal friends, and of course her family. It was filled with laughter and admiration as a coterie of distinguished speakers related their fond memories and interaction with Justice Richli.

Presiding Justice Ramirez spoke of his 30 year relationship with Justice Richli and how along the way they shared remarkable experiences and journeys including the building of the Courthouse. He acknowledged her sense of humor, tenacity, fierce competitiveness, and ability to express her opinions, and her duty to the oath of office in fulfilling her obligations to the Court and its heavy workload. He presented her with three bound volumes of her published cases, noting the thousands of opinions she has authored in her 20 year tenure on the court. It was evident Presiding Justice Ramirez will indeed miss Justice Richli's contributions and presence on the Court in the future.

Dean Ronald Phillips, Senior Vice Chancellor and Dean Emeritus of Pepperdine University School of Law also spoke recalling Justice Richli as a first year law student in his contract's class. He noted his 40 year relationship with Justice Richli from those early years to her now distinguished career on the bench. He ended his remarks by noting that Justice Richli has made the legal community a better place for all of us.

Remarks encompassed in a letter by the current Dean of the Law School Deanell Reece Tacha touched on her perception of Justice Richli's rare and superb intellect, and her genuine care and deep dedication to the legal community and her work. She ended her remarks by observing Justice Richli as a model of a great lawyer and justice.

The remaining speakers, Retired Administrative Justice Jim Ardaiz, from the Fifth District Court of Appeal, and Justice Bert Levy, also from the Fifth District, detailed their long term friendships with Justice Richli. Justice Ardaiz elaborated on Justice Richli's competitive nature and with laughter filling the courtroom affectionately recalled Justice Richli's tales of attempting to best him in running, tennis, and skiing. He also noted, as did Justice Levy, her warm smile, self-confidence, determination, and intelligence. Justice Levy described his colleague, Betty, as multi-faceted. "Betty, the Party Animal" with a penchant for shopping, collecting antiques, and a fondness for white peach Bellinis. Then there is "Betty the Jurist," who is highly respected throughout the State. Finally, there is "Betty the Friend," who is a loyal friend and trusted pal with a great sense of humor and a large capacity for kindness.

Susan Heiser led in the Pledge of Allegiance and Mrs. Della McKinster sang the National Anthem

Judge Raymond Haight III and Robin Cochran

Cheryl and John Evans

Dr. Connie Welebir and Douglas Welebir

Don and Vicki Davio

Terry and Brenda Lynch

Justice Richli's colleagues, Justice Art McKinster and Justice Carol Codrington also spoke with great emotion of their warm and close, almost familial relationships with her. Justice McKinster described her superior work ethic, the length of their friendship, since the late 1970s and that saying goodbye to his dear friend was bittersweet. Justice Codrington spoke of Justice Richli's kind and thoughtful nature and their mutual love of movies, shopping, and all things that make life off the bench so much fun. She observed that she would miss her dear friend.

Incoming President of the Riverside County Bar Association Kira Klatchko presented Justice Richli with an award from the RCBA. She noted that the legal community would miss her during oral argument, as well as her keen intellect and warm presence on the bench.

Justice Richli's brief comments summarized her emotional response to each speaker and to her audience of family, friends, and colleagues. She related her sense of both pride and humility at the turn out and at the remarks made by all the speakers. She finalized by saying it had been a privilege to serve the People of the State of California. She thanked Governors Deukmejian and Wilson for giving her the opportunity to do so, and analogized her next chapters in life to Katherine Hepburn's remark about always "listening to the song of life." Justice Richli hoped her song's lyrics would be like a Stephen Sondheim composition: challenging, a bit edgy, intellectually stimulating, witty, and that its melody would be haunting, long, and transcendent. She then invited everyone to an elegant reception hosted by herself and her family.

In reflecting on all of these events and my long association with Justice Richli, my heart is heavy knowing she is leaving the Court and that we will no longer be hearing her humorous stories echoing in the Court halls; her fiercely and finely articulated opinons; her amiable sparing with Justices Ramirez, Hollenhorst, and McKinster; and her discussions of cases and fashion with her newest friend and colleague Justice Codrington. Her Court family will miss her homemade baked goods brought for staff to enjoy. Justice Richli had a special relationship with each one of her Court family.

Most importantly to me, she will always be a mentor and friend. I have learned a lot from her and I will miss her but I will never forget her. I wish her great health and happiness on her continuing journey through life.

Yoginee Braslaw is copy editor for the Riverside Lawyer *and a Senior Research Attorney at the Court of Appeal.*

photos courtesy of Jacqueline Carey-Wilson

Sandy Simmons, Art and Peggy Littleworth

Yoginee Braslaw and April Rylaarsdam

Theresa Han Savage and Justice Art McKinster

Setting the Record Straight: The San Francisco Court of Historical Review

by Abram S. Feuerstein

"We were just having a lot of fun," explained retired Superior Court Justice George T. Choppelas in a recent interview about San Francisco's mock Court of Historical Review and Appeals.[1]

"Our goal was to amuse and entertain people. I looked more forward to the cases (before the Court) than to the actual ones assigned to me," Choppelas said.

From 1975 to the late 1990s, the Court of Historical Review convened on an irregular basis to decide a range of historical controversies. Some of the subjects it considered were serious, such as whether Bruno Hauptmann's conviction for the 1932 kidnapping of the Charles Lindbergh baby should be overturned.

Other subjects had significance to the sports world: Did Babe Ruth really point to the location in centerfield before hitting his famous homerun in Game 3 of the 1932 World Series?; Did San Francisco sports personality Lefty O'Doul deserve to be in the Hall of Fame?; Was Shoeless Joe Jackson guilty in the 1919 Black Sox scandal?

