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MAGAZINE

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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, 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.

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

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

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

CALENDAR

JUNE

- 2 New Admittee Swearing-In Ceremony**
10:00 a.m.
Riverside Superior Court, Department 1
- 8 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: David Mitrovich, Crime IQ
Topic: “Criminal Law, It’s a Brave New World: Crime-IQ’s Technology Helps Guide the Way”
MCLE
Lunch sponsored by Trey Roberts of Breathe Easy Insurance Solutions, will be provided to those that RSVP by noon on June 7.
RSVP to rcba@riversidecountybar.com
- 9 Associate Justice John G. Gabbert Fourth Historic Oral Argument & Lecture Series**
Check-in 2:30 p.m., Program from 3:00 p.m. to 5:30 p.m.
Court of Appeal, 3389 12th Street, Riverside
“The Courage to Remember: The Holocaust & The Nuremberg Trials, Seventy Years Later (1946 – 2016)”
RSVP/More info – Paula Garcia at paula.garcia@jud.ca.gov or 951.782.2530.
MCLE - 2 hours General
- 14 Civil Litigation Section**
Noon – 1:00 p.m.
RCBA Gabbert Gallery
This meeting is to plan events; for members to brainstorm new presentations, who/what areas to delve into, etc. All members are welcome.
- 17 General Membership Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: The Honorable Harold Hopp, Presiding Judge, Riverside Superior Court
Topic: “Riverside Superior Court Update”
MCLE
- 21 Joint Meeting of the Family Law Section & Estate Planning, Probate & Elder Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: John Fleishman
Topic: “Social Security Cross-Over Issues for Family Law and Probate Attorneys”
MCLE
- 21 Mixer**
Family Law & Estate Planning/Probate Law Sections
5:30 p.m.
Mario’s Place, 3646 Mission Inn Ave., Riverside
- 24 Brown Bag Lunch Presentation**
Hosted by the RCBA, the Riverside County District Attorney’s Office, and the Riverside County Public Defender’s Office
12:15 p.m. – 1:15 p.m.
District Attorney’s Office, 3960 Orange Street, 10th Floor, Riverside
Speaker: Josh King, Chief Legal Officer, AVVO
Topic: “Someone Online Hates You – Ethical & Effective Responses to Negative Online Feedback”
MCLE - 1 hour Ethics
Register - <http://tinyurl.com/AVVO-2016>
- 28 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Alexandra Ward
MCLE





by Kira L. Klatchko

Earlier this year, I wrote to you about the RCBA's effort to join with our local courts, legislators, and with the judicial branch, in an effort to secure additional resources for the Inland Empire. As part of that effort, the RCBA recently hosted a Legal Leadership Summit. This Summit brought together important stakeholders to address the acute legal needs in our community. While I cannot share with you the entire discussion in this short column, I did want to summarize for you several key parts of the Summit. My primary purpose in sharing this information is to highlight significant issues in our community and invite RCBA members to become actively involved in finding ways to address them.

One major issue continues to be underfunding. Riverside County Superior Court Presiding Judge Harold Hopp briefed our group on efforts to address the issue, including proposed legislation that would shift judicial positions to Riverside County and away from other counties. He also stressed the need to fill vacant judicial and interpreter positions, and urged qualified candidates to apply. The federal courts also are in need of judicial resources; Riverside district and bankruptcy courts are as underfunded as their state counterparts relative to other metropolitan areas. Both the district attorney's office and public defender's office also are in need of additional funding. These problems are ongoing, but the RCBA has created a standing Advocacy Committee designed to address these issues going forward. The Committee is comprised of local

stakeholders and RCBA members, and will be examining a variety of legislative and judicial branch efforts to address the acute need for resources. These problems will only be solved with consistent pressure from all segments of our community, and we welcome your support and involvement.

Another major issue addressed at the Summit was the growing justice gap in our community. A significant portion of the local population lacks the resources required to hire a lawyer. Summit participants identified numerous substantive areas of legal need where the involvement of a lawyer would benefit our underfunded and overcrowded courts while significantly improving the lives of pro per litigants. These areas of law included family, landlord/tenant, social security, debt collection, and bankruptcy law.

As a result of discussions at the Summit, the RCBA will work to provide additional support to the court and to litigants in these areas. In the coming months, the RCBA will be working with the Superior Court and with the Court of Appeal in an attempt to expand pro bono mediation programs. We will also be looking to expand existing programs providing low- or no-cost services to litigants in these substantive areas. For these efforts to succeed, we will need volunteers. If you have an interest in learning more about how you can get involved, please contact me or RCBA Executive Director Charlene Nelson.

The RCBA also recognizes the need for increased community involvement. As several of our Summit participants noted, lawyers have an important role to play in civics education. It is difficult to expect support for lawyers and the judicial branch if our community does not understand what we do. In an effort to begin addressing that issue, we will be working to expand our existing Adopt-A-High School program and to partner with other local legal groups providing community outreach and education to high school, primary, and middle schools. Again, these efforts will not succeed without support from RCBA members, and we welcome your involvement.

On behalf of the RCBA, I extend my gratitude to all who participated in the Summit. I particularly appreciated the thoughts and contributions of County Counsel Greg Priamos, District Attorney Mike Hestrin, Public Defender Steve Harmon, County Law Librarian Victoria Williamson, Presiding Judge Harold Hopp, Court Executive Officer Samuel Hamrick, Judge David Bristow, Justice Carol Codrington, and Judge David Chapman. Special thanks also to the Presidents of the Desert Bar, Southwest Bar, Richard T. Fields Bar, Federal Bar, and Hemet/San Jacinto Bar for their participation and commitment to working with the RCBA to address these important issues.

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 a vice chair of the appellate practice at Lewis Brisbois Bisgaard & Smith, where she is a partner.



BARRISTERS PRESIDENT'S MESSAGE

by Christopher Marin



As our year winds down, we get ready to bring in the next program year by electing new officers to sit on the Barristers board. Our regularly scheduled election date is June 8, and plans are currently in the works to gather at a casual restaurant in downtown Riverside. More details will be posted on our Facebook feed as these plans

get confirmed.

After putting out a call for nominees both in my monthly message and at various Barristers events, here is the list of candidates who are nominated for offices:

President – Erica Alfaro
Vice President – Julianna Crawford, Kris Daams
Secretary – Priscilla George
Treasurer – Nesa Targhibi

Member-at-Large – Julianna Crawford, Breanne Wesche
I will also serve on next year's board as the Immediate Past President. Thank you to everyone who submitted nominations. If you were not nominated but are interested in serving on next year's board, you face the uphill challenge of a write-in campaign. Or, there is always next year. In the meantime, I would also encourage you to come out to future events and get to know other young attorneys.

As I had mentioned previously, Erica Alfaro has coordinated a committee to plan social events to allow us to get out, interact and have fun. Our May event was miniature golf at the Glo indoor golf course at the Tyler Galleria. I was there, and I can tell you that everyone who attended literally had a ball (mine was green). As we head in to the summer, we welcome comments for future events, especially to help us beat the Inland Empire heat.

Christopher Marin is a sole practitioner based in Riverside. He can be reached at christopher@riversidecafamilylaw.com.



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TO ASSUME OR REJECT: UNEXPIRED REAL PROPERTY LEASES IN BANKRUPTCY

by Cathy Ta

When a debtor files for bankruptcy, certain contracts that are executory such as unexpired real property leases may be assumed or rejected as part of the bankruptcy process. This ability to assume or reject has significant implications in the context of a debtor who is a lessor or a lessee – from offering a debtor-lessor or lessee a way to continue business operations wherein the lease is an essential component to its operations to relieving a debtor-lessee from future performance obligations that have become too burdensome.

What is an Executory Contract?

The Bankruptcy Code provides that a contract may be assumed or rejected *only if* it is an executory contract or an unexpired lease, subject to bankruptcy court approval and certain limitations.¹ If a contract or lease has terminated prior to the bankruptcy filing date, otherwise known as the Petition Date, it would be non-executory and incapable of assumption or rejection.

While the Bankruptcy Code does not define what is an executory contract, the 9th Circuit has adopted Countryman's² definition, which is a "contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other."³ This means that if one party has substantially performed its side of the bargain, such that that party's failure to perform further would not constitute a material beach excusing performance by the other party, the contract is *not executory* and cannot be assumed or rejected. Whether a lease is unexpired and otherwise executory would be determined by this definition.

Significance of Assumption or Rejection

If a real property lease is unexpired and otherwise executory, a debtor in possession or a trustee charged with administering the bankruptcy estate could assume or reject it.

