

RIVERSIDE LAWYER

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MAGAZINE



In This Issue

Protecting Sexual Harassment
Civil Judgments in Bankruptcy

#MeToo Movement:
Better Late Than Never

Evaluating Sexual Allegations:
Practical Advice

The Impact of the #MeToo
Movement on Our Practices


Recent Regulations on Harassment
and Transgender Issues Will Have
Real Workplace Impact

Repairing California's "One Size
Fits All" Sex Offender Registration

New Federal Sex Trafficking
Law Attacks Websites that
Intentionally Promote or Facilitate
Sex Trafficking or Prostitution



The Official Publication of the Riverside County Bar Association

A portrait of Greg Rizio, a middle-aged man with short, wavy grey hair, smiling broadly. He is wearing a dark suit jacket, a light blue dress shirt, and a blue patterned tie. The background is a blurred outdoor setting with a wooden door and greenery.

Greg Rizio

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RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

- 3 **President's Message** by L. Alexandra Fong
 4 ... **Barristers President's Message** by Shumika T. R. Sookdeo

COVER STORIES:

- 6 **Protecting Sexual Harassment Civil Judgments in Bankruptcy**
by Cathy Ta and Alexander Brand
- 8 **#MeToo Movement: Better Late Than Never**
by DW Duke
- 10 **Evaluating Sexual Allegations: Practical Advice**
by Boyd F. Jensen II
- 12 **The Impact of the #MeToo Movement on Our Practices**
by Daren H. Lipinsky
- 16 .. **Recent Regulations on Harassment and Transgender Issues Will Have Real Workplace Impact**
by Joseph Ortiz
- 18 **Repairing California's "One Size Fits All" Sex Offender Registration**
by Souley Diallo
- 20 **New Federal Sex Trafficking Law Attacks Websites that Intentionally Promote or Facilitate Sex Trafficking or Prostitution**
by Opal Singleton

Features:

- 15 **Inland Empire Family Law Mid-Winter Gala**
by NaKeshia Ruegg
- 22 **Tell the Story of the Mission Inn Hotel & Spa**
- 24 **Nominees for RCBA Board of Directors, 2018-2019**
- 27 **Judicial Profile: Honorable Emma Smith**
by Juanita E. Mantz

Departments:

- Calendar 2 Membership 19
 Classified Ads 28

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), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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

MAY

- 8 Civil Litigation Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Asst. Presiding Judge John Vineyard,
Riverside County Superior Court
MCLE
- 9 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Presiding Judge Becky Dugan,
Riverside County Superior Court
Topic: “Legal Updates”
MCLE
- Barristers 2nd Annual Judicial Reception**
Grier Pavilion, Riverside City Hall
5:30 p.m. – 8:00 p.m.
- 15 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Marc Kaplan, CFLS, Special Master
Topic: “Tracings – What You Need to Know –
Problems, Solutions & Answers”
MCLE
- 16 Estate Planning, Probate & Elder Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Jim Bruner, CFP; UBS Financial
Services
Topic: “Business Transaction Planning”
MCLE
- 17 Immigration Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Kelly O’Reilly, Wilner & O’Reilly;
Chair of RCBA Immigration Law Section
Topic: “The Year in Immigration: Updates and
Strategies”
MCLE
- 18 General Membership Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Panel Discussion led by District
Attorney Michael Hestrin
Topic: “The Law as a Noble Profession: The
Ethical, and Other, Responsibilities of the
Prosecution in a Criminal Matter”
RSVP by April 10
MCLE
- 24 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Come & participate in timed exercises geared
to better familiarize appellate practitioners
with the Rules of Court for Civil Appeals.
Moderators: Susan Beck, Thompson &
Colegate; Brian Unitt, Holstein, Taylor & Unitt
MCLE
- 30 Solo/Small Firm Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Judge Randall Stamen, Riverside
Superior Court
Topic: “Tips on the Road to the Bench from a
Former Solo”
MCLE

EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit
the RCBA’s website at riversidecountybar.com.





by L. Alexandra Fong

This month's issue of *Riverside Lawyer* is about sexual harassment, misconduct, and assault. In essence, the #MeToo movement. This movement was founded by Tarana Burke, a survivor of sexual assault and violence.¹ It gained momentum on social media when actress Alyssa Milano tweeted these two words after numerous allegations were revealed against a Hollywood producer.