But most of the cases were less consequential, with courtrooms serving as stages for attorneys to exercise their wit and theatrical skills. These included cases in which the Court determined that Elvis truly was dead, that a purported historic meeting between Albert Einstein and Marilyn Monroe never took place; that the fortune cookie was a San Francisco, not a Los Angeles invention; and that chicken soup really is the Jewish penicillin.[2]

The Court's Origins

According to Choppelas, the Court began in 1975 as part of an effort to promote and publicize a new police museum. To that end, the Court heard arguments as to whether a 1905 firing of a police chief had been justified. In the Court's early days, the trials related to local San Francisco-based events or personalities. The Honorable Harry Low, then a Superior Court judge, presided over the trials, which would take place during lunchtime so that Court personnel could attend proceedings without interrupting their official duties. There were no juries, rules of evidence had limited application, and the rulings were light-hearted.

"We did not take ourselves too seriously," Choppelas said in commenting on the Court's popularity.

When Judge Low was elevated to the Court of Appeals, Choppelas, a self-described history buff, became the Court's presiding judge. In sum, he presided over 39 of the "trials," more than any other of its jurists; Justice Low headed 27 of the trials, and a handful of other judges handled the remaining cases.

In the early 1980s, in addition to Choppelas, the unofficial organizers behind the Court were Bernard Averbuch, the executive director of a community group known as the Market Street Development Association, and Gladys Hansen, an archivist with the San Francisco Library. The group largely selected the topics and the participants.

"It was not rehearsed nor scripted," Choppelas noted. Once a topic had been selected, the organizers would contact attorneys that they knew and it was up to the attorneys to pick witnesses and present evidence for the pro and con positions.

The Accordion Controversy

On one occasion, however, San Francisco Mayor Art Agnos approached Choppelas to request that the Court hear the topic of whether the accordion was the City's official musical instrument. The request had been prompted by the actions of a group of accordion players who had descended upon restaurants and their patrons in the City's North Beach section. The accordion players would disrupt diners with loud renditions of the song, "Lady From Spain," until the restaurant owners paid them to leave. And now the accordion players wanted the Board of Supervisors to pass a resolution elevating the accordion to official status.

Choppelas recalled the mayor telling him, "I hate the accordion." "You have to have a hearing on this," the mayor implored.

Choppelas had an idea as to how he could help his friend. Prior to the hearing, Choppelas approached many of the municipal court employees and asked if they would be will-

1 The author is indebted to the Honorable George T. Choppelas, retired Superior Court Judge, who made himself available to be interviewed about the Court of Historical Review on May 8 and 9, 2015. Unless otherwise noted, the information in this article was developed through conversations with Judge Choppelas.

2 Of note, in the chicken soup case, in addition to the Court hearing testimony from a physician, an official of the American Jewish Congress, and a purported Jewish mother, a person dressed in a chicken outfit took the witness stand to advise the Court that chicken soup constituted an act of genocide. After Choppelas decided that chicken soup deserved its medicinal reputation, the Court adjourned to the hallway where the audience was treated to some soup that had been made by a local Chinese restaurant. Choppelas recalled that individuals from a homeless shelter located across the street had heard that they were serving soup and they were on the soup line, too.

ing to form the Municipal Court Marching Kazoo Band. They agreed, Choppelas purchased dozens of Kazoos from a Five and Dime Store, and the group held practice sessions in the weeks leading up to the Court hearing.

At trial, one witness imitated the sound of a foghorn and testified that it should be the official instrument of San Francisco. Another witness sounded off that the cable car bell deserved official recognition. Celebrity rock-n-roll concert promoter, Bill Graham, testified that the official instrument of the City should be the electric guitar.[3]

Choppelas then interrupted the proceedings and asked the audience how many of them owned the easy-to-play, inexpensive Kazoo. Approximately 40 people raised their hands, took out Kazoos, and began to march around the courtroom playing "San Francisco, Open your Golden Gates . . ."

Yes, There Is A Santa Claus

Under Choppelas, the Court convened several times around the holiday season to consider various Christmas themes. These included whether the Grinch in fact stole Christmas, whether Santa Clause should be a woman, and the basic age old question of whether Santa Claus even existed. To decide that question, Macy's Department Store supplied an employee to testify who personified Santa Claus at its flagship Union Square store, while a police official interjected that anyone driving as fast as Santa Claus on Christmas Eve had to be driving under the influence. In holding that Santa Claus was real, Choppelas said the Court merely was following the federal precedent that had been established by the movie, *Miracle on 34th Street*.

"For years afterwards I would see someone on the street who would yell at me and say, 'Hey, you are the guy who says there is a Santa Claus,'" Choppelas said.

Attorneys As Thespians

When asked why a courtroom worked well as a setting for resolving historic disputes, Choppelas noted that people identify the courtroom as a place of drama where, upon going to a governmental building, they will witness human conflict. "And the attorneys we picked were real thespians. You know how attorneys are, they will argue anything," Choppelas observed.

A diverse group of actors have taken note of the intersection between courts and theaters. For instance, in her 1959 autobiography, *Goodness Had Nothing to Do With It*, in discussing her conviction for starring in an allegedly lewd play, Mae West wrote, "I enjoyed the courtroom as just another stage – but not so amusing as Broadway."[4]

Similarly, Woody Harrelson, who played Larry Flynt in the movie, *The People vs. Larry Flynt*, said: "In the courtroom, it's where a lawyer really becomes an actor. There's a very fine line between delivering a monologue in a play and delivering a monologue to a jury. I've always felt that way – I've been in a lot of courtrooms. The best lawyers are really theatrical."[5]

For his part, Choppelas said: "I know in my own career, when I went to work every day and sat up on the bench, it was like going to a theater."