If assumed, the lease would resume in full force and effect, despite the bankruptcy filing and even when the debtor has defaulted under the lease as long as the default is cured or adequate assurance of future cure is provided. Further, if assumed, the lease may be sold and assigned for value, too. Typically, the rights of the non-debtor party to the lease are limited to challenging whether or not the assignee of the lease can provide adequate assurance of future performance or the adequacy of any cure. Thus, the power to assume and assign an unexpired lease allows a debtor in possession or trustee to maintain and maximize whatever value there may be left of the bargain under the lease.

Conversely, if the lease is rejected, the debtor in possession or trustee would be able to walk away and otherwise be relieved from future performance obligations under the lease. This includes having to surrender the real property almost immediately. Under the Bankruptcy Code, the rejection would be treated as if a breach of the lease had occurred immediately before the Petition Date, regardless of when the actual rejection is made. The non-debtor party would have a claim for damages which would be administered as part of the bankruptcy process, including being subject to payment of pennies on the dollar and to the debtor's discharge should there be one.

Limits on the Decision to Reject or Assume

While a debtor in possession or trustee exercises the decision to assume or reject an unexpired lease, there are certain time limits after which automatic rejection occurs. Generally, in a chapter 7 case and with respect to a residential lease, a debtor or trustee has 60 days after the Petition Date to assume or reject it, after which, the lease is deemed rejected. In all other cases, the general time limit to assume or reject before automatic rejection occurs is at any time prior to confirmation of a plan of reorganization. Similarly, as a lessee under a nonresidential lease, a debtor in possession or trustee has until the earlier of 120 days after the Petition Date or the entry of an order confirming a plan to assume or reject the lease before it is deemed rejected.

Further, while a debtor in possession or trustee, as the lessor may reject an unexpired lease and walk away

1 11 U.S.C. § 365(a).

2 Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 Minn. L. Rev. 439, 460 (1973).

3 *Pac. Express, Inc. v. Teknekron Infoswitch Corp. (In re Pac. Express, Inc.)*, 780 F.2d 1482, 1488-89 (9th Cir. 1986).

from the lease, that decision would not extinguish all the rights a lessee may have under the lease. That is because under the Bankruptcy Code, the lessee will have a *choice* between treating the lease as terminated as a result of the rejection, or if the term of the lease has commenced, retaining their rights under the lease, such as the rights of possession and quiet possession, until the end of the term, including any rights of renewal or extension.

Bankruptcy Goals

While the bankruptcy power to assume or reject unexpired real property leases is not unfettered, the power

does serve the central goals of bankruptcy law, which is to provide a debtor a financial fresh start and to maximize the value of a bankruptcy estate for the benefit of creditors. Should that include continuing with an unexpired real property lease through assumption or disposing of the lease through rejection would be up to the debtor in possession or trustee.

Cathy Ta is an attorney at Best Best & Krieger LLP. She practices in the areas of insolvency, bankruptcy and business litigation.



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THE DANGERS OF IDLE PROPERTY: SQUATTERS RIGHTS IN CALIFORNIA

by Sarah Mohammadi

Imagine that you live in Colorado, but own a vacation home in California. You love California, but are only able to visit once a year during the summer, while your kids are on vacation from school. Typically you and your family will spend the entire month of July enjoying your vacation home. During the rest of the year, the house is vacant with the exception of occasional renters. In 2015, you and your family decided to take your summer vacation somewhere other than California. In order to afford the vacation, and your summer home, you decided to rent your California abode to a couple during the months of June and July. On July 31, 2015, that couple vacated your home - or so you thought.

On July 1, 2016, you and your family land in California for your annual summer vacation. Upon arriving at the vacation house, there are unrecognized cars in the driveway. You walk up to the door, and ring the doorbell. You hear voices inside, but no one answers the door. Against your better judgment, you try to use your key to get into your home and confront the intruders, only to find that your locks have been changed. You see the curtains by the window move and recognize the faces peering out at you. It is the couple who rented your home during the summer of 2015. You immediately call the police to inform them of the intrusion. You explain that this couple rented your home for two months in 2015, and may have been staying there rent free since then. To your dismay, the police cannot help you – at least not yet. The couple has been living in your home for over thirty days continuously, which provides them with protections under California's landlord-tenant laws. The police inform you that in order to remove the couple from your home you will likely need to file eviction proceedings in court, despite the fact that they have not paid any rent to you since May 2015. The couple is holding your vacation home hostage.

You contact an attorney in order to determine how to get possession of your property back. The attorney informs you that you will have to pursue an unlawful detainer action. He explains that an unlawful detainer is a lawsuit seeking court authorization to terminate a tenancy. That lawsuit can also seek collection of unpaid rent. However, before you can pursue the action, you must provide the couple with notice of the intent to terminate the tenancy.

Your attorney informed you that the first step to take is to prepare a notice informing the couple that they are to vacate the premises within three (3) days of receiving the notice or pay all currently outstanding back rent.¹ This notice may be served through one of the following means: (1) personal service; (2) substitute service; or (3) if neither personal service nor substitute service can be effectuated, by affixing a copy in a conspicuous place on the property and sending a copy through the mail addressed to the couple.² It is virtually certain, based on the behavior of the couple that you will be forced to post and mail the notice, and that they will ignore the notice and continue to reside at the vacation home rent free.³ The attorney informs you that if the couple does not vacate the property within the specified time frame, they will be guilty of an unlawful detainer because they “continue [to hold the property in] possession...without the permission of [their landlord]... after default in the payment of rent...and three days’ notice, in writing, requiring its payment...”⁴

The next step is to prepare the unlawful detainer filing.⁵ The complaint for unlawful detainer must be verified, set forth the facts that you depend on in seeking recovery from the couple, describe the property with reasonable certainty, explicitly provide the amount of back rent owed and state the manner of service of the notice to pay rent or quit.⁶ The complaint may also explain the circumstances surrounding the couple's fraud.⁷ Lastly, the complaint should attach the notice, and the lease that you had with the couple back in 2015.⁸ Once you have served the couple with the unlawful detainer action, they will

1 California *Code of Civil Procedure* §§ 1161, 1162.

2 California *Code of Civil Procedure* § 1162. There are requirements to attempt personal and substitute service in advance of posting and mailing the notice.

3 On the off chance that the couple actually remits payment to you for back rent, you will still have exercisable options to have them vacate the property. However, that process will be more lengthy than if the couple simply ignores the three day notice to pay rent or quit.

4 *Id.*

5 California *Code of Civil Procedure* § 1166.

6 *Id.*

7 *Id.*

8 *Id.*

have an opportunity to respond.⁹ Their period to respond will extend this process by at least another five days.¹⁰

Your attorney explains that the couple will hopefully ignore the complaint, allowing you to take their default.¹¹ If the couple answers the complaint, the proceedings will take additional time to complete. However, if they fail to answer, and your attorney takes their default, then you will have be able to enter a judgment against the couple and issue a writ of execution thereon.¹² If the judgment is not paid within five days, the judgment can be enforced for the full amount and for the possession of the premises.¹³ Once you have a judgment and a writ of execution, the

9 California Code of Civil Procedure § 1167.3.

10 *Id.*

11 California Code of Civil Procedure § 1169.

12 *Id.*

13 California Code of Civil Procedure § 1174.

sheriff's department will be able to start helping you with removing the couple from your property.

This process will likely take at least two months and will cost thousands of dollars. After all this, one thing is certain—you will not leave your vacation property unattended again.

Sarah Mohammadi is an attorney in the Labor and Employment Practice Group at Best Best & Krieger, LLP. Sarah's litigation practice encompasses, but is not limited to, wage and hour, discrimination, harassment, wrongful termination and contract disputes. Sarah also spends a substantial amount of her practice advising employers on how to comply with California laws.



ANNUAL PAST PRESIDENTS' DINNER

The past presidents of the RCBA spanning 45 years of bar leadership, together with current president Kira Klatchko, Executive Director Charlene Nelson, and guest Presiding Judge Harold Hopp, met for their annual din-

ner on May 19. Participants spent the evening renewing acquaintances, catching up on news, and discussing the state of law practice and the courts.



Front row (l-r): Justice Bart Gaut (Ret.) – 1979, Robyn Lewis – 2011, Judge Chad Firetag – 2014, Justice James Ward (Ret.) – 1973, Art Littleworth – 1971, Sandy Leer – 1991, Theresa Han Savage – 2005, Diane Roth – 1998, Kira Klatchko – 2015, Richard Swan – 1977, Brian Percy – 2002.

Back row (l-r): Judge Steve Cunnison (Ret.) – 1981, Harry Histen – 2009, Judge Craig Riemer – 2000, Dan Hantman – 2007, Michael Clepper – 1983, David Moore – 1984

Past President attending dinner but not pictured: Jim Heiting – 1996

A SAFETY NET FOR HOUSING: “SECTION 8”

by Darrell K. Moore

A powerful tool in the societal effort to prevent homelessness is the so-called “Section 8” program. “Section 8” is a commonly used term encompassing a number of different housing programs. The focus of this discussion is on the “voucher” program that is in widespread use throughout Riverside County.