April is Sexual Assault Awareness Month (SAAM) in the United States. It was first observed nationally in April 2001 and its campaign is meant to raise awareness about sexual violence and educate communities on how to prevent it. The theme, slogan, resources, and materials for SAAM are coordinated by the National Sexual Violence Resource Center.²

The Bureau of Justice Statistics (BJS), a component of the Office of Justice Programs in the United States Department of Justice, gathers information regarding contacts with law enforcement and is our country's primary source for criminal justice statistics. Its mission is to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. These data are critical to federal, state, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded.³ Depending on the topic, data collection by BJS can occur yearly or every four years.

In December 2017, BJS released its Criminal Victimization Report for 2016, which provided statistical information concerning various crimes, including rape and sexual assault, committed upon U.S. residents age 12 or older. Rape is defined as forced sexual intercourse, including both psychological coercion and physical force. Forced sexual intercourse means vaginal, anal, or oral penetration by the offender(s). Attempted rape includes verbal threats of rape. Sexual assault is defined as a wide range of victimizations, separate from rape or attempted rape. These crimes include attacks or attempted attacks generally involving unwanted sexual contact between victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. Sexual assault also includes verbal threats.⁴

The rate of reported instances of rape or sexual assault decreased, from 1.6 victimizations per 1,000 people in 2015 to 1.2 victimizations per 1,000 people, which is equivalent to approximately 323,450 victims per year.⁵ There are 525,600 minutes in a non-leap year. That makes 31,536,000 seconds in a year. This equates to one rape or sexual assault every 98 seconds, or approximately one rape or sexual assault every 1.5 minutes. Nearly 1 in 5 women in the United States have experienced rape or attempted rape some time in their lives, and 1 in 67 American men have experienced rape or attempted rape.⁶

The California Department of Justice, via its Criminal Justice Statistics Center (CJSC), also keeps statistical data concerning crime within the Golden State. The role of the CJSC is to collect, analyze, and report statistical data that provide valid measures of crime and the criminal justice process, examine these data on an ongoing basis to better describe crime and the criminal justice system, and promote the responsible presentation and use of crime statistics.

The most recent data available is from 2015, wherein there were 12,793 reported rapes per 100,000 people in California in 2015.⁷ Of these reported offenses, less than 20% of alleged perpetrators (2,467) were arrested, of which 250 were juveniles. Of the 2,467 arrests, the vast majority were male perpetrators, although 61 individuals arrested were female.

If you or someone you know is a survivor of sexual assault, please contact your local authorities. Please remember that you did not do anything to cause this to happen to you. If you would like to speak with a trained individual, I strongly recommend contacting the National Sexual Assault Telephone Hotline at (800) 656-HOPE (4673). This hotline was created in 1994 by RAINN (Rape, Abuse & Incest National Network) and has helped over 2 million people affected by sexual violence. You can also visit <https://www.online.rainn.org> to receive support via confidential online chat.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, practicing in the field of juvenile dependency law, and is president-elect of the Leo A. Deegan Inn of Court.



1 <https://www.cnbc.com/2018/01/19/metoo-founder-tarana-burke-has-big-plans-for-the-movement-in-2018.html>

2 https://www.nsvrc.org/sites/default/files/2018-01/about_saam2018_final508.pdf

3 <https://www.bjs.gov/index.cfm?ty=abu>

4 <https://www.bjs.gov/index.cfm?ty=tp&tid=317>

5 <https://www.bjs.gov/content/pub/pdf/cv16.pdf>

6 https://www.nsvrc.org/sites/default/files/2018-01/about_saam2018_final508.pdf

7 <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd15/cd15.pdf>

BARRISTERS PRESIDENT'S MESSAGE

by Shumika T. R. Sookdeo



I can proudly state that the Riverside Barristers is truly a fun, hard-working, and grateful group of new and young attorneys. On March 1, 2018, we were fortunate to have Judge Jackson Lucky present a MCLE on evidence. Judge Lucky never disappoints. Attendees were entertained as they learned evidence tips via the interactive seminar with the use of their cellphones. The event was sponsored by ABC Counseling. I want to take a moment

to thank Judge Lucky and all of our speakers who have taken time out of their busy schedules to help make this year's educational and networking events a success.

Additionally, we celebrated Saint Patrick's Day with a social event at Lake Alice in downtown Riverside on March 16. We had a great turn out and saw some new faces. A few new attorneys that attended the event joined Barristers. The event was partially sponsored by Tim Scanlan at Summit Settlement Services.