Winding Down Court Business

After the 1989 Loma Prieta earthquake, the San Francisco courts were forced to move to new quarters. The smaller courtrooms could not accommodate the audience devotees that the Court of Historical Review had attracted. And security concerns made the option of moving to the Federal Courthouse infeasible. As a result, during the 1990s, the Court met less frequently, with occasional hotel venues and alternate locations providing temporary venues.

Some restaurant owners approached Choppelas with the idea of holding the Court proceedings at their facilities, but Choppelas resisted what he viewed as attempts to commercialize the Court.

Not long ago, Choppelas, who retired from the Superior Court in 2000, attempted to locate video tapes of the Court's proceedings that had been filmed by San Francisco State students and which had been housed at the City's Public Library. To his distress, Choppelas learned that the videos could not be located and likely were destroyed when the library moved in the 1990s from its Loma Prieta earthquake damaged building to a new building.[6] Other tapes of proceedings filmed by local TV stations are not accessible to the public.

"The Court will just have to exist in people's memories," he said. But later he added, "You never know. I have given thought to writing a book about the Court to back up some of the things we decided." With Choppelas' love of history and unending intellectual curiosity, he uniquely is the person that can keep the Court – and, more importantly, the idea of a court that decides historical controversies or curiosities – alive.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. The views, if any, expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.

3 Bill Graham was a well known San Francisco-based rock concert promoter who handled such bands as the Grateful Dead and Jefferson Airplane. He died in a helicopter crash in 1991. (*See generally, http://en.wikipedia.org/wiki/Bill_Graham_(promoter).*)

4 *http://quotes.dictionary.com/I_enjoyed_the_courtroom_as_just_another_stage.*

5 Tim Lammers, "At the Movies: Woody Harrelson Finds Warmth in *North Country*, *http://www.ibatom.com/atthe movies/5133249/detail.html*.

6 The old library building underwent reconstruction and currently houses the Asian Art Museum.

An Introduction to Health & Safety Code Receivers

by Nicholas Firetag

Californians have a vested interest in ensuring that homes and commercial businesses do not fall into a state of disrepair because substandard properties are more prone to criminal activity, vagrants, and fire damage. The appointment of a health and safety receiver is one practical solution regularly relied upon by cities to help prevent blight from taking over their neighborhoods and commercial centers.

Before seeking the appointment of a receiver, a city must first provide the property owner and lienholders with notice of the alleged violations and a reasonable opportunity to cure. Many cities satisfy this requirement by conducting administrative hearings where both sides get to present their case before a neutral third party. If the property is deemed substandard, the administrative law judge will issue an order to repair and will impose daily civil penalties to encourage voluntary compliance. If the substandard conditions persist, a city then has the right to petition a court to appoint a receiver.

For the past seven years, I have served as the lead trial counsel in over 60 health and safety cases in seven cities and counties. This has provided me with extensive, firsthand experience in how receivership cases can revitalize neighborhoods and bring a sense of pride back to a community.

A receiver in a health and safety case is appointed to rehabilitate a substandard home or commercial building. To be effective, the receivers must have a number of resources at their disposal, such as a litigation team, a transactional team, access to money to fund the rehabilitation work, access to a title insurance carrier willing to issue title policies, and a property management team to oversee the extensive rehabilitation work necessary to repair the substandard home or commercial building.

Unlike a rents and profit receivership case, the only asset in a health and safety receivership case is the substandard home or building, which is often encumbered with liens. To rehabilitate a substandard property, the receiver must have the ability to borrow funds using first-priority receiver certificates or be able to sell the property free and clear of all liens. For years, receivers in this field cited to *Title Insurance & Trust Company v. California Development Co.* (1915) 171 Cal.2d 227, 231 as the primary authority to sell property free and clear of liens. In *City of Chula Vista v. Gutierrez* (2012) 207 Cal.App.4th 681, the appellate court, in *dicta*, called into question these powers, noting as follows: "If the Legislature had intended to impose direct liability or provide the receiver with a priority lien, it would have done so . . . ." (*Id*. at p. 694.) This was immediately used by lienholders to threaten the ability of health and safety receivers to effectively continue their work.

Recently, in the *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670 (*Horspool*), the appellate court unquestionably restored the power given to receivers to sell real property free and clear of recorded liens when it affirmed the receiver's plan to sell a substandard home to an investor-buyer – free and clear of the bank's mortgage – with an agreement that the investor-buyer complete the rehabilitation work under the receiver's supervision. As a result of the work on that property (and the court's approval of a receiver's priority status), the home is no longer a public nuisance.

The following insider's history of the *Horspool* case offers a practical view of what health and safety receivers encounter on a daily basis.

I. The Beginning of the Receivership

On December 10, 2008, the City of Riverside received a complaint from a neighbor regarding the property at 4720 Mt. Vernon Avenue (the "Property"). The City observed a dilapidated shingle roof, overgrown weeds in the front yard, peeling trim around the windows and porch, large cracks in the driveway, and what appeared to be the start of construction on a second story without any permits. The City notified the owners and the secured lienholder (JP Morgan) of the serious health and safety code issues. No steps were taken to repair the Property.

Over the next 18 months, the City issued multiple notices and citations, obtained an order from an administrative law judge imposing daily civil penalties, and conducted a number of site inspections in an attempt to convince the owners and JP Morgan to repair the Property, all to no avail.

On August 2, 2010, the court appointed a receiver to take over the Property in order to correct the serious health and safety code violations.

