

RIVERSIDE LAWYER

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MAGAZINE

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The Capacity Declaration: Forms GC-335 and 335A

An Overview of Civil Causes of Action for Elder Abuse in California

Safeguarding the Elderly

Age Discrimination By Any Other Name: A Survey of Recent ADEA Lawsuits in California



The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:
To serve our members, our communities, and our legal system.

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

September

15 Family Law Section

Noon – 1:15 p.m.

RCBA - Gabbert Gallery

Topic: "Securing Your Retirement:
Social Security & Family Law"

Speakers: John C. Fleishman, Financial
Advisor & Art Villar, Retirement Specialist

24 RCBA Annual Installation of Officers Dinner

Mission Inn – Music Room

Social Hour – 5:30 p.m./Dinner – 6:30 p.m.

RSVP by September 18

For more information – 951.682.1015

October

6 25th Annual Red Mass

6:00 p.m.

Our Lady of the Rosary Cathedral

2525 North Arrowhead Avenue

San Bernardino

Information –

Jacqueline Carey-Wilson at (909) 387-4334
or Mitchell Norton at (909) 387-5444

16 General Membership Meeting

Joint with Riverside Legal Aid

Noon – RCBA Gabbert Gallery



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Seeing your name in print?

Advancing your career?

Addressing your interests?

Being published?

Expressing your viewpoint?

Join the Riverside Lawyer staff NOW
and be a part of our publication.

Contact Charlene or Lisa

at the RCBA office

(951) 682-1015 or

lisa@riversidecountybar.com





President's Message

by Kira L. Klatchko

In his last column for the *Riverside Lawyer*, outgoing RCBA President Chad Firetag (now Judge Firetag) shared the highlights of his sojourn into the Bar's historical archives. He was looking for wisdom from past Bar presidents that could be used to guide and enlighten our future endeavors. If you read the messages Chad compiled, or took your own trip to the archives, you would note the uniqueness of our more than century-old Bar, and its consistent focus on community service, fellowship, and professionalism. This past year Chad has kept that same focus. I am very pleased to be able to use my first President's Message to thank Chad for his service and dedication to the Bar and to congratulate him on his recent appointment to the bench.

I also want to thank the rest of the 2014-2015 RCBA Board, our incredible staff, and our many volunteers, for their work. This past year, the bar continued to support popular programs like the Good Citizenship Awards, Mock Trial, Project Graduate, Bridging the Gap, and Elves. We also started new programs, like the highly successful Adopt-a-High School Program and the New Attorney Academy. In addition, we continued efforts to increase funding for our local courts, and offered more than 70 high-quality CLE programs. None of these things would have been possible without the concerted efforts of our entire legal community. Our members and friends, both in the community and on the bench, have dedicated thousands of volunteer hours to programs like the ones I have just mentioned. Their efforts are what make the

Bar an important force in our community, and also what make it a great organization to be a part of.

If you are not familiar with all of the Bar's programs, this is the year I hope you will have a chance to learn more. While many in our community associate the Bar exclusively with CLE and the monthly general membership meeting, those things are only a small part of what the Bar does for its members and for the community. The wonderful thing about our Bar is that there are many ways to be involved, and many levels of involvement. If, for example, you are a sole practitioner looking for referral sources or for other attorneys you can turn to when you have a novel legal problem to discuss, you could join our Solo and Small Firm Section, and meet many other people looking for the same kind of fellowship. You could also come to a general membership meeting, cocktail party, or the installation dinner. If you work for a large firm or large government office, and find you already have plenty of networking opportunities and CLE programs, but want to be more involved in your community, you could try donating your time to the Elves Program; you and your family can help shop, wrap, and deliver holiday gifts to struggling local families and victims of crime. You could also become a role model for young people in our community by joining Project Graduate, Mock Trial, or Adopt-a-High School, where you might volunteer as a mentor, reader, or a coach. If you work in an interesting area of law and want others to know more about it, you could teach a CLE class—every Section is always on the lookout for good topics and speakers—or write an article for the *Riverside Lawyer*. If you like to argue about court funding, rules, and legal policy, we would be glad for you to join our ongoing advocacy efforts in Sacramento, or to volunteer to be a delegate at the State Bar's annual Conference of Delegates meeting. Basically, no matter what your interest, the RCBA has something to offer you, if you are willing to engage.

If you are new to our Bar, don't consider yourself to be a "joiner," or are otherwise hesitant to attend an event where you think you might not know anyone, I offer the following: (a) you will find most people in the RCBA to be abnormally friendly (particularly for a group of lawyers), and interested in getting to know you and know more about your practice; (b) Section chairs, Board members, and RCBA staff are always thrilled to see new faces and would be very pleased if you stopped over to introduce yourself; and (c) I personally would be happy to meet you, would gladly introduce you to our other wonderful members, and would love to help you find a way to connect your interests with Bar programs.

I am very honored to be your Bar president, and look forward to all we will accomplish together in the coming year.

Kira Klatchko is a certified appellate law specialist, and co-contributing editor of Matthew Bender Practice Guide: California Civil Appeals and Writs. She is also chair of the appellate group at Best Best & Krieger, where she is a partner.



BARRISTERS PRESIDENT'S MESSAGE

by Christopher Marin



Tradition...Tradition!

*Traditions, traditions.
Without our traditions,
our lives would be as
shaky as... as... as a fid-
dler on the roof!*

-Tevye,
from *Fiddler on the Roof*

Ah, a new RCBA year – and here I am as your new Barristers President! As is

the tradition, I am probably expected to lay out my vision for the coming year. Well, in broad strokes I have two directives in mind for the Barristers program: 1) Adopt a more interdisciplinary approach to our meeting presentations, hoping to connect with other professionals and other professional organizations, and 2) Develop the leadership potential of our members by embracing the energy and creativity that we share as young attorneys.

Since this issue of *Riverside Lawyer* deals with elders and the law, I thought I would turn my attention to a great gift that we young attorneys inherit from the elder generations – our traditions. The Barristers and the RCBA have many great traditions. In fact, we will be celebrating one – the swearing in of our RCBA and Barristers Boards of Directors – on Thursday, September 24 at the Mission Inn. The Honorable L. Jackson Lucky, IV, has graciously accepted my invitation to serve as the installing officer for the Barristers board. I hope you will be able to join us; the Installation Dinner is quite the grand affair.

Traditions generally serve to bring stability and predictability to the chaos of our daily lives. Stability and predictability are important; they motivate our legal system's tradition of *stare decisis*. And I am sure many of us carry on family traditions as we strike out in the world and start families of our own (shout to the Talkovs, the Hestons, the Mays, the Daams, and the Diaz-Wrights and their recently expanded families – Heyyy!). Sometimes we even start new traditions in the hopes that we can make our corner of the world a little better. For example, the RCBA Holiday Elves program is a fairly new tradition started by past RCBA President Brian Percy, but the goodwill, generosity, and sense of community that the program engenders ensure that it will be an RCBA tradition for many years to come.

But not all traditions are good or helpful, and some things done for the sake of “tradition” have helped maintain institutions of racism, sexism and homophobia in

this country well into the 21st Century. Thankfully, 2015 has seen the slow bending arc of progress eliminating some of our more odious “traditions.” From the ruling in *Obergefell v. Hodges* overturning laws “protecting traditional marriage” to provide equal protections to LGBT families, to the removal of the Confederate Battle Flag from several government buildings in the Deep South, this slow bending arc seems to have picked up a lot of momentum lately.

All that being said, there are a few Barristers traditions I would like to address during my tenure. First, I would like to move away from the traditional MCLE presentation format of our monthly meetings. I expect that as we reach out to other professionals in our community that not all of the wisdom that they have to offer will qualify as MCLE, but that does not make their wisdom any less valuable.

Second, I would like to bring back a tradition carried over from the RCBA that was recently removed from our bylaws – the office of President-Elect. I know the position was eliminated for the sake of democratizing the election of a President each year, but with that we lost something valuable that the office brought – institutional memory. Besides our Immediate Past President, Scott Talkov, I have the longest tenure on the Barristers Board of Directors – and this is only my third year! Of course, bringing back the President-Elect would require another amendment to our bylaws, so I hope our current Barristers members will join me in re-embracing this important RCBA tradition.

But so we don't make too many changes too fast, our first general membership meeting on September 10, 2015 will be another MCLE presentation. Doug Levinson will present on “Proper Care and Handling of Business Clients”. Doug was one of my professors at USC, and taught Business for Lawyers – a class he designed and even wrote the textbook for. Doug is an amazing speaker (he previously came out to present to our Solo and Small Firm Section) so I do hope you can join us. We will be at a traditional location, The Cask ‘n Cleaver Steakhouse, at our traditional time – 5:30-6:30 social hour, presentation starting at 6:30. I will also be extending an invitation to the Pick Group of Young Professionals to attend, so hopefully we can start that interdisciplinary interaction that will be an empowering tradition for years to come.

Christopher Marin, a member of the Bar Publications Committee, is an attorney based in Riverside. He can be reached at christopher@riversidefamilylaw.com



CREATING POWERS OF ATTORNEY TO PREVENT FINANCIAL ELDER ABUSE

by Jack B. Osborn

Preventing elder abuse can begin with prudent estate planning while competent. More than 20 percent of seniors nationwide have fallen victim to financial abuse according to the National Center on Elder Abuse Bureau of Justice Statistics. Sadly, family members are the perpetrators in 90 percent of cases of elder abuse and neglect. Adult children commit most of the abuse followed by other family members and spouses. Women are twice as likely to be victims. Not all abuse is strictly financial – the U.S. Department of Justice reports that 42 percent of murder victims over age 60 are killed by their children, while 24 percent are killed by their spouses. Probate and criminal courts throughout California are facing an increasing caseload dealing with elder abuse.