Our group of fiercely competitive young sharks has found another outlet to challenge ourselves. We are currently receiving golf lessons at the Canyon Crest Country Club in Riverside. The sessions will last for several weeks. We are all about finding new and exciting activities. We owe a huge gratitude to our board member-at-large, Megan Demshki, who also serves as chair of the social committee. She has been the brains and energy behind most of the new events that Barristers has had this year. Megan never runs out of creative ideas or the means of executing them.

Upcoming Events

Barristers plan to collaborate with a local legal aid organization to provide pro bono legal services to those with limited means this month.

On May 9, 2018, Barristers will hold its Second Annual Judicial Reception at Grier Pavilion, which is located at Riverside City Hall, from 5:30 p.m. to 7:30 p.m. This year's theme is "Work-Life Balance on the Road to the Bench." Admission is free for judicial officers, invited special guests, and RCBA members; and \$20.00 for non-members. Space will be limited. RSVP is required to attend. You may do so at <https://rcbabarristers2nd.eventbrite.com> by 5:00 p.m. May 8, 2018. Barristers wish to thank the following sponsors who have made this event possible:

Platinum Sponsor: Aitken Aitken Cohn; Rizio Law Firm;

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General Sponsor: First Legal

On June 20, Barristers will hold elections for the 2018-2019 term. Elections will be held during happy hour (6:00 to 7:30 p.m.) on the patio at Heroes Restaurant. The available positions are: president-elect, secretary, treasurer, and member-at-large. Nominees must be: 1) a member of the State Bar of California; 2) an RCBA member; and 3) in practice less than seven years or be less than 37 years of age. If you are interested in holding a board position or know an excellent candidate, please send nominations to rcbabarristers@gmail.com, by May 21, 2018, to be included on the ballot.

Finally, please stay informed about Barristers events by joining our mailing list at www.riversidebarristers.org or follow Riverside County Barristers Association on Facebook.

Shumika T.R. Sookdeo, managing attorney of Robinson Sookdeo Law, is a past president of the Richard T. Fields Bar Association, a commissioner on the California Commission on Access to Justice and a board member of John M. Langston Bar Association and the California Association of Black Lawyers.



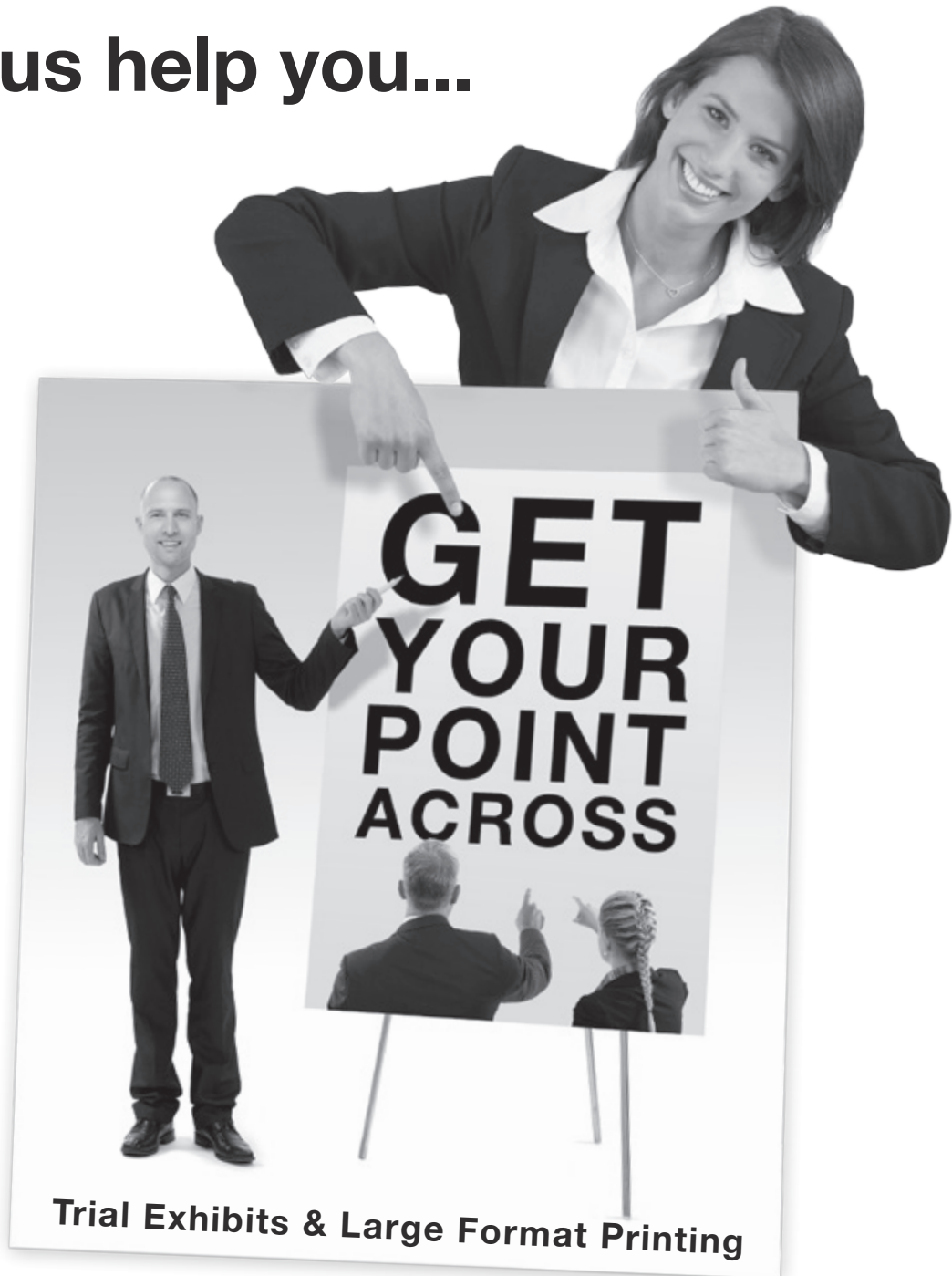
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PROTECTING SEXUAL HARASSMENT CIVIL JUDGMENTS IN BANKRUPTCY