II. Steps Taken by the Receiver to Rehabilitate the Property

After taking possession of the Property, the receiver identified 48 health and safety code violations, including holes in the roof, holes in the exterior walls, trash and

debris in and around the home, hazardous and exposed wiring throughout the home, no interior plumbing, defective flooring, an unpermitted room addition, and the presence of mold throughout the home.

On April 29, 2011, the court approved the receiver's request to approve the sale of the Property to an investor-buyer for $75,000 and the investor-buyer's secured obligation to complete the rehabilitation work under the receiver's supervision. The investor-buyer took title free and clear of JP Morgan's deed of trust.

Within a few months, the investor-buyer corrected all 48 code violations. As a result, the Property is now a decent, safe, and habitable dwelling.

III. The Appellate Court Affirmed the Receiver's Authority to Sell the Property Free and Clear of JP Morgan's Lien

The homeowner filed a notice of appeal on the basis that the trial court lacked the authority to authorize the sale of the Property free and clear of JP Morgan's lien. The appellate court rejected this argument, noting as follows: "A court of equity has the power to order the sale of property free and clear of liens and encumbrances."[1] To reach this conclusion, the appellate court went through a detailed analysis, as discussed below.

A. Receivers Have the Authority to Sell Substandard Property.

There is little dispute that a receiver has the right to sell real property in its possession.[2] The California Supreme Court has also acknowledged that receivers have the authority under health and safety code receiverships to sell real property in their possession.[3] The only arguable question is whether the trial court had the authority to authorize the sale free and clear of any liens.

B. Trial Courts Have The Authority To Sell Property Free And Clear Of Liens Provided The Lienholders Are Parties To The Lawsuit.

Health and Safety Code section 17980.7, subdivision (c)(2) provides that a receiver is appointed to "develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building." In determining the extent of a receiver's powers to accomplish this goal, a court can look to: (1) the statute underlying the appointment; (2) the receivership order; and (3) case law.[4] As it should have, the receivership order contained the power to sell real property free and clear of all liens. The remaining two factors (the appointing statute and case law) supported the trial court's order approving the sale.

1. The Health & Safety Code Authorized The Sale Of The Property Free And Clear Of JP Morgan's Lien.

Prior to the appointment of a receiver, the owner and lender are given an opportunity to voluntarily repair the property.[5] If the owner and lender refuse to correct the problems, the city has the authority to petition a court to have a receiver appointed to perform the repairs directly.[6]

As noted above, a receiver has the power to sell the property to pay for the cost of the rehabilitation work. The sale divests the owner of any interest in the property and, logically, the lender's security interest as well.[7] If this were not so, there would be no logical reason to require cities to provide the lenders with notice. A lender could simply sit back, allow the property to be rehabilitated, and then accept the benefit of its security being greatly increased in value, while maintaining its status as a first-priority lienholder. That is not a reasonable interpretation of the statute and fails to achieve the legislature's statutory goals. Moreover, the majority of receiverships would fail to proceed since there would be insufficient funds to pay for the repairs and other receivership expenses. Thus, the statute authorizes the sale of the property free and clear of any liens.

2. Case Law Likewise Authorized The Sale Of The Property Free And Clear Of JP Morgan's Liens.

California decisional law also supports the trial court's order authorizing the receiver to sell the Property free and clear of any liens and/or encumbrances.

In 1915, the California Supreme Court first recognized a receiver's right to borrow funds secured with receiver's certificates (i.e., a secured debt instrument) that have priority over preexisting liens and other encumbrances such as deeds of trust.[8] The California Supreme

1 *Horspool*, supra, 223 Cal.App.4th at p. 683; see also pp. 673-674.
2 See Civ. Proc. Code, § 568.5.
3 See *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 930 *(City of Santa Monica)*; see also Health & Safety Code, § 17980.7, subd. (c)(4)(H).
4 *City of Santa Monica*, supra, 43 Cal.4th at p. 930.
5 Health & Safety Code, § 17980.6.
6 Health & Safety Code, § 17980.7.
7 See Health & Safety Code, § 17980.7, subd. (c)(4)(H); see also Civ. Proc. Code, § 568.5.
8 See *Title Insurance & Trust Company v. California Development Co.* (1915) 171 Cal.2d 227, 231.

Court understood that by allowing a receiver's certificate to take priority, the lienholder would eventually lose its security interest in the property when it came time to repay the certificate. That is no different than selling a home free and clear of all liens and encumbrances.

In *Horspool*, the appellate court removed all doubt by affirming the trial court's holding, noting as follows: "A court of equity has the power to order the sale of property free and clear of liens and encumbrances."[9]

IV. Conclusion

After the *Horspool* decision, Health & Safety Code section 17980.7 remains a powerful tool for local enforcement agencies. It provides a direct, court-supervised process for removing blight, abating dangerous conditions, and holding the responsible parties financially accountable.

Nicholas Firetag is a shareholder at Gresham Savage. Mr. Firetag has served as lead trial counsel in over sixty Health & Safety Code receivership cases. Mr. Firetag was the lead attorney in the published opinion entitled, City of Riverside v. Horspool *(2014) 223 Cal.App.4th 670.*

9 *Horspool,* supra, 223 Cal.App.4th at p. 683.