Each year, congress provides funding to the Department of Housing and Urban Development (“HUD”). HUD provides funding to local government entities to locally administer the voucher program. The governing rules of this program can be found in the Code of Federal Regulations, Title 24 Section 982.1. Additionally, HUD’s website www.hud.gov provides substantial information.

The Housing Authority of the County of Riverside (HA) is the local entity that is responsible for administering the “voucher” program for all of Riverside County. HA has two physical offices, one in Riverside and one in Indio along with a website, www.harivco.gov.

In 1937, “Section 8” was created in the midst of the great depression, and while that depression has long since passed, there are currently 9,062 vouchers in use in Riverside County today. There are another 45,000 people on the current waiting list seeking to obtain a voucher. The anticipated wait time for the people at the bottom of that list currently exceeds five years.

That long wait can be avoided if a particular individual is entitled to a preference. One type of preference is that provided to veterans; 539 of the 9062 vouchers are set aside for veterans with the objective of eliminating homelessness for all veterans. That program has been put into effect with great success with a dramatic decrease in the number of homeless veterans in Riverside County.

The voucher program was designed to benefit both the landlord and the renter. The landlord benefits by the assurance of a guaranteed rent payment. Any landowner/landlord who would like to avail themselves of this program may do so by contacting the Housing Authority and going through their vetting process. The rent is paid directly by the Housing Authority to the landlord. The benefit to the renter is that, in addition to the help with the rent payment, the renter is provided

with housing that has been inspected and found to have met certain quality standards.

While the benefits are straight forward, the “voucher” relationship is complex and involves three distinct contractual relationships. The first is between the HA and the participating landlord and is known as the HAP, Housing Assistance Payments. A second exists between the HA and the renter, which consists of the eligibility questionnaire and the award letter. And finally, there is a contract between the landlord and the renter, typically a lease.

Much is at stake when a legal problem arises in the context of a voucher. The HA has invested time in vetting the landlord, inspecting the property and screening the renter for eligibility. The landlord has been subject to property inspections and a vetting process. The tenant has gone through a long wait as well as rigorous screening.

When a legal problem arises within the context of a voucher, the first order of business is to find out which contract is at issue. If the issue is between the Housing Authority and the renter over the terms and conditions of the renter’s continued eligibility for the voucher, there is an administrative hearing process. These procedures are complex and the specific time deadlines can be exacting. A useful guide used to navigate the process is the *HUD Housing Programs: Tenants’ Rights, 4th Edition*, published by the National Housing Law Project.

If the problem arises out of the relationship between the Housing Authority and the landlord, there are handbooks available to a landlord on the HA website. Generally speaking, if the landlord refuses to continue to adhere to the requirements of the program, HA will drop them from the program, discontinue rent payments or the landlord will withdraw from the program.

Finally, if the legal issues are between the landlord and the tenant, then the possibility of an eviction looms. The eviction follows the routine state court procedures found at *Code of Civil Procedure*, §1159, et seq.

The *California Practice Guide “Landlord-Tenant”* published by the Rutter Group is an excellent resource. Those eviction lawsuits look no different than most other eviction lawsuits except that an eviction judgment is a particularly harsh result for a renter with a voucher.

In addition, to losing a place to live, the renter faces the possibility of being ineligible for future housing assistance. Consequently, a paramount consideration for any settlement agreement is that it be structured so that it does not adversely impact the renter's ability to remain eligible for continued housing assistance.

Many voucher recipients have families with children. Given the time and effort put into the "voucher" and given the substantial societal benefit to having families in stable housing, great care should also be given to preserving the relationships between the HA, the landlord, and the renter.

Darrell K. Moore, Esq., is the Deputy Director of Inland Counties Legal Services, Inc.

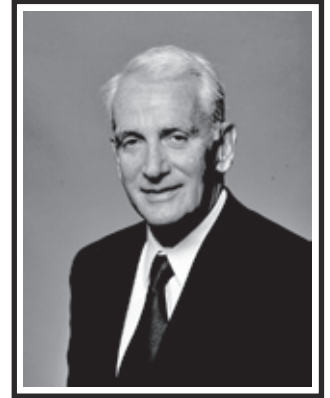
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WHY RENTERS SHOULD LOOK AT BECOMING BUYERS

by Steve Bertone

The Millennials are not as willing to become homeowners as their parents were. Coming off the “great recession”, there are many fears and misconceptions about homeownership that we need to explain. For the past two decades prior to 2007 in California, appreciating home values were as certain as death and taxes. Then, people found out that real estate is an investment and like any other investment, it goes up and down. When you shake up people’s core values, people will shy away from something they do not understand. However, unlike any other investment, a home provides an emotional bond and basic shelter that doesn’t come from your stocks. Apartments are a great transitional solution but do not satisfy that long term desire in all of us to put down roots. You never really pass from children to adult, until you buy your first home.

The advantages of homeownership are numerous. The financial advantage of building equity and owning something of your own has always had a strong draw. Buying a home expresses commitment, a sense of self-worth, and a desire to belong in a community. You no longer have to put up with noisy neighbors, absent landlords, other tenants that take no pride in the property, and you finally get something back for the money you spend. Your home will become an extension of your own individual style. Gone are the restrictions on colored walls, the size of your dog, and where or when you do your laundry. A home provides a unique sense of freedom and allows you to put down roots at the same time.

What has changed in home buying is the way in which you are able to finance a home. Gone are the excess of stated income, no documentation, and negatively amortized adjustable rate mortgage loans. These were the things that caused the real estate problems in the last recession. Qualifying for a loan is now more of a straight forward process. How much home you can afford is determined by three factors: your income less your other debts, the history of your paying debts expressed in a credit score, and the amount you have for a down payment. Beyond the traditional down payment of 25% of the home price, there are State and Federal programs that range from 95% to even 100% of the purchase price. With the addition of PMI (Private Mortgage Insurance) you can get a traditional Bank loan to 97%. Closing costs can even be financed into the rate or covered by the seller moving you in for just the minimum down payment requirements. These programs all have limiting factors that tie back to the home’s location, your income, your credit score and if grant money is available. The best place to find out what all your options are is from a mortgage professional.

Steve Bertone is the Branch Manager at Provident Bank Mortgage, a division of Provident Savings Bank. Provident is celebrating 60 years of strength in the local community and their mortgage division has several locations with seasoned mortgage professionals available anytime to assist in the home buying process. Provident has an excellent reputation in the real estate community with great service and low rates. They offer no fee, no obligation pre-approvals, applicable to any home in California. They can explore all options and walk even the most nervous first time homebuyers through the entire process.



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RCBA MENTORING 2.0

by Michael Gouveia

“If I have seen further, it is by standing on the shoulders of giants.”

Sir Isaac Newton

In the Academy Award nominated movie *Brooklyn*, 1950's Irish immigrant Ellis Lacey meets a world wise Irish immigrant who shows her the ropes of traveling across the ocean. “Don't eat when you are on the ship. Look like you know where you are going and eyes forward.” Ellis takes her advice and arrives in Brooklyn, New York to start her new life in America.

Ellis stands on the shoulders of those that have gone before.

In our legal careers, there have been minor and major mentors as well as teachers and guides that have helped us along the way. From the cranky judge who pointed out the error of our ways in a full courtroom, to the fellow attorney who took pity on our bewildered look when a foreign procedure popped up, to the clients who taught us how the law is practiced, each of these people have given to our careers and made us the lawyers we are today.

Now is the time to repay the debt we owe to those that have helped us. It is time to thank the giants whose shoulders you stood on. It is time to make a difference in the next generation of lawyers.

Join us as we kick start the RCBA's mentoring program.

In the next few months, we will be surveying the local bar to see what works in mentoring the next generation and what does not work. Does the traditional model work? What do new attorneys want? What are mentors willing to give? What is a mentor in 2016? These are the questions we will be asking.

Someone showed you the ropes on your journey, now it is your turn to return the favor.

Michael Gouveia, chair of the RCBA Mentoring Committee, is a sole practitioner, author, speaker and principal at attorney-mentorcoach.com which coaches those making transitions.