by Cathy Ta and Alexander Brand

With the rise of the #TimesUp and #MeToo movements, sexual harassment in the work place, whether in the public or private sector, has been thrust into the spotlight. With these ongoing movements, sexual harassment claims and civil actions are likely to rise, and as they do, so do liability, recovery, and insolvency issues relative to these claims. A concern for both plaintiffs and defendants is whether sexual harassment civil judgments are dischargeable in bankruptcy. There is no hard and fast rule if they are dischargeable in bankruptcy; whether they are dischargeable such that the judgment debtor may avoid paying a judgment will depend on the facts of the case.¹

While most debts can generally be discharged by filing a bankruptcy case, certain debts are excepted from discharge. Sexual harassment judgments may be excepted from discharge pursuant to 11 U.S.C. §523(a)(6), which excepts debts “for willful and malicious injury by the debtor to another entity or to the property of another entity.”

In order for a civil judgment to be excepted from discharge, the creditor must demonstrate that the conduct supporting the judgment was both willful and malicious.² Over the years, courts have varied over their interpretation and application of section 523(a)(6) to sexual harassment judgments. In recent years, courts have been relatively settled on definitions of willfulness and maliciousness if not their application.

Willfulness Under § 523(a)(6)

For a sexual harassment civil judgment to be deemed non-dischargeable in bankruptcy, the creditor must demonstrate that the debtor’s conduct was willful. Prior to 1998, this standard was treated rather leniently by courts. However, in *Kawaauhau v. Geiger*, the U.S. Supreme Court addressed the willfulness element of section 523(a)(6) and made clear that it is a strict analysis, concluding that for a judgment to be non-dischargeable, the underlying conduct must be intentional and made with the intent to cause harm.³ Subsequently, courts added that an act is willful “when the debtor [state court defendant] has a subjective motive to inflict injury or when the debtor

believes that injury is substantially certain to result from his own conduct.”⁴

In the context of sexual harassment claims, courts are split over whether the conduct alleged and proven in a sexual harassment case can be deemed willful for purposes of section 523⁵ because intent to cause harm is not an element in a sexual harassment case.⁶ A creditor must be able to establish that the underlying conduct was willful in order to have a bankruptcy court determine that the judgment is not dischargeable. Therefore, it is important that either in the civil case or through other means, that the creditor have evidence of the debtor’s subjective intent when engaging in the harassing conduct. Absent evidence of the debtor’s subjective intent, it is likely that the judgment will be deemed dischargeable.