Annual Past Presidents' Dinner

The past presidents of the RCBA spanning 44 years of bar leadership, together with current president Chad Firetag, Executive Director Charlene Nelson, and guest Presiding Judge Harold Hopp, met for their annual dinner on May 20. 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):
Jane Carney - 1989, Robyn Lewis - 2011,
Art Littleworth - 1971, Theresa Han Savage - 2005,
Justice James Ward (Ret.)-1973, Diane Roth -1998,
Chad Firetag - 2014, Judge Chris Harmon - 2012,
Harlan Kistler - 2010

(back row, left to right):
Judge John Vineyard - 1999,
Judge Steve Cunnison (Ret.) – 1981, Brian Pearcy – 2002,
David Moore – 1984, Judge Craig Riemer – 2000,
Jim Heiting – 1996, Harry Histen – 2009,
Judge Irma Asberry – 1997, Jacqueline Carey-Wilson – 2013

Presidents attending dinner but not pictured:
Judge Dallas Holmes (Ret.) – 1982,
Judge David Bristow – 2006, Dan Hantman – 2007

Government Benefits Hearings

by Amy Stump

Government benefits, also referred to as public benefits, include CalWorks (cash aid) CalFresh (formerly known as food stamps), Medi-Cal, In-Home Supportive Services, CAPI (Cash Assistance Program for Immigrants); and General Relief (known as General Assistance in some counties). These programs are administered by the county in which the recipient lives.

Each program has stringent eligibility requirements, complicated application processes, and strict rules with which recipients must comply in order to retain their benefits. The bottom line for eligibility, however, is that applicants and recipients are living at or near the Federal Poverty Level.

Once an applicant has been granted any of these benefits, there are many ways for the benefit to be lost, or to have the dollar amount of the benefit reduced. For example, failure to turn in a document or failure to perform a requirement such as looking for work may result in lost or reduced benefits. If the amount of a recipient's benefit is reduced, it will frequently result in him or her being charged with an overpayment. Often the blame for the overpayment lies with the county; however, the responsibility for repayment of benefits due to the county error is the recipient's.

Whenever a county takes any action on a case, the individual must be notified in writing on a Notice of Action (NOA). An NOA is issued whether the action is favorable or unfavorable to the claimant. To be adequate, the NOA must explain what the county is intending to do; when it is intending to do it; and, if there is an adverse action, what the recipient can do to fix the problem. The Notice must state the rules that are being used and must include an explanation of the recipient's appeal right.

When applicants are denied benefits, are granted less than they feel they are entitled to receive, or when recipients have benefits either stopped or reduced, they can file for a State Fair Hearing. For most benefits, the Request for Hearing must be filed within 90 days of receipt of the NOA. If a recipient wants current benefits to continue pending the outcome of the hearing, then the Request for Hearing must be filed before the action is taken. Instructions for filing a Request for Hearing are found on the back of every NOA.

Once a Request for Hearing is filed with the state, it will go to the appropriate county and will be assigned to an Appeals Specialist. The Appeals Specialist will often contact the claimant or the claimant's representative to see if the matter can be resolved without a hearing. If the matter cannot be resolved, the Appeals Specialist will prepare the county's Position Statement which will include all documents the county has and their statement of why the action was taken. The Position Statement must be made available to the claimant or the authorized representative no less than two business days prior to the hearing. Claimants, or their representatives, may also file a Position Statement, but are not required to do so and there is no timeframe in which it must be submitted.

The hearing will be scheduled approximately one month after the Request for Hearing is submitted. Sometimes these hearings are scheduled to be held via telephone call. The claimant has the right to insist on a face-to-face hearing if that is what he or she wishes.

At the hearing, a claimant may self-represent or may be represented by an attorney or non-attorney representative.

The Administrative Law Judge (ALJ) who hears the case works for the State and makes a decision independent of any previous decision made by the county. All witnesses are sworn in and the ALJ begins the hearing with an explanation of the process and an identification of all parties present. Usually, the county will be asked to state its position first and then the claimant will present his or her position. There can be questioning by the ALJ to either party, and by each party to the other. One unique aspect of these cases is that the authorized representative can swear in and will be permitted to testify as to his or her own knowledge of the case and opinion about it.

The ALJ does not see the file until immediately before the hearing starts. He or she will not give a decision at the time of the hearing but will review all the documents and do any necessary legal research at a later time, before issuing a written decision. Parties may be given time to submit additional documentation that will help to complete the record.

If either party disagrees with the decision, they may file a Request for Rehearing. This appeal is with the state. The hearing record will be reviewed by a different ALJ from another district. If the rehearing is denied for lack of judicial error then a writ can be filed in Superior Court under Code of Civil Procedure §1094.5 within one year of the original decision. It should be noted that if desired by the aggrieved party, the writ may be filed immediately following the decision. Being denied a rehearing is not a prerequisite to filing a writ.

Amy L. Stump is a Paralegal III with Inland Counties Legal Services. She is an advocate for low-income individuals in public benefits hearings for SSI, CalWorks, CalFresh, Medi-Cal, and In-Home Supportive Service cases.

Graduation of Inaugural Class of the RCBA–Riverside Superior Court New Attorney Academy

by Robyn A. Lewis

In October of 2014, the Riverside County Bar Association and the Riverside Superior Court launched a new training program for new attorneys, the New Attorney Academy.

The purpose of the New Attorney Academy (hereafter "the Academy") is to provide professional guidance and counsel to assist newly admitted attorneys in acquiring the practical skills, judgment and professional values necessary to practice law in a highly competent manner and to encourage sensitivity to ethical and professional values that represent the traditions and standards of the Inland Empire legal community.

The Academy was made up of a series of classes, which took place once a month from October through April. The curriculum was taught by judges and noted attorneys in the community. Faculty included attorneys Jeb Brown, Terry Bridges, Virginia Blumenthal, Edward Lear, Michael Gouveia, Richard Lorenzi, Jeremy Hanson, Jonathan Lewis, Christopher Marin, Steve Geeting, David Moore, William Moffitt, Bryan Reid, Greg Rizio, Bill Shapiro, Jim Spaltro, Jason Sanchez, Jay Korn, John Lowenthal, Darren Pirozzi, Jim Tierney, Corey Weck, Greg Bentley, Richard Scott, Patricia Law, Brian Hannemann, and Robyn Lewis. Judges John Vineyard, Gloria Task, Sharon Waters, David Bristow, Jackson Lucky, and LeRoy Simmons also volunteered their time as instructors, as did Sarah Hodgson, the ADR coordinator for the Riverside Superior Court. Countless court staff and other bench officers also provided valuable insight for the Academy students.