Creating a carefully worded power of attorney for financial affairs is an important first step in preventing financial elder abuse. However, it is through the creation or use of these documents that most incidents of financial elder abuse by family members occur. For example, once a power of attorney is signed, it generally takes effect immediately, which gives the agent immediate access to the principal's money. The following safeguards can be effective to prevent a scam through the misuse of a power of attorney:

- Pick someone completely trustworthy as the agent who already has a proven track record managing money. Often family members simply pick a favorite son or daughter who may be attentive and kind, but without the necessary skill to manage someone else's money.
- Consider creating a springing power of attorney that only goes into effect after the principal is incapacitated as evidenced by one or more physicians. The creation of a springing power of attorney ensures that it cannot be used while the principal is fully functional. Nevertheless, many practitioners disfavor its use because physicians may be reluctant to write a letter indicating incapacity for their client; it requires disclosing confidential medical information to banks and financial institutions; and, without additional safeguards, the incapacitated senior is still vulnerable to the misuse of the power of attorney.
- Consider not releasing the power of attorney until it is needed. Keep the signed power in the attorney's office.

- Narrowly tailor the power of attorney to include only necessary powers and consider requiring two individuals to serve as attorneys in fact. One agent could have authority to write checks up to a certain dollar amount, but both agents' signature could be required above that limit.
- Require the agent to provide monthly or yearly accounting to the principal, other family members, or to the principal's attorney.
- Keep it current. Avoid pushback from banks or financial institutions by renewing a power of attorney every year. This regular contact with the attorney helps to ensure that the principal is still capable and free of undue influence.

Attorneys in fact need to clearly understand what their duties and responsibilities are to the principal, as well any limitations. Unfortunately, while pre-printed powers of attorney purchased on the internet or at a stationery store must include a "Notice to Person Accepting Appointment as Attorney in Fact" outlining the duties involved acknowledged by the attorney in fact's signature, there is no such requirement for attorney drafted powers of attorney (Probate Code §4128). It is essential that attorneys in fact receive a clearly written set of instructions in "non-legal-ese" that helps them understand their duties as a fiduciary.

An attorney in fact has no duty to exercise their authority regardless of whether the principal is incapacitated unless he or she has expressly agreed in writing to act (Probate Code §4230). In the face of potential elder abuse by others, the attorney in fact may be reluctant to act because of personal inconvenience or believe someone else is better suited to handle the problem. Furthermore, if the attorney in fact acts in one circumstance, he or she is not duty bound to act in a subsequent transaction.

An attorney in fact is bound to a standard of care that would be observed by a similarly situated prudent person dealing with the property of another (Probate Code §4231). A breach of the standard of care may result in the attorney in fact liable for twice the value of the value of the misdeed including reasonable attorneys' fees and costs.

While the attorney in fact only owes a duty to the principal, including a duty to keep regular contact, and to communicate with the principal, any interested person upon court order can examine the records of the attorney in fact

(Probate Code §4236). A duty to account to the principal may be imposed upon the attorney in fact by the principal, upon request of the conservator, or the principal's successor in interest after death.

Finally, common sense says that the existence of a power of attorney should not be kept a secret. While the original document may still be kept under lock and key at the attorneys' office, family members should be made aware of who has been selected as an attorney in fact, when that power becomes effective, and the limitations on the powers granted. Financial elder abuse is best prevented through carefully written and understood powers of attorney, and when family members keep each other accountable.

Jack B. Osborn is a partner with Brown White & Osborn LLP specializing in probate matters.



GRANDPARENT VISITATION

by Christopher Marin

The last time *Riverside Lawyer* addressed the topic of elders and the law, I wrote about the issues grandparents face when they become the primary caretaker for their grandchildren.¹ This time, I am addressing the flip side of this problem: grandparents that spend too little time with their grandchildren. In many single-parent households, one parent has the lion's share of custody time with the children not just to the exclusion of the other parent, but often to the exclusion of the other parent's extended family. Oftentimes the custody arrangement comes about as a result of orders from the family law or juvenile courts, but just as often it can come around informally by necessity or design – either through the agreement of the parents, concealment by the custodial parent, or the unavailability of the other parent due to physical location, incarceration, or death.

Regardless of how the custody situation comes about, it is problematic from a child development perspective because it essentially blocks off half of a child's total identity. If a child perceives a parent as acting maliciously or contemptuously towards the other parent or the other parent's family, it is not a far leap for the child to infer that some part of them is bad or worthy of contempt. To provide some relief for children in these kinds of situations, the Family Code contains several provisions to keep children connected to significant family members despite (or sometimes because of) the wishes of one or both parents. Although significant family members come in many different forms – siblings, stepparents, aunts/uncles, legal guardians, etc. – for purposes of this article, I shall focus primarily on the laws that affect grandparents. Keep in mind also that this is about visitation through the Family Law Court; other similar issues may lead grandparents to petition for adoption or legal guardianship through Juvenile or Probate Courts.

Family Code 3102 – Grandparents through a deceased parent

If the relationship between grandparent and grandchild is becoming estranged due to the death of the connecting parent, Family Code 3102 gives the court the power to order visitation provided that visitation is found to be “in the best interest of the child.” Grandparents do have a special status under this code section in that they

do not need to establish any previous amount of contact with the child before the application for the court to consider whether it would be in the child's best interest (although having a prior relationship would certainly help establish that a continued relationship is in the child's best interest). However, this section does not apply if the child is adopted by anyone other than a stepparent or grandparent.

Family Code 3103 – Grandparents through parents in a dissolution, separation, custody or parentage action

Family Code 3103 would probably provide the most common route for grandparents to petition for visitation with their grandchildren. As such, this code section also has quite a bit of nuance for the petitioning grandparent. First, the court does have to establish that the visitation is in the best interest of the grandchild. Second, the court must factor in whether the grandparent is subject to a domestic violence restraining order in making a best interest determination. Third, the grandparent must notify all parents, stepparents and other physical custodians of the grandchild by certified mail of their petition. Fourth, the agreement of both parents creates a rebuttable presumption against the visitation being in the child's best interest. Fifth, the visitation cannot conflict with the custody or visitation of birth parent who is not a party to this action. Sixth, the visitation cannot serve as a basis to petition or challenge for a move-away order, but it shall serve as a factor for the court to consider. Finally, the grandparent visitation may allow for a reallocation of custody time for purposes of a parental guideline calculation, and either the parent or grandparent may be ordered to pay support for the transportation and basic necessities for the child associated with the visitation.

Family Code 3104 – Miscellaneous issues conferring standing to grandparents

If neither Family Code 3102 nor 3103 apply to the grandparent seeking visitation, they may find authority granting them standing to petition the court under Family Code 3104. Family Code 3104 applies only to grandparents and requires the court to make two findings: 1) that there was a preexisting relationship between grandparent and grandchild such that there is a bond created that visitation would be in the best interests of the child, and 2) the balance of the interests between hav-

¹ “When Grandparents Become Parents,” *Riverside Lawyer*, June 2012 (published as Christopher J. Buechler)

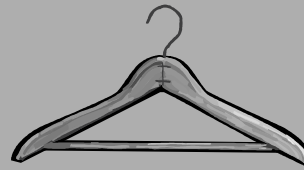
ing the grandchild visit the grandparents is weighed against the interests of the parent exercising authority over their child. Additionally, the grandparent cannot petition the court for visitation if the parents are still married unless: 1) the parents are living separately on a permanent or indefinite basis, 2) one of the parents has been absent more than one month without the other parent knowing of their whereabouts, 3) one of the parents joins in the petition with the grandparents, 4) the child is not residing with either parent, 5) the child has been adopted by a stepparent, or 6) one of the parents is incarcerated or involuntarily institutionalized. Also, all of the conditions listed above from Family Code 3103 apply to the petitioning grandparent.

Family Code 3105 states, "The Legislature finds and declares that a parent's fundamental right to provide for the care, custody, companionship, and management of his or her children, while compelling, is not absolute. Children have a fundamental right to maintain healthy, stable relationships with a person who has served in a significant, judicially approved parental role." Although that section applies to granting visitation rights to former legal guardians, it is easy to see how that logic also applies to helping grandparents maintain an equally important bond with their grandchildren.

Christopher Marin, a member of the RCBA publications committee, is an attorney based in Riverside. He can be reached at christopher@riversidefamilylaw.com.



The Southern California legal community is joining together for a clothing drive to support WHW (Women Helping Women/Men2Work)



Suits for a Cause

September 1st through September 30th
All Riverside Law firms are Invited to Participate

WHW collects Men's and Women's Clothing (business and casual) as well as Accessories (shoes, purses, jewelry, and toiletries, etc). WHW provides comprehensive employment support services to empower disadvantaged men, women and teens to achieve economic self sufficiency through employment success. If you have questions, or your law firm would like to join Suits for a Cause and collect clothing, please contact Laurie Rowen (Laurie@montagelegal.com) of WHW's Advisory Board of Directors. All participating law firms will be featured on WHW's website.

For more information, see www.whw.org.