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SERVICE ANIMAL LAWS COMPARISON¹

Applicable Law	Americans with Disabilities Act (ADA)	Fair Housing Act (FHA)	
What is protected?	Requires reasonable accommodation by public entities and accommodations for “service animals,” where this means “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.” In some circumstances, this can also extend to miniature horses. Explicitly does not apply to emotional support animals. 28 C.F.R. §§ 35.104, 36.104, 35.136(i) (2010)	Requires “reasonable accommodation” to handicapped persons in housing. 24 C.F.R. § 100.204 (1996) Covers all “assistance animals,” including those needed for emotional support, to the same extent.	Prohibits air travel. “regarded a
Additional Requirements	No size, weight, or breed restrictions allowed. 28 C.F.R. Pt. 36, app. a (2011) May ask ONLY (1) if animal is required due to disability and (2) what tasks it is trained to perform. May not require documentation or proof of certification or licensing. 28 C.F.R. § 35.136(f) (2010) For public accommodations: allows private civil suit, or Atty. General suit, if violations occur; injunction and/or fines of up to \$55,000 for a first violation and \$100,000 for subsequent violations. 28 C.F.R. §§ 36.501-.505 (2010) (asking additional questions or refusing access is a violation)	No size, weight, or breed restrictions allowed; determination of reasonableness based on specific animal in question.	May require animal, or r n
Emotional Support Animals?	No, under Article II and III. Unclear under Article I, which requires “reasonable accommodation” and does not explicitly mention service animals or limit the scope of what is “reasonable,” though they do name service animals as an example of a “reasonable accommodation” in explanatory documents.	Yes, with “reasonableness” determined on a case by case basis. Requires evidence of disability and that animal’s presence will alleviate this in order to waive “no pets” policy. Can still deny access if evidence that specific animal will cause harm or endanger health and safety of others.	Yes, with stating th related disa the pas mental h assessm health pro her profess ONLY requ animal (ra it is a serv verbal assu the animal Pra
Apply to Housing?	No, unless government provided.	Yes.	
Apply to Employment?	Yes. “Reasonable Accommodations” are required; service animals are not explicitly mentioned in Article I, and the EEOC has not issued any limiting instructions. However, with no indication to the contrary, it is logical to assume a consistent definition of “service animal” that must be accommodated throughout the ADA.	No.	
Exemptions & Defenses?	A public accommodation may remove a service animal from its premises if (1) the animal is out of control and effective remedial action is not taken, or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b) (2011) Employees with service animals in food service: “FDA Food Code Section 2- 403.11 prohibits handling of animals, but allows employees to use service animals. Section 6- 501.115 states that service animals may be permitted in areas not used for food preparation. Employees may handle their service animals if, after handling a service animal, the employee washes his hands for at least 20 seconds using soap, water, and vigorous friction on surfaces of the hands, followed by rinsing and drying as per Section 2-301.12.” The Food Code is not binding but provides the basis for interpretation of a business’ obligations. How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (January 19, 2011), http://www.eeoc.gov/facts/restaurant_guide.html		Not require animals sp
Issues to Address?	ADA is a FLOOR and preempts any state or local law that puts an additional burden on disabled persons. Thus, cannot require certification/identification to accommodate claimed service animal, nor ask for details of disability. Violations of ADA’s accommodation provisions are also violations of the Unruh Civil Rights Act. Cal. Civ. Code § 51(f) (2011)		

¹ Information obtained from the California Department of Fair Employment & Housing, <https://www.dor.ca.gov/DisabilityAccessInfo/DAS-Docs/SERVIC>

Air Carriers Access Act (ACAA)	California State Law (CSL)	California Fair Employment and Housing Act
discrimination on the basis of disability in broadly defines disability, includes anyone as having an impairment." 14 C.F.R. § 382.3 (2010)	Provides for standardized identification tags for "assistance dogs" which it defines as "guide dogs, signal dogs, or service dogs." Cal. Food and Agriculture Code § 30850 (2004)** Protects those using guide dogs, signal dogs, or service dogs from additional fees (such as a standard pet fee) for bringing their assistive animal into their residence. Cal. Civil Code § 54.3 (1996)	Prohibits discrimination on the basis of disability in employment and housing; this includes reasonable accommodation in both rental/leasing and construction of housing. Cal. Gov't. § 12927 (2010), Cal. Gov't. §§ 12955-12955.1 (2011)
require 48-hours notice for an emotional support for a service animal on a flight of 8 hours or more. 14 C.F.R. § 382.27(c) (2010)	Makes falsely claiming an animal to be a service animal a misdemeanor, punishable by imprisonment in a county jail for six month or a fine up to \$1000 or both. Cal. Penal Code § 365.7 (1994), Cal. Food & Agriculture Code § 30850(b) (2004) Makes "interfering" with rights of a disabled person (such as disallowing them access) a misdemeanor punishable by a fine not exceeding \$2500. Cal. Penal Code § 365.5(c) (1996)	N/A
in letter from a mental health professional that (1) the passenger has a mental health disability, (2) that having the animal accompany passenger is necessary to the passenger's health, and (3) the individual providing the consent of the passenger is a licensed mental professional and the passenger is under his or her care. 14 C.F.R. § 382.117 (2008) Can request this if they identify animal as a support animal (other than service) or if their statement that service animal does not qualify as a "credible assurance" and there is no physical evidence of animal's status. See 1 Americans with Disabilities: Practice & Compliance Manual § 3:348	No.* *Unruh Civil Rights Act includes by reference FHA protections re: animals as applied to housing for senior citizens. Cal Civ. Code § 51.2 (2010)	It depends. In the workplace, FEHA demands that an employer to "engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations" for a disability "or known medical condition." Cal. Gov't. Code § 12940(n) (2012). Thus, it is likely a case-by-case analysis. In housing, prohibits discrimination based on "disability" only. The absence of "medical condition" in this section tends to indicate that they were not intending to include non-service animals in "reasonable accommodation" provisions. Cal. Gov't. Code § 12955 (2011)
No.	Yes.	Yes.
No.	N/A (goes to FEHA)	Yes.
required to accommodate "certain unusual service animals" – snakes, reptiles, ferrets, rodents, and birds. 14 C.F.R. § 382.117 (2010)	Service Animals are allowed in dining and sales areas "not used for food preparation" only, and employees with service animals must wash their hands after handling the animal. Cal. Health and Safety Code §§114259.4-.5 (2007)	Accommodations can be denied by employers only if they can "demonstrate... that the accommodation would impose an undue hardship," where this means that the accommodation would require "significant difficulty or expense incurred by an employer or covered entity, when considered under the totality of circumstances." Cal. Civ. Code §§ 11065(r), 11068 (2013) Valid defense if any possible accommodation would endanger the health and safety of the disabled party or others, but risk of future harm is not a defense. Cal. Civ. Code § 11067 (2013).
	** This does not exist. Per Dept. of Public Health, done locally through each county's animal control. Descriptions of tag, and processes for obtaining tag, of each county vary widely. (Information from calls to SF, San Jose, SD, LA and OC Animal Control licensing centers, and CA Dept. of Public Health).	

REPRESENTATIONS AND WARRANTIES IN COMMERCIAL LEASES

by Michael Rivera

When entering into a lease of commercial property, it is important for the parties to understand each and every provision and the obligations each imposes. Each provision in a commercial lease is designed to achieve a specific purpose for the landlord and tenant, and is structured to allocate risk or provide a right or remedy to one of the parties. Commercial leases contain provisions in which a party “represents and warrants” that a certain proposition is true. The scope and purpose of this article is (i) to define the meaning and use of certain representations and warranties commonly found in a commercial lease, and (ii) to discuss the risks to be distributed by representations and warranties as they relate to the status of the leased property. The discussion will primarily focus on the tenant’s perspective in a lease negotiation.

Definition and Use of Representation and Warranties

“Representation” is defined by Black’s Law Dictionary¹ as “[a] presentation of fact made to induce someone to act, especially to enter into a contract.” Representations are ordinarily made regarding past or present facts which one party knows or should have known, and which the other party does not know or cannot spend the time or money to learn. Examples of a representation include (i) that a party has the power and authority to enter into the lease; (ii) that the shopping center is zoned for a particular use; (iii) that the premises have not previously and do not currently contain hazardous materials; and (iv) that there are no current or threatened eminent domain proceedings or litigation pending.

“Warranty” is defined as “[a]n express or implied promise that something in furtherance of the contract is guaranteed by one of the contracting parties.”² Warranties are typically made regarding the title to property and its condition, which in a commercial lease is the title to the leasehold and the existence of encumbrances. Thus, a landlord may warrant, for example, (i) that it holds fee simple title to the property; (ii) that the parking and access areas are a part of the property; and (iii) that there

are no encumbrances on landlord’s title other than those revealed in a title commitment.