Topics of the classes included an introduction to the legal community, a practical and intensive primer on pleadings, depositions and discovery, an introduction to practicing in court (court appearances, legal writing and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in ADR, relations with other attorneys, case management, etc.) and an introduction to law practice management. Students were given tours of the Historic Courthouse, including a "behind the scenes look" at the clerk's office, and the Court of Appeals. The last class was an introduction to trial that included a interactive class on voir dire and tips on openings, closings, direct and cross examinations from some of the most notable trial attorneys in the Inland Empire.

At every session, the class attended the monthly RCBA General Membership meeting for that month so as to promote membership in that organization and to allow for class members to participate in their legal community.

Back row (L-R) Brandon Vaters, Dwight Kealy, Angel Coleman, Sherry Macmanes, Chad Morgan, Scott Sheldon Front row (L-R) Veronica Randazzo, Heather Danesh, Laurel Buchanan, Kristine Borgia, Randolph Melendez, Dawn Saenz, Jennie Spere

Students of the Academy were recognized for their participation at the April 2015 RCBA General Membership meeting and received a certificate, graduating them from the Academy.

Overall, the Academy was an enormous success, which is due in large part to the efforts of the Riverside Superior Court and members of ABOTA (American Board of Trial Advocates) and CAOC (Consumer Attorneys of California, Inland Empire Chapter), and most particularly Judge John Vineyard and Greg Rizio.

If you are interested in obtaining more information about the 2015-2016 Academy, please contact Charlene Nelson at the Riverside County Bar Association or Robyn Lewis at robynlewis@jlewislaw.com.

Robyn Lewis is with the firm of J. Lewis & Associates, APLC. She is a past president of the Riverside County Bar Association.

New Attorney Academy – A Student's Experience

by Kristine M. Borgia

Becoming an attorney is by no means an easy task. Once you receive your much awaited bar results and are sworn in, every attorney asks themselves, "now what?" Law school does a great job in teaching you how to become an attorney. But truthfully, there is never enough and can never be enough training on how to practice as an attorney.

When I first saw the flyer for the attorney academy, I was not sure what to expect. I thought to myself, honestly what do I have to lose. Some of the material may be repetitive, but some may not. During our first meeting, I was surprised to see the immense diversity the group presented. There were solo practitioners, associate attorneys from large and small firms, newly admitted attorneys, and attorneys practicing just around five years. The group covered so many vast areas of the law from civil litigation to elder law, and public to private practice. We received the overview of what the academy entailed. We would dedicate one Friday a month for six months and, in turn, receive years of training in this short period of time.

Each class taught us or reviewed different topics. The topics ranged from court room procedures and preferences, to depositions and written discovery, to arbitration and mediation, to law office management. Every course was taught by top attorneys who had amazing biographies and with it, years of experience and crafted skills. We were receiving courses and training, at no cost. Surely other attorneys would easily pay top dollars to receive these courses. Every training coincided with the RCBA monthly general meetings. It appeared that more and more attorneys arrived earlier and earlier to the RCBA general meeting room every Friday we met. Perhaps it was coincidental, or perhaps they too wanted to listen in and catch a glimpse of the gold nuggets these experienced attorneys were sharing with us.

As we come upon our last training and graduation on April 17, 2015, I can only look back and be thankful I took the time to sign up for the course and dedicate time to be there each Friday. I would strongly encourage any new attorney to attend the academy. The skills you already know will be honed, and those skills that are rusty will become stronger. You will find long term mentors from every attorney and judge who participated and volunteered their time.

On behalf of the New Attorney Academy, I would like to thank all of the individuals who dedicated much time in preparing for our trainings and arranging all of the attorneys and judges who participated. To Robyn Lewis, Charlene Nelson, Judge Vineyard, Judge Trask, Judge Waters, thank you for organizing this amazing training. To Judge Hopp, Chad Firetag, Terry Bridges, Judge Lucky, Edward Lear, Virginia Blumenthal, Richard Lorenzi, Michael Gouveia, Jonathan Lewis, Christopher Marin, Jeremy Hanson, Judge Bristow, Jeb Brown, Judge Levine, Greg Rizio, Fredrik Whitley, Jason Sanchez, Jay Korn, John Lowenthal, Darren Pirozzi, James Tierney, we appreciate the time you took to share your expertise and years of wisdom with us. To anyone else I may have missed, please forgive me, but you are equally appreciated! Thank you for allowing me to share my wonderful experience in the New Attorney Academy.

Kristine Borgia is a sole practitioner in Riverside.

Judicial Profile: Judge James T. Latting

by Mary E. Gilstrap

The desert courts have seen several significant changes in the past few months, not the least being the appointment of new judges to the bench. The newest addition to the Palm Springs courthouse is the Honorable James T. Latting, formerly Of Counsel to the law firm of Roemer & Harnik LLP in Indian Wells.

Judge James T. Latting

Judge Latting was appointed by Governor Jerry Brown and sworn in at his enrobement on February 6, 2015. He fills the position vacated by former Judge Gary Tranbarger. Sitting in Courtroom 1 in Palm Springs, Judge Latting takes over an active civil caseload of more than 700 cases, following the move of Judge John G. Evans from that department to a criminal department in Indio. Judge Latting's courtroom staff include Veronica Franco, his clerk ("the one person in the courtroom who knows what's going on," quipped Judge Latting), and veteran court reporter Leslie Gonzalez.