The Riverside County Bar Association Supports
WHW and Suits for a Cause

Drop Donated Clothing at:
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4129 Main Street, Suite 100, Riverside



ELDER ABUSE PROSECUTION AND PREVENTION

by Janet K. Hasegawa

Elder abuse prosecution found me. I never considered it as a career. When I graduated from college, I went straight to Japan to teach English. I am a second-generation Japanese American. I moved to Nagasaki, Japan to learn about the culture and to be closer to my extended family. I stayed there for three glorious years. When I returned, I worked at a non-profit law office in San Francisco. My Okinawan grandmother had a friend who lived in a small rural town called Grants Pass, Oregon. She was the closest thing to family that I had in America. I called her "Auntie" and I called her husband "Papa." They were so kind. I visited them in the summers and spent Thanksgiving with them. As a child, Papa sent Christmas and birthday cards with \$10 tucked into them (which was a lot of money back then).

After I returned from Nagasaki, I learned Papa died and I started driving from San Francisco to Grants Pass monthly to visit Auntie and bring her Japanese groceries. Auntie's adult grandson moved in after Papa passed and there he stayed. Auntie had lived in America for over 30 years but her English was minimal and broken at best. She and I communicated in Japanese. Auntie was a unique, strong and stubborn woman. One day, she told me she kicked out her grandson and she asked me to help her pay a bill by writing the check. I looked over her checkbook and realized she didn't have much money beyond her monthly Social Security. I asked about her savings and any life insurance money. She was confused and could not answer my questions. She did not understand that her grandson spent all her life savings and all of Papa's life insurance proceeds.

Papa had taken such good care of Auntie that she never paid a bill. In fact, she could not read a bill due to her poor eyesight and did not even know how to balance a check book. When Papa died, she had no clue how much money they had. When her grandson stepped in and took over her finances, Auntie was grateful and trusting. Auntie's son was supposed to have helped after Papa's passing but fate was cruel and he died months before Papa. By the time I stepped in, all the money was gone. When I explained to her what happened, she was shocked and sad, but she did not want to report it to the police. She told me the money would have gone to her grandson when she died anyway. She worried so much after that and I worried about her. When I decided to go

to law school, I attended the University of Oregon so I could be closer to her.

I am a Deputy District Attorney at the Riverside County District Attorney's Office. When I started my career 10 years ago and was asked where my ideal assignment would be, I told them elder abuse. For the past seven years, I prosecuted elder abuse cases which included physical, financial abuse and neglect. I was recently assigned to the Economic Crimes Team where I now handle a variety of complex financial crimes including elder abuse. I have learned that Auntie's case is not unusual. When a spouse passes away, the grieving and lonely surviving spouse is vulnerable. Greedy family members or "friends" take advantage of these situations by volunteering to help when in fact they are only helping themselves.

Another common scenario is the "sweetheart swindle" when an elder is befriended, usually in a supermarket parking lot, and this new "friend" over time uses a romantic interest to "borrow" money or manipulates the elder to pay for various expenses. The most common victim is a surviving elderly spouse who supports an adult child or grandchild. The elder allows the family member to live at the elder's home rent free. The family member is unemployed and/or has a substance abuse or mental health issue. The elder is financially abused by the family member and is usually also emotionally and sometimes physically abused.

Elder abuse exists but is rarely addressed. More cases have come to light since banks became mandated reporters. Many cases arise when a concerned neighbor or friend suspects abuse and calls law enforcement or Adult Protective Services. I often receive phone calls from family members who have just discovered the abuse since they live some distance away or rarely visit the elder.

Since we are all aging, people must prepare so that their wishes are known and safeguards are put in place. People work hard and save to prepare for their later years. They should take the same care to have a plan for their spouse and children, their finances and their own health in the event they can no longer make decisions. It costs time and money to prepare a financial power of attorney, advanced healthcare directive, will and/or trust. But, it costs infinitely more time and money if they don't have these instruments to protect them-

selves, their spouses and their children. Further, when a person is designated to handle another's finances, a second trusted person should also be designated to check those financial statements.

Family, friends and neighbors must become involved to prevent elder abuse. Whether you call an elder once a week or visit in person, you must make the time. When the elder's cognition and/or physical health make it dangerous for the elder to live alone, hire a caregiver after conducting a background check or move the elder to a licensed care facility. Check in on elderly neighbors.

When you provide services to an elder and you want to ensure they understand the transaction, hire someone who specializes in work with older adults and has experience with conducting assessments such as a geriatric psychiatrist, neuropsychologist or geropsychologist. That specialist can conduct an assessment prior to your transaction or can be a witness when the elder executes documents to have the elder explain what she believes she is signing at each point in the event her capacity is later questioned.

As an attorney, if you are contacted to provide services to an elderly person and the elder appears

confused and unable to answer your questions appropriately, please report any suspected elder abuse in Riverside County to Adult Protective Services (APS) at 1-800-491-7123. Your identity may remain confidential.

My Auntie died in 2010. Before her passing, she started to show signs of dementia and I contacted her granddaughter in Tennessee and APS. My mother and I prepared for her to move to a senior care facility in California so we could look after her. Auntie refused to move as she wanted to keep her house so she could leave some inheritance to her grandchildren. I wish I knew then what I know now, so that Auntie would have been prepared and cared for her in her later years as Papa had surely intended her to be.

Janet Hasegawa is a Deputy District Attorney who has worked at the Riverside County District Attorney's Office for 10 years. She dedicates this article to her mentor, Felony San Bernardino Supervising District Attorney Tristan Svare, who passed away in June 2015. Tristan Svare had a passion and drive for elder abuse prosecution and was a national trainer on elder abuse.



TO PRESERVE AND PROTECT ESTATES FOR FUTURE GENERATIONS

by Cheri Brettmann

The importance of an effective estate plan is essential in preserving and transitioning assets to future generations. An estate plan is only as effective as the documents themselves and the fiduciaries chosen to implement them. Many people die without even a will and, therefore, their estates are distributed according to intestate succession laws after a lengthy court supervised probate. An effective estate plan will not only include a trust to provide distribution of one's estate and avoid probate upon death, it will also plan for incapacity.

Unfortunately, many delay executing an estate plan until later in life when there may be capacity, mobility, or financial issues. It is advisable to create an estate plan as early as possible because death and incapacity can never be predicted, especially since wills, living trusts, and power of attorneys can all be revoked or amended as circumstances change.

Not only can capacity be a concern but, also one's susceptibility to undue influence. It is not uncommon for a caretaker, a neighbor, or even a family member to take advantage and persuade an individual, or typically a surviving spouse, to create an estate plan that does not reflect their true intent. If individuals would plan earlier the risk of these claims could be reduced because there would

already be an estate plan in effect at the time of the first spouse's death. Even though estate plans can be changed, it can still be helpful in providing a history of one's previous intent.

The significance of choosing a successor trustee is often a neglected aspect of an effective estate plan. Many individuals understand that a trust allows them to choose how their estate will be distributed and will avoid probate, but few clients put much thought into naming a successor trustee. Most clients adhere to the ideology that the oldest child or the child who lives geographically closest should be nominated. However, this is not the most effective method of choosing a fiduciary and the complexities of the different roles should be explained.

Choosing a successor trustee is pivotal as this fiduciary will be responsible for administering the trust, managing and investing trust assets, and possibly creating subtrusts for future generations for years to come. And, it may become even more crucial if one becomes incapacitated and the successor trustee must serve during the individual's lifetime. For example, an agent named under a durable power of attorney to pay monthly living expenses may not be the best person to be the successor trustee to administer lifetime trusts for grandchildren. Likewise, a successor trustee may not be the best agent to name in a health care directive because they may not clearly understand viewpoints on certain end of life decisions.

Planning for death and incapacity can be viewed as an unpleasant task. I have the privilege of explaining to my clients that an effective estate plan allows them the opportunity to plan for their own futures, as well as the futures of their families and other loved ones.

Cheri L. Brettmann is owner of the Law Office of Cheri L. Brettmann and a Certified Specialist in Estate Planning, Trust and Probate Law by the State Bar of California Board of Legal Specialization. Ms. Brettmann also serves as Of Counsel with Albertson & Davidson LLP in Ontario, California.



THE CAPACITY DECLARATION: FORMS GC-335 AND 335A

by John Franklin Randolph, M.D.

For many years now, the state Judicial Council has utilized forms GC-335 and GC-335A, developed to facilitate expression of expert opinion regarding clinical capacity at guardianship proceedings. The form presumes that any California physician or psychologist is qualified to complete it, and asks 1) whether the subject is able to attend a court hearing to determine whether a conservator should be appointed; 2) whether the subject has the capacity to give informed consent to medical treatment, or 3) whether the subject has dementia and if so, (A) whether he/she needs to be placed in a secured facility for the elderly or a facility that provides dementia treatment and (B) whether he/she needs or would benefit from dementia medications.

California's probate code defines "capacity" as "a person's ability to understand the nature and consequences of a decision, and to make and communicate a decision, and includes in the case of proposed health care, that ability to understand its significant benefits, risks, and alternatives (Probate Code §4609). The Due Process in Competence Determinations Act (1995) was enacted to ensure that all persons who are the subject of judicial capacity proceedings retain their legal decision-making powers unless there is specific evidence that the person is functionally unable to make the type of decision at issue. It states that a person with a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions. A judicial determination that a person lacks the capacity to perform a specific act must be based on specific evidence of a mental function deficit, rather than on a mere diagnosis of a person's mental or physical disorder (Probate Code §810). In addition, the code requires a finding of significant impairment with respect to "the type of act or decision in question," and the court may take into consideration "the frequency, severity, and duration of periods of impairment." The code provides guidance to legal and health professionals in determining: (1) whether mental deficits exist, (2) whether mental deficits significantly affect legal mental capacity, (3) a diagnosis, (4) whether a mental disorder is treatable, and (5) whether the mental deficits may be reversible. These concepts were current in 1995 when the capacity form was developed, but the science of capacity assessment has grown.