The distinctions between a representation and warranty are important, as they may determine the remedy available to a party in the event of a breach of the lease. A warranty differs from a representation in four principle ways: (1) a warranty is an essential part of a contract, while a representation is usually only a collateral inducement; (2) a warranty is always written on the face of the contract, while a representation may be written or oral; (3) a warranty is conclusively presumed to be material, while the burden is on the party claiming breach to show that a representation is material; and (4) a warranty must be strictly complied with, while substantial truth is the only requirement for a representation.³

Risks Regarding the Status of Leased Property

Representations and warranties allow the parties to allocate responsibility for risks among themselves. Generally, landlords of real property prefer to make no substantive representations or warranties. Tenants, on the other hand, prefer representations and warranties, covering all aspects of the transaction. From the tenant’s perspective, the main purpose of representations and warranties is to cause the landlord to reveal facts that, together with a period of due diligence, allow the tenant to make an informed decision as to the risk involved and the ultimate value of the lease.⁴

The representations and warranties regarding the status of leased property are specifically designed to require the landlord to disclose facts necessary for the tenant to make an informed decision whether the property is in a condition, both legal and physical, which a tenant is willing to accept. What constitutes an acceptable risk will vary from among tenants. However, these representations and warranties should identify the material risks associated with the property to be leased. Facts surrounding the status of the property are mainly within the knowledge of the landlord, and a tenant will therefore seek to allocate the majority of that risk to the landlord.

³ *Id.*

⁴ Peterson, Edward, *The Effective Use of Representations and Warranties in Commercial Real Estate Contracts*.

¹ 7th ed. 1999, 1303

² *Id.* at 1581

Sophisticated landlords will seek to limit their representations and warranties and argue that much of the risk should instead be addressed by title insurance and a thorough due diligence investigation by tenant. A major function of representations and warranties is that they operate in conjunction with, and may act as a partial substitute for, due diligence by the tenant. The tradeoff between due diligence costs and express representations and warranties are important for the parties to consider.⁵

While a tenant may be able to discover most risks regarding the legal condition of the property via a review of record title, a title report will reveal few, if any, existing physical conditions of the property. A prudent tenant should require representations and warranties with regard to the physical condition of the property, or undertake a series of physical investigations, including a Phase I and geotechnical investigation to surmise the risk of the physical condition of the property. If the landlord will not provide representations or warranties with respect to the physical or legal condition of the property, tenant's added cost of independent investigations should be taken into account when negotiating lease costs. The risk allocation then becomes a cost allocation.

Conclusion

Representations and warranties are important provisions that allocate and reveal risks between the parties in a commercial lease, particularly the risk as it relates to the condition of the leased property. The prudent tenant should assume that the landlord may overlook facts and should pursue every means available to uncover material risks during the due diligence period. No representation or warranty is a complete substitute for the tenant and its counsel undertaking appropriate due diligence. However, the landlord is often times in the best position to make certain representations and warranties and

⁵ J. Cary Barton, "Representations, Warranties, Covenants, and Conditions in Acquisition Contracts," 22nd Annual Advanced Real Estate Law Course (2000).

is often the only party that has access to certain matters not found in the public record which can affect the status of the leased property. Thus, it is of utmost importance that tenants counsel negotiate certain representations and warranties that allocate certain risks to landlord regarding the unknown condition of leased property.

Michael Rivera is an associate in the firm of Gresham Savage Nolan & Tilden. He is in the firm's transaction group where he focuses his practice on assisting clients with the acquisition and lease of commercial real property.





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THE SHARING ECONOMY: LOCAL REGULATION OF SHORT-TERM RENTALS

by *Melissa Cushman*

The last few years have seen a rise throughout the United States in what is referred to as the “sharing economy.” This term refers to situations in which owners rent out something they are not using, such as a car or a bicycle or a house, to a stranger. Arranging the transaction usually takes place via an internet- or app-based service that connects prospective users with potential customers, and that service then takes a cut from the user, the customer, or both, or makes money by some other method, such as charging a membership fee.

Many examples of sharing services exist, including Uber, Lyft, Sidecar, Homeaway, and Mealsharing. Among these, and one of the most famous, is Airbnb, which facilitates the sharing of residences. Airbnb began around 2008 with two designers in San Francisco who were having trouble making their rental payments.¹ They got the idea to rent out some air mattresses on the floor of their apartment to people looking for a reasonably priced place to stay. Inspired by their ability to attract three travelers for \$80 a night, they began to work on expanding the idea from merely renting out their own apartment to facilitating the residence sharing of others. After a couple of years of little progress, Airbnb’s growth has now become so explosive that Airbnb now claims more than 800,000 listings in 190 countries, more than 25 million guests served, and an estimated value in the *billions*, larger than that of some popular hotel chains.

As the popularity of sharing facilitation services such as Airbnb has risen, associated problems have also developed. For example, the vacation rental marketplace appears to be creating problems relating to the pricing and availability of housing in areas with existing problems of pricing and supply. Also, most local governments tax hotel stays, but Airbnb and similar services leave the obligation to comply with local laws to the users, including compliance with local taxation requirements such as Transient Occupancy Tax. In many areas, few users are complying with – or are sometimes even aware of – these requirements. In addition, the temporary renters have sometimes been linked to code

enforcement problems, especially noise, parking, and litter.

Local jurisdictions have used different tactics in dealing with short-term rentals and their related problems. At the moment, the most popular tactic still remains to ignore them completely. A few places, most notably New York City, have banned short-term rentals outright. Other jurisdictions have attempted to regulate these uses to varying degrees, especially in areas where short-term rentals are particularly popular or have resulted in significant problems.

Several jurisdictions throughout California have chosen the regulation route, including the cities of San Francisco, Morro Bay, San Jose, Indio, Rancho Mirage, and Palm Desert, among others. While fewer counties have attempted to regulate on this issue, the County of Riverside (the County) has recently enacted two ordinances relating to short-term rentals or the problems that they can sometime create.

In September 2015, the County Board of Supervisors adopted Ordinance No. 924 relating to multiple enforcement responses to loud or unruly parties and gatherings.² In it, the County recognized that such gatherings often led to excessive noise, excessive traffic, obstruction of public streets, public drunkenness, disturbance of the peace, and litter, among other problems. Ordinance No. 924 sets forth regulations that come into play when the sheriff has to respond multiple times to a loud or unruly gathering and helps the County recover its costs in making these responses. This ordinance applies broadly and is not limited to short-term rentals, but it address some of the types of problems that can occur with them.

In January 2016, the County also adopted Ordinance No. 927, which directly regulates short-term rentals.³ Ordinance No. 927 explicitly recognizes that there has been a substantial increase in privately owned residential dwellings being used as short-term rentals in the County and also notes that these rentals can provide a benefit to the County by expanding the number and type of lodging facilities available to visitors. However,

1 <https://www.airbnb.com/help/getting-started/how-it-works>.

2 <http://www.rivcocob.org/wp-content/uploads/2009/10/924.pdf>.

3 <http://www.rivcocob.org/wp-content/uploads/2009/10/927.pdf>.

due to the potential problems that can arise with short-term rentals, the ordinance recognizes the need to identify a responsible party for problems with short-term rentals and the need to notify neighbors of what to do in case of violations. The ordinance also notes that Transient Occupancy Tax payment requirements apply to short-term rentals. Both County ordinances were in effect in time for the 2016 Coachella Music Festival and Stagecoach, the large, annual influx of out-of-County visitors for which partially spurred the enactment of the County's ordinances, as well as the related regulations of some of the area desert cities.

As local jurisdictions continue to struggle with problems relating to the sharing economy and attempt different ways of managing it, several competing bills have been introduced into the California legislature relating to the regulation of short-term rentals, which may ultimately impact local agencies' ability to regulate them. Unless and until the state acts in a significant way, the sharing economy will likely continue to expand, and its growing pains and the number of local jurisdictions that attempt to regulate it will likely continue to increase for some time, too.

Melissa Cushman is a deputy county counsel with the County of Riverside who specializes in Land Use and the California Environmental Quality Act.



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ARBITRATION CLAUSES IN LEASES

by Boyd Jensen

California law seems to prohibit rental agreements compelling mandatory arbitration. However, there are conflicts in the laws and case authority. California *Civil Code* section 1953 states “any provisions of a lease or rental agreement that of a dwelling by which the lessee (the tenant) agrees to modify or waive any of the following rights shall be void as contrary to public policy...(including) procedural rights in litigation...” Therefore a tenant cannot in advance, at the time of lease signing, waive the right to have a jury trial.¹ There is also California law that seems to allow landlords to force tenants into binding arbitration. *Civil Code* section 1942.1 provides that landlords and tenants may agree in writing to arbitration concerning “the condition of the premises...” The appellate cases cited previously examined the conflict of the two laws and the ostensible conflict remains.

As arbitration procedures suffer from evolutionary growing pains, not just in the drafting but the methods, procedures and costs, consider the following suggestions:

1. Mediation First: In standard residential leases mediation seems to more easily make sense. However, in commercial leases particularly, counsel want to invoke mediation when procedures are so loose and unwritten. However, that actually plays into the hands of the skilled counsel and the knowledgeable client. They are familiar with the rules and the looseness of the environment, which actually provides advantages for resolution, avoiding the constantly migrating plethora of jurisdictionally sensitive case authority about “arbitrations.”