The genial affability that is the hallmark of Judge Latting has not gone unnoticed, particularly by his fellow judicial officers. "Jim is probably the most patient and kind man I have ever met," said Presiding Judge Harold Hopp. "He has the perfect judicial temperament." Judge Latting's colleague Brian Harnik could not agree more. "I have had the honor of working with him for the past 12 years in our civil litigation and business firm," Harnik said. "I know Jim is fair, honest, and filled with integrity. He can command respect but will temper his authority with wit and patience. Both litigants and counsel who appear before him will be in good hands."

Governor Brown's judicial appointment was the culmination of Judge Latting's legal career that has spanned nearly four decades. Prior to joining Roemer & Harnik, Judge Latting was general counsel and managing general partner at Latting and Co. from 1996 to 2002 as well as partner at George, Hull, Porter and Kohli P.S. from 1990 to 1996. He was an associate at Bogle & Gates from 1988-1990 and acted as general counsel and managing general partner of Latting and Co. from 1984-1988. He also served as a partner of Bratcher, Owen, Latting, Teague and Owen from 1981-1984, and was an associate at the law firms of Bogle & Gates and Crowe & Dunlevy.

Judge Latting and his family hail from Oklahoma. His parents were both native Oklahomans – his father Trimble Latting was a well-respected attorney in Oklahoma City and his mother, Patience Latting, was the first female mayor of Oklahoma City, the United States' largest city at the time headed by a woman. In addition to his Juris Doctor degree from the University of Oklahoma, College of Law, Judge Latting has a Master of Science degree from the London School of Economics and a Bachelor of Arts degree from Yale University.

Judge Latting and his wife Kathie have two children, Ian and Sunne. Since moving to the desert in the 2000s, Judge Latting has been active in both civic and philanthropic organizations there, serving as President of the Family YMCA of the Desert and as Secretary/Treasurer of the Warren Slaughter/Richard Roemer Inns of Court. He and Kathie are both avid tennis players and outdoor enthusiasts in general, and Judge Latting is known for his annual photo safari trips to Kruger National Park in South Africa.

In the short time spent in Palm Springs thus far, Judge Latting has had to learn quickly how to balance the demands of a large docket. His number one piece of advice for lawyers practicing in his department: be short and to the point in your papers. "The word 'brief' – take it literally," he joked. On a serious note, he does caution practitioners to not take up the court's time with issues that the attorneys should be able to work out (discovery disputes, for example) and to keep the "big picture" in mind constantly. "Don't get lost in the details of a case," he cautioned. "Think through to the end result and think of the big picture."

Mary E. Gilstrap is a partner of the law firm of Roemer & Harnik LLP and a past president of the Desert Bar Association.

Opposing Counsel: Dorothy McLaughlin

by Melissa Cushman

The daughter of two lawyers, Dorothy McLaughlin remembers sitting in her parents' offices as a child, watching them work quietly, sitting at a desk surrounded by giant stacks of paper. "That doesn't look fun at all," she mused, never for a moment thinking she would someday become a lawyer herself.

Dorothy McLaughlin

Before she became a lawyer, Dorothy tried out multiple careers and traveled extensively. Dorothy was born and raised in Pittsburgh with her two younger sisters, then later attended Brown University in Rhode Island, where she studied history. She took a year off between her junior and senior year in college to work for Summerbridge, an academic enrichment program for middle school kids. This program inspired Dorothy to become a teacher. After graduating from Brown, she moved to Switzerland to teach high school English in Lugano, where she inspired high-schoolers to love Shakespeare and served as dorm "mom" and year book advisor. While Dorothy loved teaching, she was torn between continuing a career in teaching and pursuing one in journalism and worried there were few journalistic opportunities for her in Switzerland. She then moved to San Francisco, where she interned at multiple publications, including at the *San Francisco Bay Guardian* and the *Center for Investigative Reporting*. She also continued teaching English at a vocational school where she loved working with students on writing and public speaking.

It eventually occurred to Dorothy that teaching was a form of advocacy and that becoming a lawyer could give her the opportunity to put that love together with her love of writing. She applied to law schools and ultimately attended Northwestern University in Chicago. She became interested in litigation early in law school and interned for a local district court judge then the U.S. Attorney's Office. Dorothy wanted to return to San Francisco after law school, so she summered at the San Francisco office of Cooley Godward (now known as Cooley).

After law school, Dorothy first moved to Anchorage to clerk for the Alaska Supreme Court. Because there is no intermediate court of appeal in that state, she obtained experience in a variety of disparate legal issues. She also loved the opportunities afforded by the vast natural landscape surrounding Anchorage, including snow skiing and kayaking. Next, Dorothy moved to Memphis to clerk for Justice Ronald L. Gilman in the Sixth Circuit, who, besides being a wonderful judge and amazing person, she reports would also perform magic tricks for the staff on "Magic Mondays." The clerkship opportunities were very important to Dorothy's development as a lawyer because they gave her the opportunity to read a huge number of appellate briefs and hear frequent appellate argument. Among all of the attorneys she saw, Dorothy was particularly impressed by the intelligence, integrity, and excellent lawyering of the attorneys from the U.S. Attorney's Office, and made it a goal to someday pursue a position there. However, since the AUSAs hire only experienced attorneys, after finishing her internships, she returned to Cooley. Looking for different day-to-day responsibilities than were available at such a large firm, Dorothy then moved to a smaller litigation boutique firm, Keker & Van Nest LLP about a year later.