There is no formal pathway for expert training in capacity assessment. Recent research suggests that physician

performance of capacity assessment is often suboptimal. Physicians are frequently unaware of a patient's incapacity for decision making. When incapacity is suspected, physicians may not know which standard to apply, and, as a result, their evaluations may omit mention of the relevant criteria or may not apply them specifically to decisions about treatment. Public Guardians frequently ask treating physicians to complete the form. Unfortunately the form is often completed incorrectly. The California Medical Association convened a task force in 2010 to clarify issues regarding proper completion of the capacity declaration. The task forces findings were communicated to the California Judicial Council but no action has yet been taken.

Assessment of capacity is a relatively new and evolving field that integrates principles from the fields of law, medicine, and ethics. A gold standard for assessing capacity has not been established but advances in the field have seen development of specific tools to evaluate different types of capacity. An informed view of capacity assessment incorporates questions about the specific issues in question, to assess the patient's judgment skills, and include the patient's response in the context of the evaluation. This line of questioning attempts to determine whether the patient can respond knowingly and intelligently to queries about medical treatment, participate in that treatment decision by means of a rational thought process, understand the nature and seriousness of his/her condition, the nature of the medical treatment recommended, the probable degree and duration of any benefits/risks, the consequences of lack of treatment, and the nature, risks, and benefits of any reasonable alternatives. The expert must begin by asking the referring party to clarify the referral question and type of capacity under consideration. A person can have the capacity to engage in one activity (decide about a minor medical procedure), but not another (decide about high-risk surgery). Each type of decision requires different cognitive abilities. Thus an evaluation is needed which will connect a person's strengths and weaknesses to the specific decision for which his or her capacity is being assessed. A cognitive assessment alone falls short of defining a person's ability to function in everyday life, but it does help to clarify the basis of impairment, or lead to a clinical diagnosis. The point of evaluation is to determine cognitive and functional strengths and weaknesses, and offering an opinion about

the ability of the elder to make a particular decision or carry out a particular act.

Among the approximately 3.3 million seniors in California there are over 588,000 people living with Alzheimer's disease and related dementias. Patients with Alzheimer's disease and other dementias have high rates of medical decisional incapacity. More than half of patients with mild-moderate dementia may have impairment, and such incapacity is universal among patients with more severe dementia. For many years, California nursing homes sought help from local Public Guardians for medical decisions for older adults with decisional incapacity who lack surrogates, which was remedied in 1992 by the California legislature with the passing of Health and Safety Code Section 1418.8.

Capacity assessment of older adults is becoming increasingly important—society has a very strong interest in being able to accurately discriminate intact from impaired functioning in the older adult population. Increasing numbers of older Californians with cognitive deficits impairing decision-making whose assets require intergenerational transfer will be a major public policy concern. A challenge to legal professionals is that a “gold” standard does not exist, and that clinical judgments of capacity may be inaccurate, unreliable, and even invalid. Capacity assessment training should become a part of the clinical training of physicians, psychologists, and other health care professionals working with the elderly population.

John Franklin Randolph, M.D., is the Chief of the Geriatric Medicine Center, Arrowhead Regional Medical Center.



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SAVE THE DATE

The Riverside County Bar Association requests the pleasure of your company at the

Annual Installation Dinner

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Special Presentation to Virginia Blumenthal,
recipient of the Krieger Award
and Steven Harmon,
recipient of the E. Aurora Hughes
Meritorious Award for Service

Thursday, September 24, 2015
Social Hour 5:30 p.m.; Dinner 6:30 p.m.

Mission Inn, Music Room
3649 Mission Inn Avenue, Riverside

RSVP by September 18
Information – please call (951) 682-1015

AN OVERVIEW OF CIVIL CAUSES OF ACTION FOR ELDER ABUSE IN CALIFORNIA

by C. Athena Roussos

Civil actions for elder abuse appear to be on the rise. As our aging population grows, abuse and neglect of our elders will continue to be a significant concern.¹

Originally, California sought to combat elder abuse by encouraging reporting and imposing criminal penalties on abusers. The focus later shifted to private, civil enforcement of elder abuse. (See *Delaney v. Baker* (1999) 20 Cal.4th 23, 33.) The Legislature recognized that elderly persons and dependent adults “are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in conjunction with this abuse due to problems of proof, court delays, and lack of incentives to prosecute these suits.” (Welf. & Inst. Code § 15600 (h).)² The Elder Abuse and Adult Civil Protection Act (§§ 15600, et seq.) (the “Act”) governs civil actions for elder abuse.

What is elder abuse?

Elder abuse is defined as: “(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering” or “(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.” (§ 15610.07.) There are numerous statutory definitions in the Act. (See §§ 15610.05-15610.70.) The three main categories of elder abuse are physical abuse, neglect, and financial abuse.

Physical abuse includes obvious criminal acts like assault, battery, and sexual crimes. It also includes unreasonable use of restraints, prolonged or continual deprivation of food or water, and use of chemical or psychotropic medication for punishment or beyond the physician’s prescribed period. (§ 15610.63.)

Elder neglect is more difficult to pin down. It is defined as the “negligent failure of any person having the care or custody of an elder or dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.” (§ 15610.57 (a)(1).) Neglect

includes failure to provide or assist in basic needs like hygiene, food, clothing, and shelter; failure to provide medical care (including mental health needs); and failure to protect from health and safety hazards. (§ 15610.57 (b).) The tricky part is that elder neglect is distinct from medical malpractice; it requires a showing of more than “simple or gross negligence by health care providers.” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 785.) Examples of elder neglect have included: leaving elders who require help unassisted for long periods, leaving elders without basic hygiene for long periods so they develop bedsores or infections, ignoring medical care plans requiring daily checks, and ignoring complaints regarding such issues by the elder or family members. (See *Carter v. Prime Healthcare Paradise Valley, LLC* (2011) 198 Cal.App.4th 396, 405-407 [collecting cases].)

Financial elder abuse is a different category altogether. The plaintiff must show a wrongful “taking” occurred—shorthand for “takes, secretes, appropriates, obtains, or retains real or personal property of an elder....” (§ 15610.30(a)(1)-(3).) A person commits financial abuse by taking or assisting in taking property from an elder for a wrongful purpose or with intent to defraud, or by using undue influence. Whether undue influence occurred is based on several factors, including the vulnerability of the victim, the authority of the influencer, the influencer’s tactics, and equitable considerations. (§ 15610.70.) A plaintiff does not have to show mental or physical suffering to establish financial abuse.

What remedies are available for elder abuse?

In physical abuse or neglect cases, a plaintiff may recover heightened remedies—including attorney’s fees and costs—upon a showing of clear and convincing evidence that the defendant acted with recklessness, oppression, fraud, or malice. A decedent’s survivors may also recover damages up to \$250,000 for the decedent’s pain and suffering, normally unavailable in wrongful death actions. The defendant may be liable for punitive damages also. These remedies are “in addition to all other remedies otherwise provided by law.” (§ 15657.) To obtain these remedies, the plaintiff must show evidence of a conscious choice with knowledge of the serious risk of harm, similar

1 The number of people over 65 is projected to double between 2012 and 2060; persons who are 85+ are projected to triple by 2040. Administration on Aging, etc., *Profile of Older Americans: 2013*, available at http://www.aging.ca.gov/data_and_statistics/Docs/2013/Profile_of_Older_Americans_2013.pdf.

2 Further statutory references are to the Welfare & Institutions Code.

to the deliberate indifference standard. (See Delaney, supra, 20 Cal.4th at p. 31.)

A plaintiff who proves financial abuse by a preponderance of the evidence is entitled to return of the property, compensatory damages, and attorney's fees and costs (including cost of a conservator). The plaintiff may recover the same additional heightened remedies as in other elder abuse cases upon a showing of recklessness, oppression, fraud, or malice, by clear and convincing evidence. (§ 15657.5.)

Athena Roussos is a Certified Specialist in Appellate Law by the State Bar of California Board of Legal Specialization. She can be reached at athena@athenaroussoslaw.com.



ATTENTION RCBA MEMBERS

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

The website includes bar events calendar, legal research, office tools, and law links. You can register for events, make payments and donations, and much more.



25th ANNUAL RED MASS

Tuesday, October 6, 2015, at 6:00 p.m.

**Our Lady of the Rosary Cathedral
2525 North Arrowhead Avenue, San Bernardino**

The entire legal community and persons of all faiths are invited to attend the 25th Annual Red Mass on Tuesday, October 6, 2015, at 6:00 p.m. The mass will be held at Our Lady of the Rosary Cathedral, which is located at 2525 North Arrowhead Avenue in San Bernardino. The chief celebrant will be the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Red Mass Steering Committee will follow the mass.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass.

Barbara A. Keough Will Be Honored with the Saint Thomas More Award

Barbara A. Keough, a partner with Cota and Cole, LLP, will be honored with the Saint Thomas More Award for her extraordinary service and devotion to church, community, and justice. The Saint Thomas More Award is given to an attorney or judge in the community whose professional life is a reflection of his or her faith, who gives hope to those in need, who is kind and generous in spirit, and who is an overall exemplary human being.