Many responsible arbitration services will provide provisions for leases such as Judicate West which states as follows:

“In the event any controversy arising under this agreement is not resolved through negotiations between the parties, the parties agree to participate in a non binding mediation administered by Judicate West. This mediation must be conducted and completed before any party may commence a civil action or arbitration. Each side shall split the fees equally unless otherwise agreed upon by the parties in writing. If the parties cannot agree on a mediator within 45 days of requesting a hearing, Judicate West will provide 7 names of mediators based on substantive and procedural knowledge, availability and location. Each side will have an opportunity to strike 3 names and rank the remaining names. The numbers will be added together and the mediator whose rank is the lowest, which is most favorable, will be chosen mediator. The mediation shall be completed within 90 days of the selection

of the mediator unless otherwise agreed upon by the parties in writing. The mediation will be conducted pursuant to, and governed by, California *Evidence Code* Sections 1115-1128.”

2. Arbitration Clauses Won’t Save Poorly Defined Lease Terms: arbitration clauses may fail not only for forfeited constitutional rights, but because of “ill defined terms in the lease” which frame the arbitrator or arbitration procedure as irretrievably infeasible. The term “rent,” for example, in a basic lease may be clear, but rent in a commercial lease may cause the collapse of the arbitration process for want of being able to litigate without the formality of discovery and motions. Is it “fair market” rent...improved or unimproved premises? What is the point in time for valuation? How about geography, inducements or comparables? The failure of the landlord and tenant to clearly articulate critical lease terms may condemn the process and prove the lack of the “meeting of the minds” that the purest arbitration clause cannot save.

3. Use Separate Arbitration Agreements: More and more with the diversity of languages in my practice I counsel usage of forms in different languages including arbitration agreements. Customizing the arbitration process, can provide a much more detailed road map for the conduct of the arbitration and demonstrate the discerning and prescient meeting of the minds. Also, be aware that state law and local rent control ordinances not only require some lease provisions, but also prohibit other lease provisions, many of which are commonly found in long efforts at the comprehensive lease document. When a lease contains such an invalid provision the courts will not enforce it and perhaps everything else.

4. Screening Your Applicants and Tenants: Every California tenancy should begin with the screening process. Commercial leases of course have significant individual characteristics and there are obviously many industry screening methods. For the common landlord/tenant agreement, it might be most sensible to perform a search of the internet. Arbitration clauses are certainly valuable and serve an important purpose, but whether it be mediation or arbitration it is a dispute which costs time and money of your clients. Perhaps the most valuable counsel you can offer is to help them advantage themselves to the most effective screening process and drafting those forms and procedures, which keep them as far away from arbitration clauses as possible.

Boyd Jensen of Garrett & Jensen has lived and raised his family in Riverside throughout his 35 year legal career.



¹ *Jaramillo v. JH Real Estate Partners Inc.* (2003) 111 Cal.App.4th 394; compare *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402.

35TH ANNUAL GOOD CITIZENSHIP AWARDS

National Law Day (May 1) is a special day focusing on our heritage of liberty under law, a national day of celebration officially designated by joint resolution of Congress in 1961.

As a part of its celebration of Law Day 2016, the Riverside County Bar Association and Riverside County Superior Court once again sponsored the Good Citizenship Awards (established by the RCBA in 1981) for high school students in Riverside County. The award is presented to those high school juniors who have been designated by their respective principals as exhibiting the characteristics of a good citizen – leadership, problem solving and involvement on campus.

RCBA President Kira Klatchko, Presiding Judge Harold Hopp, Judge Jacqueline Jackson and Judge Helios Hernandez addressed the assembled high school juniors and their parents, teachers and counselors, and recognized their exemplary citizenship and accomplishments.

The recipients receive \$75 cash stipends from the RCBA and the Lawyer Referral Service, as well as certificates of merit from the Riverside County Superior Court and local elected officials. This year, certificates of recognition were given by U.S. Congressman Ken Calvert, U.S. Congressman Duncan Hunter, U.S. Congressman Raul Ruiz, U.S. Congressman Mark Takano, State Senator Mike Morrell, State Senator Richard Roth, State Senator Jeff Stone, Assembly Member Chad Mayes, Assembly Member Jose Medina, Assembly Member Melissa Melendez, and Assembly Member Marie Waldron.

The awards ceremony was held on Friday, April 22, 2016, in Department 1 of the Historic Courthouse in Riverside. The following high school students from around the county were recognized for their good citizenship:

High School Name	Student Name
Abraham Lincoln	Maribel Galarza
Alvord	Pedro Tinoco
Beaumont	Ana Paiz
California Military Institute	Mehran Hossain
Cathedral City	Alexa Terrazas
Centennial	Richard Cho
Citrus Hill	Isabel Molina
Desert Hot Springs	Jesus Amezcuita
Eleanor Roosevelt	Sky Avalos
Elsinore	Deisha Thanh Hughes
Great Oak	Alexander DeSantis



Hemet	Anusha Koka
Hillcrest	Maya El Jawhari
Indio	Luz Acosta
John W. North	Joseph Seabrook
Lakeside	Jacob Breese
La Quinta	Fernanda Diaz
March Mountain	Lia Gonzalez
Martin Luther King	Rachel Priebe
Mountain View	Eric Navarro
Murrieta Valley	Hannah Finger
Norte Vista	Paola Aguirre
Notre Dame	Joshua Peck
Orange Grove	Sebastian Zarate
Ortega	Thomas Carmona Jr.
Palm Desert	Grant Swajian
Palm Springs	Linden Conrad-Marut
Paloma Valley	Seth Harris
Patriot	Angie Castro
Perris	Estefani Guzman
Ramona	Rosalina Ramirez
Rancho Mirage	Rachel Washington
Riverside Christian	Faith Kim
Rubidoux	Edgar Beltran
San Jacinto	Destinee Taylor
Shadow Hills	Paris Burgie
Sherman Indian	Mikelle Ivins
Temecula Valley	Wyatt Barone
Temescal Canyon	Andrea Chabolla
West Valley	Jessica Goodson
Woodcrest Christian	Caleb Russell

Photograph by Michael J. Elderman



2015-2016 GRADUATING CLASS OF THE RCBA- RIVERSIDE SUPERIOR COURT NEW ATTORNEY ACADEMY

by Robyn A. Lewis

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

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

This year, the Academy began its sophomore term in October with the curriculum taught by judges and noted attorneys in the community. Faculty included attorneys Virginia Blumenthal, Jeffrey Raynes, Edward Lear, Jim Tierney, Patricia Law, Brian Percy, Randy Stamen, Jonathan Lewis, Jillian Duggan-Herd, Jeremy Hanson, Greg Rizio, Darren Pirozzi, William Shapiro, Steve Geeting, James Spaltro, Jack Marshall, Jason Sanchez, Justin King, Rima Badawiya, John Lowenthal, Brian Hannemann, Robyn Lewis, and Marlene Allen-Hammarlund. Judges John Vineyard, Gloria Task, Sharon Waters, David Bristow, Bryan Foster, Harold Hopp, Becky Dugan, and Justice Carol Codrington as well as Public Defender Steve Harmon and District Attorney Michael Hestrin also volunteered their time as instructors as did Sarah Hodgson, the ADR coordinator for the Riverside Superior Court, Jamee Rashi and court reporters from Esquire Deposition Services and Greg Dorst from the Other Bar. Countless court staff and other bench officers also provided valuable insight for the Academy students.

Topics of the classes included an introduction to the legal community, a practical and intensive primer on pleadings, depositions and discovery, an introduction to practicing in court (court appearances, legal writing and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in ADR, relations with other attorneys, case management, etc.) and an introduction to law practice management. Students were given tours of the Historic Courthouse, including a “behind the scenes look” at the



Front row – (l-r): Ashley Ruiz, Goushia Farook, Julianna Crawford, Nicole Naleway, Lewis Duong, Breanne Wesche, Nesa Targhibi
Back row – (l-r): Suzanne Kersh, David Hamilton, Alexandra Andreen, Chris Keilson, Aaron Chandler, Robert Montanez, Dave Kim, Victor Salazar

clerk’s office, the Family Law Court and the Court of Appeal. The last class was an introduction to trial that included an interactive class on voir dire and tips on openings, closings, direct and cross examinations from some of the most notable trial attorneys in the Inland Empire.

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

Students of the Academy were recognized for their participation at the April 2016 RCBA General Membership meeting and received a certificate, graduating them from the Academy.

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

If you are interested in obtaining more information about the 2016-2017 Academy, please contact Charlene Nelson at the RCBA or Robyn Lewis at robynlewis@jlewislaw.com.

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

Photo courtesy of Jacqueline Carey-Wilson.