While Dorothy was at Keker & Van Nest, she met future husband Joel, who was finishing his postdoc in the biology department at Berkeley. Joel began looking at potential academic jobs around the country, one of which was at UCR. Coincidently, there is a branch of the U.S. Attorney's Office for the Central District of California here in Riverside, and Dorothy joined that office, and Joel began at UCR, in 2007. As one of the smaller U.S. Attorney's offices, the Riverside office gave her an opportunity to work on a wide variety of different types of cases, including drug trafficking, assaults, attempted murder, and financial fraud. In 2011, Dorothy became the Deputy Chief of the office, which gave her an opportunity to supervise and counsel more junior attorneys and she enjoyed being a kind of a teacher again. Around the same time, Dorothy's boss, as well as mentor and friend, Sheri Pym became a U.S. Magistrate Judge at the local federal court. Shortly thereafter, in the fall of 2012, Dorothy followed her to become a career clerk in Judge Pym's chambers.

After having been a litigant in the court for years, Dorothy got the opportunity to become part of the court community and learn about it from the inside as well.

While Dorothy loved the court, she missed being a litigator and recently took a position in the education group at the Riverside office of Best Best & Krieger LLP, where she is enjoying doing litigation again, learning a new area of law, and working with well-known local attorneys Jack Clarke and Cathy Holmes.

In addition to working hard at her career, Dorothy has two children: a five and a half year old daughter and a two year old son. She still loves camping, hiking, and other outdoor activities; participating in the UCR and local legal communities; and being active in a local moms' group. She has somehow even found time recently to learn to knit and sew. Dorothy McLaughlin: teacher, journalist, world-traveler, outdoorswoman, mom, great friend, and, yes, despite her early intensions, lawyer — the nicest one you'll ever meet.

Melissa Cushman is a Deputy County Counsel with the County of Riverside specializing in land use and CEQA, and Dorothy's friend.

Tell the Story of the Mission Inn

Do you like telling stories that educate and entertain? Does the history of Riverside and the Mission Inn fascinate you? If so, then you might be a great candidate to be a docent at the Mission Inn. The Mission Inn Foundation is recruiting students for the 2015-2016 docent training class that starts in September.

The Mission Inn Foundation is the not-for-profit organization founded in 1976 that gives tours of the historic Mission Inn Hotel and runs the Mission Inn Museum. Their charter is embodied in their mission statement, "to preserve, promote and share the history and legacy" of this National Historic Landmark hotel. The hotel's history is intertwined with the history of Riverside, from the founding of the Glenwood cottages in 1876 to present day. Docents provide a glimpse into this captivating history as they lead groups through the fascinating and eclectic 4 Diamond hotel.

In class you will learn about, among other things, Frank A. Miller, the driving and creative force behind the creation of the hotel, visits by ten different U.S. Presidents, the many famous people married in the Saint Francis of Assisi Chapel, the hundreds of historic artifacts on display in the hotel, and how the hotel was instrumental in both the growth and revitalization of Riverside.

Applications to join the 2015-2016 class will be accepted from now until July 31. Classes are one night a week from mid-September through April. The docents come from many backgrounds and education, including retirees and people still active in the workforce. What they have in common is an interest in the Mission Inn and Riverside, the passion to share that history with others and the willingness and ability to commit their time and energy.

While a docent's primary duty is to lead tours, a docent can also participate in other activities, including quarterly educational forums, visits to other historic sites in Southern California, and staying at the hotel at a reduced rate at the annual Docent Sleepover. If you have always been fascinated by the Mission Inn, and enjoy sharing that fascination with others, then this is your opportunity.

Applications are available at the Mission Inn Museum, can be requested by mail from the Mission Inn Foundation office at 3696 Main Street, or can be downloaded from the Foundation web site (www.missioninnmuseum.com). Those interested are encouraged to submit their application soon, as the class size is limited.

Classified Ads

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 – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

Office Space – Magnolia Center

Professional office with secretarial space, use of conference room, phone system, copier/scanner, computer network, excellent parking. Call Debbie (951) 274-2484

Cloud Based Bookkeeping – IOLTA365

IOLTA365 is a cloud based bookkeeping service specifically for IOLTA accounts. We handle the bookkeeping and keep your IOLTA account records in compliance with CA Rule 4-100. The lawyer provides electronic copies of all banking records and we create: (1) the main account register, (2) an individual ledger for each client matter, and (3) a three-way reconciliation showing the main register balance, total of all individual ledgers, and the adjusted bank statement balance. Please contact us via message on Twitter @IOLTA365 or via email IOLTA365@gmail.com.

Complete Resource Center – Marathon-records.com

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Wanted – Attorney for Job Position

Our firm (Lobb & Cliff, LLP) is looking for a four to eight year lawyer to handle real estate and business litigation. The position requires experience in drafting and responding to discovery and law and motion matters, taking and defending depositions, arguing matters in court and trying cases. This position is available in our Riverside, Murrieta and Orange County office. Candidate must be able to attend meetings, etc. at all locations if needed. L&C is a small business firm representing companies located in Southern California. Send resume via email to Susan Lowrance at lowrance@lobbcliff.com.

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.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2015.

Lindsey Alverson – Law Student, Riverside

Mark J. Davison – Sole Practitioner, Riverside

Gary G. Geuss – Office of the City Attorney, Riverside

Chirag R. Nanavati – Law Student, Riverside

Alison E. Peacock – Law Student, Wildomar

Diane Roldan – Arent Fox LLP, Los Angeles

Rebecca A. Seldin – Office of the Public Defender, Riverside

J. Craig Williams – Williams Law Corporation, Irvine

Riverside County LAWYER

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