The Tradition of the Red Mass

The Red Mass is celebrated each year in Washington, D.C., where Supreme Court justices, members of Congress, and sometimes the President attend at the National Shrine of the Immaculate Conception. Since 1991, the Red Mass has been offered in the Diocese of San Bernardino, which covers both Riverside and San Bernardino Counties. For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387-4334 or Mitchell Norton at (909) 387-5444.



SAFEGUARDING THE ELDERLY

by Mary McClure

A large majority of frail, elderly people living in long-term care facilities do not have any visitors. If they were not being treated adequately or with dignity, they would have nobody to help them, if it weren't for the Long-Term Care Ombudsman Program. Relatives who have concerns about their loved one's treatment in a facility can also obtain help from the Ombudsman Program.

Since 1985, the Ombudsman Program in Riverside County has been a program of Community Connect, a nonprofit organization. Staff and community volunteers are extensively trained and state-certified to objectively investigate and resolve problems of residents in nursing home and board and care homes throughout Riverside County. It is a program based on human kindness and the belief that all individuals have basic human rights and comforts that should be provided. All services are free and confidential.

The program can provide help to resolve concerns about such issues as quality of care, food and nutrition, residents' rights, proper placement costs, meaningful activities, therapy and rehabilitation, financial problems, medical care, and much more.

Adult Protective Services investigates allegations of elder abuse outside facilities, while the Ombudsman Program is responsible for investigating allegations within facilities. In Riverside County, there are 13,594 elderly and disabled people living in 53 skilled nursing facilities and 651 residential care homes for the elderly. Ombudsmen visit the facilities on a regular basis. Without frequent visits, quality of care is difficult to monitor. This is especially true for those residents who have dementia or Alzheimer's, as they cannot normally give adequate historical information on their care, and the quality of their care must be observed. Last year, the Ombudsman Program made nearly 4,306 visits to facilities and responded to 3,810 complaints from residents or family members and made 119,652 contacts while in the facilities.

Each September, the Ombudsman Program honors the residents of some facilities on Grandparent's Day by delivering fresh

flower bouquets to them. This is not a funded activity but is supported by volunteers and soliciting donations. Community education is also a function of the Ombudsman Program. The program educates facility staff, family members, law enforcement, and other community members about care issues and the role of the Ombudsmen.

Funding for the Ombudsman Program is provided primarily through the Riverside County Office on Aging, plus grants and donations. In addition to its staff, the program depends heavily on volunteers; it currently utilizes the skills of 21 highly trained and certified volunteers, who work a minimum of 25 hours per month. Many volunteers have been with the program for over 10 years.

Ombudsman services are provided throughout Riverside County. The main Ombudsman office is in Riverside at 2060 University Avenue. Offices are also located in Hemet and Cathedral City. For additional information, please call (951) 329-4704 (during working hours) or (800) 464-1123 (24 hours).

Mary McClure has been the Program Director for the Long-Term Care Ombudsman for Riverside County since 2005 and has over 11 years of social service experience. She has a B.S in Human Services and is currently completing her Master's Degree at the University of Southern California.



HOW DO I REPORT ELDER ABUSE?

You can report abuse or neglect of an elder or dependent adult by calling Adult Protective Services' (APS) Hotline on a 24/7 basis at: 1-800-491-7123. APS is under the umbrella of the Riverside County Department of Public Social Services.

- If you are not a mandated reporter (i.e., you are a relative, friend, neighbor, etc.), then you need only call this 24/7 hotline. APS will gather all information needed from you to determine the best way to address your concerns. You do not need to provide us your name and contact information to report your concern, unless you choose to provide your name.
- If you are mandated to report abuse/neglect by the State of California, you will be required to complete and fax to us a "SOC 341" reporting form. The fax number is (951) 358-3969. Your name and contact information will be required. If the adult you are calling about resides in a licensed facility (i.e., a nursing home, intermediate care facility, or a board & care facility, etc.), you may call the local Long Term Care Ombudsman Office at the following numbers:
 - Local Riverside Ombudsman Office phone number at 1-877-430-4433
 - 24/7 Crisis Line at 1-800-231-4024

If the situation is an emergency, please contact your local police/sheriff station or call 911.

SB 277 – WHO’S CALLING THE SHOTS?

by Susan McClay

California’s recent vaccination legislation prioritizes public safety while still affording parental choice. Implementation of this law carries with it personal concerns begging consideration.

Imagine taking your young child to the doctor for an annual ‘before school’ physical and learning the child is *required* to have all ‘kindergarten shots.’ For most parents, this shot mandate is expected and accepted. After all, this back-to-school vaccination ritual has been in place since the 1950’s, and most parents don’t question the immunization process since it is deemed the best way to keep children healthy and safe. But to an increasing number of parents, the prospect of childhood immunizations creates anxiety due to possible adverse affects.

Approximately 90 percent of children in the United States are vaccinated against the same ailments that once plagued communities and still pose a threat to public health.¹ Despite the fact that it is generally accepted that

immunizations prevent serious ailments and potential epidemics, some parents disbelieve and question the need for vaccinations. Certainly this vaccination fear exasperated with research – later proven to be false – linking childhood immunizations with autism. As a result, parents began ‘opting out’ of vaccinations for their children; it was, after all, a matter of personal choice.

However, on June 30, 2015, California Governor Jerry Brown signed into law SB 277. Textually, SB 277 prohibits a governing authority from permitting a person in a public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center unless that person has been immunized as required by the bill.² Prior existing law required any person in these institutions to provide the governing

and Prevention. 10 July 2015. <<http://www.cdc.gov/vaccines/imz-managers/coverage/nis/index.html>>.

2 See California Senate Bill No. 277, 30 June 2015. <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB277>

1 See “National Immunization Survey.” *Centers for Disease Control*

VOLUNTEERS FOR THE LONG TERM OMBUDSMAN MAKE A DIFFERENCE ONE VISIT AT A TIME

The Long Term Care Ombudsman Program of Community Connect features a volunteer based program that is staff supported to regularly visit long term care facilities in the county of Riverside. Long-Term Care Ombudsman Program serves as advocates for the residents occupying the more than 8,000 beds in long-term care facilities in the city and county of Riverside.

Long-Term Care Ombudsman Program provides the following services:

- Advocacy by voicing residents’ concerns to a facility’s administration.
- Investigation of complaints made by or on behalf of residents.
- Informal mediation to help parties involved reach agreements and settle conflicts, with the resident’s satisfaction as the main focus.
- Elder abuse investigation. Ombudsmen are trained to investigate and report suspected cases of elder and dependent adult abuse in long-term care facilities.
- Education to make residents and caregiver more aware of residents’ rights under state and federal regulations.
- Conducting regular unannounced visits to skilled nursing facilities and assisted living or board and care facilities.

If you are interested in becoming a volunteer, please contact Program Director, Mary McClure at Mary@connectriverside.org or Anita@connectriverside.org.

authority with proof of vaccinations or documentation of an exemption for either medical or personal reasons. SB 277 eliminates exemptions based on personal beliefs; however, children with a risk of vaccine reaction or certain medical histories are still eligible for a medical exemption. Today, California is the only state that has adopted the policy of excluding personal/religious belief exemptions.³ Under SB 277, a parent's belief towards vaccinations does not exempt their child from the mandated vaccination, and some parents and organizations, such as the California Coalition for Vaccine Choice, argue SB 277 limits the ability to parent as one wishes.⁴

Effective July 1, 2016, SB 277 requires any person in a public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center to meet all immunization requirements or provide a documented medical exemption. If a child is not immunized and does not have a medical exemption, that child is unable to receive classroom-based instruction with other children in the above-mentioned authorities. Students placed in home-based private schools or enrolled in independent study programs that do not receive classroom-based instruction are exempt from SB 277.⁵ SB 277 is the most stringent vaccine mandate in effect thus far, and it aims to protect the public health and welfare of school aged children. SB 277 has gained national attention as well as criticism.

As the debate over vaccinations has grown in the last decade, the interest and research in why parents choose not to vaccinate has increased. The Center for Disease Control says, "Stopping vaccine-preventable diseases – and saving lives in the process – must be a community wide effort to vaccinate infants, children, adolescents, and adults."⁶ Jennifer Reich, of the University of Colorado Denver, adds, "Those who can reject vaccines without health risks are able to do so because they are protected by the large portion of the population who is vaccinated. But who protects the larger population?"⁷ Recently, unvaccinated children have spread vaccine-preventable outbreaks of whooping cough and measles; SB 277 intends to avoid these outbreaks and protect the larger school-aged population.

3 See "State Law and Vaccine Requirements." *National Vaccine Information Center*. 17 July 2015. <<http://www.nvic.org/Vaccine-Laws/state-vaccine-requirements.aspx>>.

4 See California Senate Bill No. 277.

5 See California Senate Bill No. 277.

6 See "Vaccines: Unprotected Stories." *Centers for Disease Control and Prevention*. 10 July 2015. <<http://www.cdc.gov/vaccines/vpd-vac/unprotected-stories.html>>.

7 See Williams, Anne. "Expression of Privilege in Vaccine Refusal." *University of Colorado Denver*. 27 Aug. 2014. . 20 July 2015. <<http://www.ucdenver.edu%2Fabout%2Fnewsroom%2Fnewsreleases%2FPages%2FExpression-of-privilege-in-vaccine-refusal.aspx>>.