KARL WALLEN, FIRST RECIPIENT OF THE HONORABLE ELWOOD RICH MEMORIAL SCHOLARSHIP FUND

by Robyn A. Lewis

Our legal community lost one of its most precious members on January 29, 2015, Judge Elwood “Woody” Rich. For over thirty years, Judge Rich tirelessly devoted himself to helping litigants settle cases in the hallway of the Riverside Historic Courthouse or “Room 163” as it is also commonly known. He also founded California Southern Law School in 1971, an institution that has produced many judges and influential attorneys in our legal community.

After his death, a scholarship fund was created in his honor for an attendee of Judge Rich’s beloved law school. This year, Karl Wallen was named the first beneficiary of the scholarship. Karl Wallen has lived in the Inland Empire his entire life. He is a graduate from CSU San Bernardino, where he received a BA in Political Science. After obtaining that degree, Wallen decided that he wanted to go to law school. In order to achieve that goal, he did everything and anything to gain the financial footing needed to support his legal education, including selling automobiles. Wallen noted that Shakespeare once remarked that we should “kill all the lawyers.” He believes that Shakespeare would make car salesman his second choice.

After enrolling at California Southern Law School, Wallen worked at a small law firm as well as for the Legal Aid Society of San Bernardino. He has tirelessly devoted his time volunteering to prepare answers to evictions, family filings, guardianships and conservatorships for the indigent of San Bernardino County. He would tell you that his work at Legal Aid was the most gratifying experience of his life.

The study of law, while initially viewed by Wallen as daunting, has given way to the attitude that anything is possible, although not without sacrifice. He has balanced the responsibilities of work, school and family “with the dexterity of a circus performer.” He notes that “my toils have rewarded me with permanent wrinkles on my brow and dark circles under my eyes.”

As his education winds to a close, Wallen’s next goal is to pass the bar exam. Once he passes, he reflects on what he would like to accomplish with his legal career stating, “Once I am an attorney, it is my goal to

do trial work for Legal Aid. There exists a massive gap in access to justice. The indigent in our community lack the requisite knowledge and education to effectively represent themselves in propria persona. Inequality, the very thing our laws seek to avoid is the inevitable result. My goal is to bridge this gap in access to justice through my representation work with Legal Aid. The practice of law is noble. It is my goal to preserve this nobility, rather than sell my soul to the first tyrant offering 75 drachmas.”

There is no doubt that Judge Rich would be just as proud of Wallen and his accomplishments as he was of all of his students.

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



The Superior Court of California, County of Riverside proposes that its fee schedule be adopted effective July 1, 2016.

Public comments are sought as part of the adoption process. To review the proposed fee schedule, please visit the court’s website at: www.riverside.courts.ca.gov.

Please direct any comments regarding the schedule to the Court Executive Office, 4050 Main Street, Riverside, CA 92501, or by email to: courtexecutiveoffice@riverside.courts.ca.gov.

Comments should be submitted by 5:00 p.m. on Tuesday, June 28, 2016, so that they can be considered as part of the fee schedule adoption process.

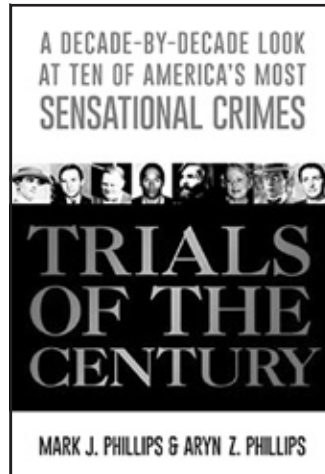
TRIALS OF THE CENTURY: A DECADE-BY-DECADE LOOK AT TEN OF AMERICA'S MOST SENSATIONAL CRIMES

by Mark J. Phillips and Aryn Z. Phillips

A very interesting book has been published entitled *Trials of the Century* (Prometheus Books, 2016). *Trials of the Century* is the story of ten of the twentieth century's epic trials, one per decade, each a tale of celebrity and sex, prejudice and heartbreak, and how the arc of American justice is often pushed out of its trajectory of fairness by an insatiable media driven to sell copy.

The story begins on the evening of June 25, 1906, when Pittsburgh millionaire Harry K. Thaw walked up to New York architect and socialite Stanford White during a sold-out performance at Madison Square Garden and fired three shots into his head, an act of vengeance for White's sexual corruption of Thaw's young wife. The resulting murder trial transfixed a nation, tearing at the fabric of America's Gilded Age. When the Hearst and Pulitzer newspapers reported the murder and sensationalized the trial that followed, the twentieth century was only six years old. Yet the trial of Harry K. Thaw for White's murder was promptly and confidently pronounced in newspapers to be the Trial of the Century.

Americans, it turns out, are addicted to violent crime and it is increasingly evident that our modern obsession with violent crime is slaked by the media. In 1893, total newspaper circulation was still only 7,500,000. But by



1910, in only 17 years, that circulation had more than tripled to 25,000,000.

Newspaper circulation requires grist for the mill. Sales depend upon lurid headlines and articles that catch the reader's eye and cause him or her to reach into a pocket for change. Trials bring society's dramas to greater life and Americans are riveted by them when they contain additional intrigue or twist; love, money, celebrity, sex, betrayal, or scandal.

At the 1913 trial of Jewish industrialist Leo Frank for the Atlanta murder of Mary Phagan, a crime that local politicians, lawyers, even the presiding judge knew he likely didn't commit, crowds of angry spectators whipped into a passion by newspaper accounts daily besieged the courthouse, intimidating the jurors and compelling a guilty verdict. At the 1934 trial of Bruno Hauptmann for the Lindbergh baby kidnapping, the reporters numbered 350 and the world came to witness what H.L. Mencken called "the greatest story since the Resurrection." In the 1954 trial of Sam Sheppard for the murder of his wife Marilyn, reporters inundated the trial, occupying every inch of the courtroom, sitting mere feet from the jury, listening in to the private conversations of lawyers, and handling the evidence. The public fascination with the crime spawned books, hit movies, and the television series "The Fugitive." And in 1995 when the O. J. Simpson

"For trial junkies—and who isn't?—these riveting accounts of ten 'trials of the century,' one from each decade, are a must-read. The stories tell us as much about the history of each decade as they do about the trials themselves."

—Alan Dershowitz, law professor and best-selling author

"Riveting accounts of the ten most fascinating trials of the 20th century will keep pages turning compulsively."

—Joseph Wambaugh, bestselling author of *The Onion Field*

verdict was read, the entire country came to a halt to listen, with ninety-one percent of all televisions in operation in America turned to the coverage. Larry King, host of CNN's Larry King Live, told his viewers "If we had God booked and O. J. was available, we'd move God."

Trials of the Century tells ten of these stories, and we learn from them that innocence or guilt depends as much on the way in which the proceedings are reflected in the media as on the evidence presented in court.

Mark J. Phillips, Esq. is an attorney with Goldfarb, Sturman & Averbach in Encino and co-authored Trials of the Century with his daughter, Aryn Z. Phillips, who graduated with a Masters in Public Health from Harvard University in June 2016 and begins her Ph.D. at U.C. Berkeley in August. Trials of the Century will be in bookstores in July 2016. www.trialsofthecenturybook.com



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Seeking Associate Attorney

Established Palm Desert AV rated law firm emphasizing community association law is seeking an associate with 5 years strong civil litigation and transactional experience. Applicant should possess excellent oral and written communication skills. Strong academics required. Email resume to gwangler@fiorelaw.com.

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REMEMBERING KRISTEN ROBINSON OLSEN

by *Kristin Varner*

For almost two decades, Kristen (“Kristi”) Robinson Olsen pragmatically advocated for the legal rights of others in the Riverside community. Since 1998, she practiced law her entire career with Varner & Brandt, LLP. Kristi specialized in civil litigation and the resolution of labor, employment and business disputes. She excelled at advocating for her clients and practicing law in a professional and solution-oriented manner.

Her role as advocate was not limited to her law practice. Kristi raised awareness for and was committed to a number of local organizations that serve our community’s youth. For over fifteen years, Kristi passionately advocated for the rights of abused children through her work with Olive Crest. She was committed to Olive Crest’s mission of preventing child abuse, treating and educating at-risk children, and preserving the family. She played a key role in starting “Black Tie Bowling,” a signature fundraising event benefiting the children of Olive Crest.

Together with Barbara Robinson, Kristi helped found the Loma Linda University Children’s Hospital’s Big Hearts for Little Hearts Riverside Guild. Serving as a board member to that organization for over six years, Kristi increased awareness about the needs of children facing life-threatening illnesses and raised funds for medical equipment and resources necessary to help those children.

Kristi also served as a leader to the Girl Scouts of San Geronimo Council Troop 1661, in which her daughter, Mallory Olsen, was a girl scout for many years. Kristi believed in empowering girls to achieve beyond their own expectations and led by example. She was admired by other girl scouts leaders and the girl scouts in Troop 1661 for being honest, hard-working, trustworthy, dependable and fun.