Maliciousness Under § 523(a)(6)

Additionally, the creditor must demonstrate that the conduct was malicious in order for the sexual harassment civil judgment to be non-dischargeable. To demonstrate that the underlying conduct was malicious, the creditor must show: “(a) that the debtor committed a wrongful act; (b) the act necessarily produced harm; and (c) the act was without justification or excuse.”⁷ In the Ninth Circuit, courts have stated further that “necessarily produce harm” means that the wrongful act must be aimed at the creditor, so that it is “certain or nearly certain” to cause harm.⁸ Moreover, the facts of the case must demonstrate that it was reasonably foreseeable to the debtor that the debtor’s conduct would harm the creditor.⁹

In the sexual harassment context, conduct that supports a judgment for sexual harassment will likely be deemed malicious. Sexual harassment infringes on a person’s right to be free from harassment.¹⁰ Additionally, conduct that is found to be sexually harassing should at least be reasonably foreseeable to the harasser that their

⁴ *Hughes, supra*, 393 B.R. at 718.

⁵ *In re Smith*, 270 B.R. 544, 550 (Bankr. D. Mass. 2001) (holding that conduct supporting sexual harassment judgment was non-dischargeable); *Sanger v. Busch*, 311 B.R. 657, 670 (Bankr. N.D.N.Y. 2004) (holding that conduct supporting sexual harassment judgment was not willful).

⁶ *In re Barry*, 138 Fed.Appx. 898, 899 (9th Cir. 2005).

⁷ *In re Gee*, 173 B.R. 189, 192 (B.A.P. 9th Cir. 1994).

⁸ *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991).

⁹ *In re Britton*, 950 F.2d 602, 605 (9th Cir. 1991).

¹⁰ *In re Gee, supra*, 173 B.R. at 192-93.

¹ The scope of this article is limited to whether a debt is dischargeable by an individual judgment-debtor.

² *Hughes v. Arnold*, 393 B.R. 712, 718 (Bankr. E.D.Cal. 2008)

³ *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998).

conduct is or could cause harm to the victim.¹¹ While these general rules will not apply to every case, it is likely that most cases of sexual harassment will be deemed malicious for purposes of section 523(a)(6).

Handling Sexual Harassment Claims Going Forward

Going forward lawyers must be aware that the law on this issue is not settled and there are no hard and fast rules on whether a sexual harassment civil judgment will be dischargeable in bankruptcy. Whether a civil judgment for sexual harassment is dischargeable will come down to the facts of each case. To preserve and protect sexual harassment claims, attorneys must be aware of the universe of facts for their clients' cases and conduct the necessary discovery in state court so that in the event of a bankruptcy filing, the attorney and their client are well-positioned to prove that the harassing conduct was willful and malicious and the sexual harassment civil judgment is not dischargeable in bankruptcy.

Cathy Ta is Of Counsel at Best Best & Krieger LLP. She practices in the areas of insolvency, bankruptcy and business litigation. Alexander Brand is a litigation associate at Best Best & Krieger LLP.



¹¹ *Id.*

ATTENTION RCBA MEMBERS

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



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Judge Brisco served for 21 years on the San Bernardino County Superior Court, most recently presiding over the mandatory settlement conference department. Regarded as a prompt and thoroughly prepared

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Hon. Jeffrey King (Ret.)



Most recently an associate justice for the California Court of Appeal, Fourth District, Division Two, Justice King also handled civil and probate cases during eight years on the San Bernardino County Superior Court. Adept at keeping

cases on track and settling cases on appeal, he serves as a mediator, arbitrator, special master and referee in **appellate, business/commercial, employment, insurance, personal injury/tort, professional liability** and **real property** matters.

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#MeToo MOVEMENT: BETTER LATE THAN NEVER

by DW Duke

While Harvey Weinstein has become the poster boy for predatory sex abusers in the entertainment industry, realistically his actions were merely a drop in the ocean of predators who exert their influence to obtain sexual favors. As a nation, we were devastated when family favorites such as Bill Cosby, from *The Cosby Show*, and Stephen Collins, from *Seventh Heaven*, were caught up in sexual abuse allegations. More recently, Matt Lauer and David Rose have captured the eye of the #MeToo movement and the list would be incomplete were not the 42nd and the 45th presidents of the United States included in the lineup of the accused.

While the act of sexual abuse is cowardly and pathetic at its best, it was a fairly common phenomenon in the workplace in all industries until enough victims came forward with their stories that the nation could no longer turn a blind eye to this hideous indiscretion. Historically, it was accepted as the price women, and sometimes men, paid for having a high paying job in America. Sometimes it was simply the price they paid for having any kind of job at all.