According to the American Academy of Pediatrics, "most childhood vaccines are 90-99% effective in preventing disease."⁸ The Center for Disease Control estimates that vaccinations will prevent approximately 730,000 deaths and 21 million hospitalizations of children born in the last 20 years.⁹

Vaccinations protect public health and protect the 'herd.'¹⁰ The U.S. Department of Health and Human Services researched the outbreak and spreading of diseases and concluded that vaccinations prevent epidemics and save lives.¹¹ When a large portion of the community is immunized, the community as a whole is protected with little chance of an outbreak. Protection and prevention are the heart of SB 277. There are members of the community who are ineligible for vaccinations, such as infants or immune-compromised medically exempt individuals.¹² The 'herd' that is vaccinated and immunized protects these individuals. Allowing an increase in the number of unvaccinated children increases the risk of outbreak for the larger population.¹³ The United States has seen the impact of 'herd immunity' and experienced the devastation when the eligible individuals are not vaccinated. Most recently, measles plagued our country with 183 cases in 2015, and a record breaking 668 cases in 2014.¹⁴ The Center for Disease Control reported that measles likely spread because of unvaccinated individuals. As of the year 2000, the threat of measles seemed ancient history, but the resistance and refusal of vaccinations placed the entire population once again, at risk.¹⁵

For parents who do not believe in immunizations or decline to vaccinate their child, there are two potential issues to consider. First, is the freedom to practice religion, and second, is the right to parent freely.

First, religious rights and freedoms are fundamental to the U.S. Constitution. Some believe that mandating vaccinations for children violates their right to practice religion freely, as some religions do not believe in or sup-

8 See "Vaccine Safety: The Facts." *American Academy of Pediatrics*. 20 July 2015. <<https://healthychildren.org/English/safetyprevention/immunizations/Pages/Vaccine-Safety-The-Facts.aspx>>.

9 See "Report shows 20-year US immunization program spares millions of children from diseases." *Centers for Disease Control and Prevention*. 10 July 2015. <<http://www.cdc.gov/media/releases/2014/p0424-immunization-program.html>>.

10 See "Community Immunity ('Herd Immunity')." *US Department of Health and Human Services*. 14 July 2015. www.vaccines.gov (accessed July 15, 2015)

11 *Id.*

12 *Id.*

13 *Id.*

14 See "Measles Outbreaks and Cases." *Centers for Disease Control and Prevention*. 10 July 2015. <<http://www.cdc.gov/measles/cases-outbreaks.html>>

15 *Id.*

port vaccinations. However, a religious exemption is not constitutionally necessary. The Supreme Court has previously determined that religious exemptions are not constitutionally required, but are often considered.¹⁶ Acts such as the RFRA of 1993 give religious groups a statutory right to exemption, unless there is a compelling government interest to deny the exemption. In the matter of SB 277, religious objectors are not forced to vaccinate. A religious belief may prevail so long as the child is not in a school-based setting. SB 277 does not force every child to be vaccinated; it only mandates vaccinations for children attending certain learning and childcare institutions.¹⁷ SB 277 does not legally impair or discriminate against religious beliefs.

Other oppositionists believe that SB 277 eliminates a parent's ability and right to parent as they see fit, and thus SB 277 dangerously infringes on their constitutional rights. SB 277 requires children to have full and on-time vaccinations. While the majority of the population receives vaccinations on time with no concern, there are parents who wish to vaccinate on their own time schedule or wish to skip certain vaccines for fears of side effects. Most children do not have a reaction to immunization, but there is a small risk of an adverse reaction for some children.¹⁸ The U.S. Department of Public Health and Safety identifies that the United States has the safest, most effective vaccines to date, but very rarely, some people may experience serious side effects.¹⁹ In an attempt to combat reactions and ensure safety, vaccines are heavily monitored by major organizations, such as the Center for Disease Control, Food and Drug Administration, and the American Medical Association.²⁰

Adverse side effects are rare, but unfortunately do happen in some children. In those instances, the Vaccine Injury Compensation Program allows individuals to regain compensation for reactions.²¹ Since 1988, over 16,000 claims have been filed with the VICP, and 9,912 claims were dismissed. In the last eight years, 2,532,428,541 doses of vaccinations were distributed and of that, 3,133 filed with

16 See "Background and Frequently Asked Questions: SB 277." <http://www.immunizeca.org/wp-content/uploads/2015/03/BackgroundFAQ_SB277_033015cm>

17 California Senate Bill No. 277.

18 See "Possible Side Effects." *Centers for Disease Control and Prevention*. 10 July 2015. <<http://www.cdc.gov/vaccines/vac-gen/side-effects.html>>

19 See "Data and Statistics." *U.S. Department of Health and Human Services: Health Resources and Service Administration*. 17 July 2015. <<http://www.hrsa.gov/vaccinecompensation/statisticsreport.pdf>>

20 See "Safety." *US Department of Health and Human Services*. 15 July 2015. <www.vaccines.gov/basics/safety/informed/index.html>; also "Vaccine Safety: The Facts." *American Academy of Pediatrics*.

21 See "Data and Statistics." *U.S. Department of Health and Human Services*.

the VICP for reactions.²² Reactions to vaccinations do rarely occur, and while the Center for Disease Control warns of possible side effects, it is key to recognize that SB 277 does not force a parent to violate their parenting preferences to vaccinate.

SB 277 does not put more children at risk of adverse reactions to vaccines or force parents to administer unwanted medicine to their children. SB 277 permits exemptions from immunization for medical reasons with the necessary documentation, and permits parents to not vaccinate their children at all if they forgo classroom-based instruction.

In 1905, the Supreme Court in *Jacobson v. Massachusetts*, 197 U.S. 26 (1905), decided that states may impose regulations to ensure public health and safety, even if such regulations infringe on personal liberties. The Supreme Court and inferior courts have continued to uphold mandatory vaccinations and school exclusion for failure to immunize.²³ SB 277 is constitutional under both a strict scrutiny and rational basis test.²⁴ SB 277 intends to protect school-aged children in classroom-based environments, and ensuring public health through mandatory vaccinations is a legitimate end achieved by rational means.

While some will continue to argue that SB 277 strips personal liberty and religious choice, SB 277 only mandates vaccinations for children wishing to attend learning and childcare facilities where other children are present and at risk. If a parent has a personal belief against vaccinations, SB 277 does not force that parent to abolish their beliefs or parenting choices. Rather, SB 277 limits the unvaccinated child's access to other children in learning environments.

SB 277 changes the way California views vaccinations. By mandating vaccinations for children attending classroom-based institutions, the State is lawfully and legally protecting the majority from devastating illnesses and epidemics. Change carries resistance, but history proves the need for SB 277. Those who criticize the law need to consider the consequences and human toll of earlier outbreaks such as polio and smallpox. Immunizations prevent the preventable; they do not prevent free choice or good parenting.

Susan McClay is a second year student at the University of San Diego, School of Law. She is also a graduate of Great Oak High School in Temecula. This summer she did an externship at the Southwest Justice Center under the mentorship of Judges Angel Bermudez and Stephen Gallon.



22 *Id.*

23 See *Jacobson v. Massachusetts* (1905) 197 U.S. 26.

24 See *Zucht v. King* (1922) 260 U.S. 174, 176; *Hartman v. May* (1934) 151 So. 737.

AGE DISCRIMINATION BY ANY OTHER NAME: A SURVEY OF RECENT ADEA LAWSUITS IN CALIFORNIA

by Jeff Olsen

With more employees ages 65 and over staying in the workforce, an increase of over 200% between 1985 and 2015,¹ the issues surrounding age discrimination in today's labor landscape should draw consideration from employers and employees alike. If a rose by any other name would smell as sweet, someone should alert California employers to this adage; over the last year or so, a steady stream of lawsuits against well-known companies cite a variety of creative ways in which employers have tried unsuccessfully to dance around the age discrimination laws. Employees and their counsel are alert and are calling out employers on practices they may have been getting away with for decades.

According to the EEOC, there has been a dramatic increase in the number of age discrimination claims filed over the last 15 years, ranging from 14,141 claims filed in 1999 to 20,588 claims filed last fiscal year in 2014.² Whether accomplished by individualized insults or carefully crafted "refreshing" or restructuring of entire workforces, California employers have proven that age discrimination is alive-and-well in many forms. As the data suggests age discrimination remains an unfortunate reality in today's workplace, this article will survey recently-filed cases in California showcasing claims related to the Age Discrimination in Employment Act ("ADEA") and other related laws.

Recent ADEA Cases

On April 22, 2015, Robert Heath, a 64-year old job applicant who was interviewed by Google but ultimately denied an engineering position despite his 30 years of experience, filed a putative age discrimination class action against the tech giant.³ In his complaint, Heath suggests Google only feigns its attempts to attain age-diverse workforces by advertising that they recruit older applicants, but in reality, ultimately refuse to hire them in violation of ADEA and similar California laws prohibiting employment discrimination based on age for people 40 and older.

Heath's complaint cites statistics to accuse Google of systematically discriminating against its applicants, effectively hiring younger employees on average: "Workforce statistics for 2013, as kept by the U.S. Department of Labor, indicate a median age of all U.S. workers of 42.4 years old...

[but...] Google's pattern and practice of age discrimination [results in] a workforce with a median age of 29." (emphasis added) Heath seeks to represent a proposed class of any Google applicants over age 40 who were not hired dating back to August 2010. According to the complaint, the proposed class "is believed to be in the thousands."