In 2006, Kristi was diagnosed with breast cancer and faced three cancer recurrences over a nine-year period. With warrior-like resolve she endured constant and often-times debilitating cancer treatments, demonstrating tenacious strength and courage. Although the cancer treatments frequently made her feel tired and ill, she



Kristen Robinson Olsen

continued advocating for her clients and the children benefitted by the organizations which she served. At times, her body was weak, but her inner spirit and will to make the most of every day remained fiercely strong. She never lost her sense of humor nor her selfless giving to others.

Kristi inspired others to never give up hope and to keep moving toward a next endeavor, whatever that may be. She adopted the motto “life is a playground” and made it a practice to enjoy the beautiful moments in each day, no matter what.

She found much joy in her vegetable garden and frequently gifted her home-grown squash, lettuce and herbs to her family and friends. Her kitchen was also her playground and she had a reputation in her gourmet food group for making the best desserts ever. Caring for and nurturing her many family pets (dogs, cats, tortoises, bunnies, fish, and guinea pig) also brought her great joy.

Kristi believed that relationships are the crux of life, and was an authentic and loyal friend. I’ll never forget the time when Kristi was suffering through her first chemotherapy treatments and she learned of some health issues I was experiencing. Despite feeling lousy from the chemo, and even though my health issues were minor compared to hers, she made a point to come to my home for a visit to give me a “strong heart,” a heart made of beautiful stone to remind me of the beauty in life and the inner strength needed to get through tough situations. I held that stone many times in subsequent weeks and each time I was reminded of how deeply Kristi cared for me and how fortunate I was to experience such true and authentic friendship. She knew how to love well and be a great friend.

On September 3, 2015, Kristi passed on. She was, and still is, deeply loved by many and is survived by her husband, Craig Olsen and daughter Mallory Olsen; her parents, Jim and Barbara Robinson, and a brother Jamie Robinson, all from Riverside. She will always be remembered for being rooted in strength and courage and rich in love.

Kristin Varner is a senior attorney in Varner & Brandt’s Riverside office.



OPPOSING COUNSEL: EDWARD C. Y. HU

by Sophia Choi

A Warrior in Public Service

If you want to learn more about aircraft, I cannot think of anyone better to learn from than Edward Hu. Although he is currently an attorney with Inland Counties Legal Services (“ICLS”), most of his career (23 years) was dedicated to service in the United States Air Force. After retiring from the Air Force with a rank of Lieutenant Colonel, Edward pursued a second career in law.

Edward was born in Hong Kong and came to the United States, specifically Cincinnati, at the age of 16. What brought Edward to Cincinnati? His mother was actually born in Cincinnati, Ohio, and had gone back to China during World War II, where she got married. Edward graduated from the University of Cincinnati with a B.S. in Aerospace Engineering. He was always fascinated by airplanes and read books on rockets and other aircrafts, and he always wanted to pursue a career in engineering and as a result, Aerospace Engineering was the ideal major.

Naturally, Edward next got his pilot license. And, as soon as he got his U.S. citizenship in the 1970s, he enrolled in the U.S. Air Force Reserve Officers’ Training Corps (“ROTC”). Right after college, Edward was commissioned as Second Lieutenant and was stationed in Texas as his first assignment and began flying the C-130 Hercules. He loved seeing the world below.

Edward then transferred to Europe and was in the Special Operation Forces for four years. Subsequently, his engineering background led him to the joint services system acquisition and program management school. In that assignment, Edward was assigned to weapons, such as the B-1B Lancer bomber, cruise missiles, and mobile ICBMs. While stationed in Europe, Edward received his MA in International Relations from the University of Southern California. He further pursued his educational goals and received his MBA from Golden Gate University.

His connection to the Inland Empire began when he was stationed in the Norton Air Force Base in San Bernardino, California. In 1995, the Ballistic Missile



Clara and Edward C. Y. Hu

Office at Norton Air Force Base closed. However, Edward wanted to remain in California.

After 23 years of service, he decided to retire and stay indefinitely in California. Edward was always interested in law so he then decided to pursue a second career as an attorney. With the support of his wife, he decided to go to law school. He graduated from California

Southern Law School and received his Juris Doctorate just as he exhausted his GI Bill. He was sworn into the California State Bar at the age of 60.

Edward says he wanted to give back to his country because, “Uncle Sam paid for my education.” So, he began his legal career as an attorney with ICLS. Edward’s family has a long tradition of public service, and it was only natural that he would continue to be a warrior for public service. Dedicated to serving the elderly and people of low income, Edward loves the work he does. He is heavily involved in legal issues for veterans because veteran issues are close to his heart. Edward is also accredited by the Veterans Administration.

Edward has a loving relationship with his wife Clara whom he met in Hong Kong. They have two boys, whose career paths both involve drones. One son is currently in Africa working on the drone system to deliver medical supplies, and another son is a Second Lieutenant in the Air Force as a drone pilot. Edward is not flying aircraft in the Air Force anymore, but his love of seeing the world has not changed and he loves to travel.

After speaking with Edward, I have learned so much about the different types of aircraft, such as the C-130 Hercules and the B-1B Lancer. Edward is truly a warrior dedicated to public service, both as a member of the Air Force and as an attorney.

Sophia Choi, a member of the Bar Publications Committee, is a deputy county counsel with the County of Riverside. She serves as a director-at-large on the RCBA Board of Directors and is a past president of the Asian Pacific American Lawyers of the Inland Empire.



WINE NOT? ONE LAWYER'S JOURNEY THROUGH OPENING A FAMILY WINERY

by April Frisby

I am not a winemaker, and I do not practice wine law. But I have been on a long and sometimes arduous journey of helping my husband start and operate a licensed winery in Orange County, California.

At first, I thought he was kidding when my husband approached me about starting a winery. We had two children and full-time careers, he as an Orange County firefighter-paramedic and I as a partner in a small law firm. We had a passion for wine, but could we make it? Many late night talks (with glasses of wine, of course), led to the conclusion that this was no joke and with lots of blood, sweat, and tears (did I mention wine too?), this was achievable. We investigated many ways of becoming winemakers—custom crush, where you pay a bonded winery to process grapes for you; becoming an alternating proprietorship, an “AP,” where you are responsible for your own winemaking, but share wine premises and equipment; or going whole hog and becoming a traditional “bonded winery,” where we would make wine, grape to bottle in a traditional vineyard setting. We also looked at the different areas we could make wine in, from Temecula to Napa.

After hiring a great PhD consultant in Paso Robles and retaining a company to help with the legal compliance, we settled on becoming an AP, sourcing grapes from Central Coast, making wine in Paso Robles at a shared facility, and running our business operations out of our home in Orange County. The first two years were tough. Wine is a waiting game and we had no idea if it would be good or if anyone would buy it. We started with a 2009 Santa Barbara Chardonnay and a 2008 Paso Robles Cabernet Sauvignon. The “Cab” won a Silver Medal award at the San Francisco Chronicle Wine Competition and a Gold Medal in the Central Coast Wine Competition (a total of five awards in various wine competitions) and was pretty much sold out after the first year.

Many varietals and awards followed and we figured we were on to something. But running a wine club from home and dealing with discount shops and distributors left us wondering if it was all worth it. Hubby had an idea—we could open our own tasting room—in Orange County! We took possession of an old crossfit gym in November 2013, and spent many a late night and weekend painting walls, cleaning floors, and building a tasting bar. In March 2014, we had the grand opening of our tasting

room in Lake Forest and began opening for weekend tastings. We also decided that it was time to expand our operations and added an additional bonded wine cellar permit, so we could blend and bottle wine on the premises. After lots of paperwork and compliance, now in our facility and tasting room in Lake Forest, we do everything to make wine except grow and crush grapes. We contract with farmers in the Central Coast for our fruit and bring the juice down in tanks, where we then barrel, bottle, and label.

There is no happy ending to this fairy tale. . . yet. It is a great deal of work and expense and it takes time away from hobbies and loved ones. But we are proud that we make good wine that friends and wine connoisseurs enjoy and that we can offer a friendly place to taste wine in the OC. We hope to leave a legacy to our children and a place for us to retire to when we are done with our “day” jobs. Cheers!

April E. Frisby is a business and corporate transactions attorney practicing at Newmeyer & Dillon, LLP in Newport Beach, California. Frisby Cellars is located at 20331 Lake Forest Drive, Suite C-3, Lake Forest, California, 949.243.6691, www.frisby-cellars.com.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2016.

Gordon L. Dayton – Tax & Law Research Inc, Riverside

Etrys Marie Henning – E. Marie Henning Attorney at Law, San Bernardino

Logan L. Quirk – Quirk Law Group APC, Los Angeles

Steven A. Smith – Law Student, Riverside



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