Prosecution of cases involving sexual abuse in the workplace is difficult and often impossible due to the care taken by perpetrators to cover their tracks. Fully aware of the consequences of their actions, the abusers take great care to prevent accusations from surfacing. Generally, they avoid engaging in predatory actions at a time when witnesses are present who will support the victim's claim of abuse. As a result, we are often left with a standalone accuser whose claims are vigorously denied by the accused. In the case of Harvey Weinstein, were it not for a victim's willingness to wear a wire, evidence corroborating the victim's claims might never have surfaced. It began a spiraling effect that has impacted the entire entertainment industry and beyond.

Despite the recent flood of sexual abuse cases, many victims remain afraid to come forward with their claims knowing that ultimately it may result in termination from employment. Causes of action based on retaliation often require proving the underlying claim of abuse before the victim can present a convincing case that termination or discipline resulted from reporting the harassment. And while many are aware that sexual harassment may give rise to a civil action, few recognize the potential for criminal prosecution arising from acts of sexual harassment. But that possibility exists under current law and in certain

circumstances the conduct could even rise to the level of human trafficking.

The U.S. Equal Employment Opportunity Commission established guidelines that identify two types of sexual harassment within Title VII, "quid pro quo" and "hostile work environment." Quid pro quo occurs when an employee's subjection to sexual conduct is related to job promotion, job retention, or some other benefits related to the employment. A hostile work environment occurs where the sexual conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.¹

California courts have also applied the distinction between quid pro quo and the hostile work environment under the Fair Employment and Housing Act. In 1998 the California Supreme Court identified "harassment" as "conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives."²

With either form of sexual harassment, the burden of proving the occurrence remains the greatest obstacle to prosecuting a claim. Under both federal and California law, the distinction between quid pro quo harassment and a hostile work environment has become primarily a rough tool to show the existence of harassment and less of a distinction of the type of harassment when proving a case. The greatest hurdle remains in the proof of a claim.

Generally, as noted, the perpetrator of sexual harassment goes to great lengths to cover his/her tracks to avoid detection. In the entertainment industry, the harassment has been more overt than in other industries and it was openly tolerated for many years. Perhaps the reason sexual harassment was tolerated in the entertainment industry was simply that, given the high rewards associated with compliance, namely fame and fortune, it was widely felt that there was little right to complain. It is the high cost of fame and fortune. Many victims in the entertainment industry have reported being told, "There are millions out there who would gladly take your place." Historically, even in more commonplace positions of employment outside of the entertainment industry, this attitude seemed pervasive especially in the 60s and 70s when females were

1 See *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 US 57, 65, 106 S.Ct. 2399, 2404-2405.

2 See *Reno v. Baird* (1998) 18 C4th 640, 645, 76 CR2d 499, 502.

just beginning to enter the professional workplace.

While some have argued that the #Me Too movement will return America to a time when women will be passed over for employment opportunities, the need to address chronic sexual harassment exists. Like any other area where people abuse the law, it is important that people come forward to expose their experiences. Without the #MeToo movement, the entertainment industry would likely have remained the last bastion of sexual harassment in America. Seeing the consequences of sexual misconduct by such public figures as Weinstein, Lauer, and Cosby will deter such actions by those in positions of power in all industries. In reality, the #MeToo movement was long overdue, but clearly its time has come.

DW Duke is the managing partner of the Inland Empire office of Spile, Leff & Goor, LLP and the principal of the Law Offices of DW Duke.



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EVALUATING SEXUAL ALLEGATIONS: PRACTICAL ADVICE

by Boyd F. Jensen II

It was a civil case. I had secured an interview with two of the perpetrators, sued for various sexual misdeeds, along with their affiliated, well-regarded local/national organization, whom I was defending. One interview took place in California's "supermax" Pelican Bay State Prison and the other in Folsom State Prison. An interview in Folsom required entry into a castle with enormously thick walls and then you are bused about 30 yards to the next set of thick walls, through which you enter, find your inmate and a place to talk. I found a picnic table in an open prison yard. He said, "Please speak softly, I don't want anyone to hear us or I could get killed." The interview lasted two hours, but the first 40 minutes, I comprehended nothing.