Interestingly, Heath's complaint also references a prior age discrimination case against Google from 2004. In that case, the plaintiff claimed he was subjected to constant age-related harassment by his Google supervisors and co-workers, being called "obsolete," "too old to matter," and an "old fuddy-duddy." Google settled that 2004 case for an undisclosed amount.⁴

This is nothing shocking, of course, as employers in California's tech industry have been battling age discrimination complaints in the public eye for quite some time. In 2013, Facebook settled an age discrimination complaint after it included the phrase "Class of 2007 or 2008 preferred" on their job advertisements. Signaling employer preferences for particular graduation years in job postings can discourage applicants over the age of 40 from applying. As of 2014, other tech monsters Apple, Yahoo, Dropbox, and video game maker Electronic Arts all had job openings listed with a preference for "new grads."⁵

The EEOC now specifically warns against using "recent graduates" and similar terms on job postings,⁶ but employers continue to recruit in legal shades of grey. For example, armed with poetic license, tech employers are now marketing their ads with preference to hire "digital natives" rather than any particular class year.⁷ In October 2015, Twitter is set to go to trial to defend an age discrimination claim against an ex-employee who claims he was fired at the age of 57 after he got kidney stones and was replaced "by several employees in their 20's or 30's."⁸

Age discrimination isn't only limited to the tech sector, though. On March 18, 2015, grocery store giant Trader

4 *Reid v. Google*, No. 04-CV-023646, *case dismissed* (Cal. Super. Ct., Santa Clara County Dec. 19, 2011).

5 Giang, Vivian. *Fortune Magazine. This is the latest way employers mask bias*, lawyers say. May 4, 2015. Web. 19 Aug. 2015. <<http://fortune.com/2015/05/04/digital-native-employers-bias/>>

6 Prohibited Policies and Practices. <<http://www1.eeoc.gov/laws/practices/index.cfm?renderforprint=1>>

7 *Id.*

8 *Taylor v. Twitter Inc.*, No. CGC-14-540444, *complaint filed* (Cal. Super. Ct., S.F. County July 9, 2014).

1 Bureau of Labor Statistics. 19 Aug. 2015. <<http://www.bls.gov/cps/demographics.htm#age>>

2 <<http://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm>>

3 *Heath v. Google Inc.*, No. 15-1824, *complaint filed* (N.D. Cal., San Jose Div. Apr. 22, 2015).

Joe's was hit with a massive class action suit claiming age discrimination on a nationwide level.⁹ With stores in nearly 40 states and nationwide revenues of approximately \$12 billion per year, the putative class action complaint alleges that Trader Joe's went through a company-wide "refresh" of its workforce in around April or May of 2014, which "systematically demoted employees aged forty or older who held upper-level positions and replaced them with younger, less-qualified employees."

The complaint notes four primary positions in which Trader Joe's employs workers at their grocery store locations: "Crew"; "Merchant"; "Mate"; and "Captain." According to the complaint, plaintiff and other older workers learned of the veiled restructuring via corporate memoranda. For example, rather than demotions of specific elder employees, all " 'Merchant' employees who were over the age of forty [were] demoted to 'Crew' [and] suffered a substantial reduction in hours and were no longer eligible for overtime pay."¹⁰ Overall, the complaint alleges a systematic loss of pay and cut hours, vacation and health benefits as a result. On August 4, 2015, the federal class action was transferred from the Northern District to proceed in our local Central District.¹¹

Conclusion

With increasing percentages of older workers in the labor force, both employees and employers should educate themselves about issues relating to age discrimination in hopes that it can be reduced or avoided. In 2013, an AARP study¹² found that approximately two-thirds (64%) of workers between the ages of 45 and 74 had seen or experienced discrimination based on age. Of those, an astounding 92% percent of workers believed age discrimination in the workplace is "very" or "somewhat" common. One might expect similar beliefs among members of potential juries. Regardless of whether worker perceptions align with reality, it certainly appears that more and more workers have been speaking out against their employer's alleged practices.

Jeff Olsen is an associate in the labor and employment department of Gresham Savage. Jeff graduated and received his J.D. from the Pennsylvania State University, Dickinson School of Law in 2011 and his Master of Science in Human Resources and Employment Relations in 2012.



⁹ *Garlough v. Trader Joe's Company*, No. 3:15-cv-01278, complaint filed (N.D. Cal. March 18, 2015) 2015 WL 1299258.

¹⁰ *Id.*, Complaint at ¶ 27.

¹¹ *Garlough v. Trader Joe's Company* (N.D. Cal., Aug. 4, 2015, 15-CV-01278-TEH) 2015 WL 4638340.

¹² AARP. *Staying Ahead of the Curve 2013: AARP Multicultural Work and Career Study Perceptions of Age Discrimination in the Workplace – Ages 45-74*. <http://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2013/Staying-Ahead-of-the-Curve-Age-Discrimination.pdf>

MEMBERSHIP

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

Ricson C. Dakanay – Law Offices of Michael A. Scafiddi, San Bernardino

Malalai Farooqi – Law Offices of Michael A. Scafiddi, San Bernardino

Tina Flores (S) – Law Student, San Jacinto

Samantha L. Hart – Walker & Mann, Rancho Cucamonga

Dave K. Kim – Social Security Administration, San Bernardino

Adam M. Jackson – Wallin & Klarich, Riverside

Ruth E. Lecaro (S) – Law Student, Moreno Valley

James A. Long – Tyler & Bursch, Murrieta

Steven E. Moyer (R) – Retired Attorney, Rancho Mirage

Marvin Powell, Jr (S) – Law Student, Riverside

Belal (Bill) Rahman – Rahman Trautman & Associates, Hemet

Shaana Dionne Ramos (S) – Law Student, Riverside

Jordan Marie Ray – Court of Appeal, Riverside

Megan E. Scafiddi – Law Offices of Michael A. Scafiddi, San Diego

Michelle A. Scheinman – U.S. District Court, Riverside

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DRS MEDIATOR PROFILE: ROB SCHELLING

by Krista Goodman

Editor's Note: We at RCBA Dispute Resolution Service, Inc. (DRS) want to introduce you to the mediators on our panel who dedicate their time and legal expertise to Riverside County's public benefit alternative dispute resolution (ADR) programs. We hope you enjoy learning more about Attorney Rob Schelling, whom we're extremely grateful and privileged to have involved in these programs.

"If it's to be summed up, my mediation practice would be mediation for humans – not for litigants, for humans," Attorney Rob Schelling described his approach to alternative dispute resolution (ADR) in legal disputes. He frequently engages ADR methods to help resolve cases in his private practice, and also gives generously of his time and legal talent to several ADR programs provided through the Riverside County Superior Court and RCBA Dispute Resolution Service, Inc. (DRS).

"What I enjoy most about my practice is the interaction with people. Clients don't come into my office unless they've experienced a major life event – they've lost a loved one, they've been attacked by a dog, they have been in an accident and injured, their elder parent has had property and money stolen from them, or they've been involved in a real estate transaction that has gone bad... and to be able to help them get through that experience and reach a positive outcome for them has always inspired me," Mr. Schelling explained.

He has been a private sole practitioner for all of his 28-year legal career. Today, his office is located in Menifee, where he practices civil litigation, primarily representing plaintiffs in financial elder abuse, dog bite, premises liability and real property litigation.

"When they come to you in these circumstances, they transition from a hard experience into a world they don't fully understand. The legal community speaks a language they don't fully understand, and it operates under time constraints and rules that are difficult for them to comprehend," he said. "Trying to bridge that gap to help them understand and navigate the legal system in a way that eases the pain for them – that's what really motivates me."

Since 2001, Mr. Schelling has served on both the Riverside County Superior Court's Civil Mediation Panel for mandatory court-appointed mediations and its Judicial Arbitration Panel.



Rob Schelling

Barrie Roberts, who once coordinated ADR services for the Court, had a profound impact on Mr. Schelling's mediation practice. "I've had a passion for mediation for quite some time, but my involvement with the Court really changed when Barrie Roberts started working for the Court," Mr. Schelling remembers. "Not only did she make it possible for others and myself to receive the Straus Institute for Dispute Resolution training, she exuded such a passion and enthusiasm for mediation . . . it was infectious. I think

she significantly helped change our [the Riverside legal community's] outlook on resolving cases."

Mr. Schelling has mediated for the Trial Assignment Mediation (TAM) Program at Riverside two to three Fridays a month for more than three years. He also recently joined the new panel for the TAM Program at Southwest, an extension program that launched at the Southwest Justice Center, located in Murrieta, in January 2015.

"The TAM Program is a lot of fun. Not only are the court staff involved delightful to work with, the mediations are quite different than those conducted in your office. I refer to them as 'drive-by' mediations because you don't have the benefit of briefs or other preliminary information on a case," Mr. Schelling explained. "As a mediator, you arrive on Friday morning, you're assigned a case and you jump into the nuts and bolts of it more quickly to help the parties and counsel see the wisdom of resolving their dispute short of starting trial on Monday. This environment also allows you the freedom to be more creative in suggesting possible means to resolution."

Additionally, Mr. Schelling serves on the panel for the DRS Probate Mediation Program, wherein the parties receive three hours of mediation at no cost through the program. Both TAM programs and the DRS Probate Mediation Program are funded in part by the Dispute Resolution Programs Act (DRPA) through Riverside County and administered by DRS in collaboration with the Riverside County Superior Court.

Mr. Schelling is also working on a chaplaincy training program with a vision to help people going through situations of grief and trauma as victims of crimes. "The chaplaincy training, and the tools you use in crisis inter-

vention and for those suffering from trauma, has helped me become a more effective mediator,” he said.

He reflected on the grief his family felt over the death of his 5-year-old granddaughter, due to cancer, this past year. “You reach levels of sorrow and pain you never knew existed. There were days I would go into the office, turn on the computer and find it extremely difficult to function in a meaningful manner. This experience has certainly helped me to be more sensitive to those who come into my office. It has also helped me to be a better listener in my mediations.”

“It’s so easy for us to lose sight of the human element of litigation. . . I view the opportunities that are afforded to me through serving as a mediator (and through the chaplaincy program) as a chance to be able to touch others’ lives in a meaningful way and help them achieve some resolution,” he explained. “There’s so much to learn about human suffering. The more you learn, the better you can communicate with people, touch them and bridge the gap between the pain and loss they experience and the legal process they’re going through.”

One of Mr. Schelling’s passions, outside of his practice, is the annual Riverside County Mock Trial Competition, which is sponsored by the Riverside County Bar Association, the Riverside County Office of Education, and the Riverside County Superior Court, in collaboration with the Constitutional Rights Foundation. He has been involved with Mock Trial for many years as a scoring attorney, and he had the pleasure of assisting Vic Wolf and Mark Easter coach the Woodcrest Christian High School mock trial team. “Being involved with the high school students for Mock Trial has been among one of the most fulfilling activities of my legal career,” he said. “The students never fail to inspire me to be a better person and attorney.”

Mr. Schelling did not take what he would consider the traditional path to becoming an attorney. His family immigrated to the United States from Holland in 1956. They resided in Cerritos (Dairy Valley), where his father worked on a dairy farm, milking cows. Between his junior and senior year in high school, his family moved to Perris, where his parents purchased a small egg ranch. Mr. Schelling was not a model student in high school, describing himself as more of a troublemaker than a student. After completing high school, he attended Riverside City College for a time. He was no better student there, so he decided to join the U.S. Marines. After three years of service, he was discharged early so that he could return home and help his father, who had suffered a heart attack, with the farm in Perris.

Shortly thereafter, Mr. Schelling met his wife. Initially, he worked as a real estate salesman. This was the time of

spiraling interest rates and it was difficult to support a family in real estate and it wasn’t a career path he found personally fulfilling. It was during this time that he responded to advertisement for law school.

In his early thirties with a young family and while continuing to work full-time, he started law school full-time at Western State University School of Law at Fullerton. He completed school in three years and passed the California State Bar in June 1986.

His early practice was focused exclusively on lemon law cases. “It was a wonderful area of law at that time. It was brand new. I got to litigate against a lot of great defense lawyers. I also learned much about how to resolve cases. It was during this time my understanding of the human element of litigation began to take shape,” he remembered.

Mr. Schelling’s first office was in Riverside. In 1994, he closed that office and worked out of his home for a few years in order to spend more time with his children and to help his wife, who suffers from a chronic illness. In 1997, his family moved to Riverside. After a bout with colon cancer, he opened an office in Perris. In 2007, he moved his private practice to Menifee.

Mr. Schelling and his wife Kathy have been married for 35 years. They have two sons and one daughter. Their son Eric, married to Kimee, lives in Anacortes, Washington with two children. Their son Joel, married to Ashley, also lives in Anacortes, Washington. Their daughter Leah, married to Andy, lives in San Luis Obispo, California. Mr. and Mrs. Schelling’s nephews Ryan Anderson and Greg Anderson and niece Kristen Vela and their spouses and children are equally as precious extended family.

Mr. Schelling most enjoys spending his spare time with his family. Sundays are usually spent attending church and the remainder of the day with his wife and family. He enjoys traveling to see his children and grandchildren, which is when he and his nine-year-old granddaughter Maddie together enjoy outings to share their mutual love for ice cream. His grandchildren call him “Opa,” which is Dutch for “grandfather.”

For more information about RCBA Dispute Resolution Service, Inc., visit rcbadrs.org or call (951) 682-2132.

Krista Goodman is the Scheduling Coordinator for RCBA Dispute Resolution Service, Inc. She completed her Master of Arts in Strategic Public Relations at the University of Southern California and her Bachelor of Arts in Journalism & Media at California Baptist University.



JUDICIAL PROFILE: JUDGE GAIL O'RAKE

by Nicole Williams

I was asked to write an expose on my friend, Judge Gail O'Rane and initially accepted the honor with some trepidation. I wanted to introduce the reader to my friend in a personal way, but I also wanted people to know who she was previously as a lawyer and currently as a Judicial Officer. For me, striking that balance was important because my friend is a well-rounded, balanced, intelligent and down to earth person.

Gail Angela O'Rane was born in Kingston, Jamaica. She has two older brothers and one younger brother. Her family moved from Jamaica to the United States in 1980 to pursue better opportunities for the family. Prior to becoming Judge O'Rane, she served as a Deputy Public Defender from 2000 to 2013. It was during her time at The Law Offices of the Public Defender that we met. I knew instantly we would become friends and realized immediately she would be someone in the legal profession to watch and learn from on a professional level. From 2010-2013 she served as a Deputy Public Defender exclusively representing clients charged with offenses that subjected them to Capital Punishment.

Judge O'Rane received her Bachelor of Arts degree from the University of California, Los Angeles and remains a proud Alumni of the Bruins. If you attend a Bruins' football game you might run into her in the stands proudly cheering on her team with her son, Corey. She received her Juris Doctorate from Pepperdine University School of law, graduating in 1997. In addition to obtaining her Juris Doctorate, she simultaneously obtained a Certificate in Dispute Resolution from the Straus Institute of Dispute Resolution at Pepperdine. The techniques she learned at the Straus Institute would prove useful in her current assignment as a Family Law Judge.

Judge O'Rane was appointed to the bench by Governor Edmund G. Brown, Jr. on August 29, 2013. Since her appointment, she has been assigned to the Riverside County Superior Court, Family Law Division in downtown Riverside. Judge O'Rane has now been on the bench for two years. I remember speaking with her after her first day on the bench and the pride I felt that I could gloat and say "my friend is a Judge." However, I wanted to know from her perspective what it felt like putting on her robe and walking to her bench on that first day. She reflected on that day and told me, it was exciting; it was an opportunity to learn



Judge Gail O'Rane

a new area of law and to help those that came before her.

During her time on the bench she has made a name for herself as a judicial officer that is fair, respectful of litigants and counsel, and as an officer that is thoughtful and intelligent. She upholds the American Bar Association Canons of Judicial Ethics without effort because that is just who she is. Judge O'Rane promotes justice through impartiality and attentiveness to the principles of the law, she runs her daily calendar in an efficient and prompt manner, and possesses exceptional judicial temperament. She understands the serious nature of her assignment; we are after

all talking about one of the most important rights an individual has – the right to raise their children. Her position also deals with the dissolution of marriages and every other issue that may cause a family to need court intervention.

This is where the Certificate in Dispute Resolution comes in. While she doesn't act as a mediator or arbitrator, those courses taught her the ability to listen to parties' complaints and get to the real issues, to make the parties feel like someone in a position of power hears their concerns and understands. Not every party leaves her courtroom happy, but they leave knowing a just decision was made within the bounds of the law and they should know that, above all, the best interest of the children, and the family, was achieved.

While Judge O'Rane loved doing trials, standing before a jury and zealously representing her client, she accepts that that period in her life is over. A new chapter has begun, one that she openly welcomes and looks forward to each day.

When I asked her what she would say to anyone that wanted to be a judge, her advice was simple yet poignant: "Protect your reputation. It takes years to build your reputation but it can be sullied in one day." She also added "...that one should be respectful of opposing parties, the Court and court staff. It is also important to be involved in the community in which you live and work."

Judge O'Rane is an active member of the Richard T. Fields Bar Association, named after Riverside's very own Honorable Richard T. Fields, who is a mentor to Judge O'Rane. Her hobbies include attending Jazz Festivals, traveling, attending UCLA games and snowboarding.

Nicole Williams has been a Deputy Public Defender at the Law Offices of the Public Defender since 2004 and is currently assigned to Department 31.



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BENCH TO BAR

Riverside County Superior Court Customer Service Enhancements Implemented for the Public

The Riverside Superior Court has implemented several new systems to make obtaining court services easier and more convenient for the public:

- **Public Kiosk Enhancement** — Court customers now have the ability to make a criminal payment at the public kiosks stationed in the court's clerical offices. This enhances a system that previously took only traffic payments. The service is free of charge and is provided as a convenience to court customers so they are not required to wait in line at the public counters.
- **Public Queuing System** — A new public queuing system will now be used in some of the busier and more crowded clerical offices of the court. The system is similar to that used by many DMV offices. Upon entering the lobby, the customer signs in using a public kiosk. At that point a ticket is issued using a sequential numbering system according to the assistance needed. Instead of the customer standing in a long line, they will now be able to sit and wait until their number is called. An announcement notifies the person to proceed to an assigned window. As the numbers are called the information is also displayed on three different monitors located throughout the waiting area. Court staff will have information available on the number of customers waiting for assistance and they can call a new customer to their window as soon as they've finished assisting the previous customer. The new system has been implemented in the Moreno Valley Court and the Southwest Justice Center. The new system will provide a more convenient environment for the public, reduce congestion in crowded lobbies, and allow customers to be helped quicker.
- **New Juror Reporting Capabilities** — The court's juror reporting automated system has been updated to include several new and exciting features which include use of text messaging to provide jurors with reporting instructions and reminders as well as automated phone calls to jurors with important information about their jury service.



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