I was prepared. My client had sequestered me for several days with experts, who were the best in the field, and to attend seminars and study the existing science about human sexuality. I had defended a thousand personal injury cases with depositions, evaluating personal injuries, including loss of consortium, paralysis, dismemberment, breast enlargements/reductions, loss of libido, retarded ejaculations, impotence, and "my back hurts" or "I have constant headaches." I had reviewed as many medical records as some doctors. But this was "normal" sexuality and not pedophilia.¹

The purpose of this article is to offer suggestions to aid peers who have not experienced what I endured for the years of that case and those which followed. Of our human body systems, reproduction is the hardest to discuss. Without worry we discuss muscles, bones, hearts, blood, hormones, and insatiably what we put on our skin, but use of the terms penis or vagina and we cower. And we have to talk about it. And we need to be prepared to talk about it. *And as lawyers, I believe we need to lead the conversation.* Yes, there is risk and the cultural, political, religious, and even the scientific communities have interests; and with good intentions, will seek to configure the conversation to ensure the outcome they desire. In counseling minors coming out, parents changing familial or domestic preferences, crafting regulations and legislation, besides actionable civil and criminal sexual behavior, consider the following:

¹ "Normal sex" is a chameleon. For purposes of this brief article, I rely upon *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) where Justice Stewart struggled to describe pornography saying "I know it when I see it."

1. **Human Beings.** We are human beings and in talking about our human reproductive characteristics, we should be able to find ample consensus. We are a dimorphic species, designed for heterosexual reproduction.² Females and males have body parts, which are designed for intercourse to produce offspring. In consultation with clients or juries, find consensus, which is readily achieved with obvious shared physicality. It can be unsettling to refer to human beings with labels. The consequences of their arousal may require lengthy discussions and analysis regarding actionable civil or criminal behavior, but hopefully it can be done sans labels.³
2. **Arousal.** Male equipment will be ineffective in reproduction unless aroused, not so for females. The term arousal is not an easy term, but it is, in my opinion, clearer than "sexual attraction" or "orientation."⁴ Who is not attracted to the engaging couple you meet at a party or the charismatic new co-employee? Studying arousal one learns, there are human beings, who become aroused by other human beings of the same sex. They retain their heterosexual physicality, but men can and will become aroused by other men and women the same. Similarly, primarily men can become aroused by prepubescent children. There are a host of sexual practices, which are actionable, but they are generally triggered by arousal and not attraction or orientation.⁵

² In human beings gender ambiguity is very unusual. Modernly, we may refer to this as "intersex."

³ I have found that labels like pedophiles, straight, intersex, gay, homosexual, and other subcategories of human beings, tend to separate us in conversation. CDC (2006) Series 23, Number 26 *Fertility, Contraception, and Fatherhood: National Survey of Family Growth* estimated approximately 22% of gay men have fathered children (page 23) and higher for gay women having babies. Isn't there greater value using terms like "mom" and "dad" rather than labels, which describe how one was aroused or the circumstances of conception at a certain moment in time?

⁴ There are many studies on "Sexual Orientation" and "Sexual Attraction." Also Westlaw reports 302 California cases referring to "sexual attraction" and 2500 "sexual orientation." There are over a thousand cases using "sexual arousal" and most of which are in reference to criminal behavior. *People v Garcia*, 229 Cal. App. 4th 302 (2014) works through the words "sexual attraction" and "sexual orientation" as not actionable (and constitutionally protected), whereas "arousal" may trigger actionable conduct.

⁵ I am reminded of *Frontline* April 20, 2010, and the practice

3. **The “Science.”** On my shelf are the first editions of Alfred Kinsey’s *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953.) Reading these books will not be as helpful as reading about them. One will find errors and may legitimately question their research scope and methods. But this work is historically singular, as a pioneering comprehensive, scientific study of sex, with a biologic emphasis. The Kinsey Institute (KinseyInstitute.org) honors that tradition. William Masters and Virginia Johnson’s *Human Sexual Response and Human Sexual Inadequacy*, was intended as a medical resource with a focus to heal, during a time when even acknowledging sexual concerns was improbable. The resource I use most is the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders “DSM 5”* (2013) and its predecessors, NOT because litigation involving actionable sexual activity requires psychiatric diagnosis or is produced by mental

known as Bacha Bazi. It is a pederastic practice where powerful heterosexual Afghanistan warriors marry, sire families, and when they go to war take their “bacheh” (boys) with them for sexual interaction. When they return they go back to family life. It is against the law, but not enforced because of “tradition.” See also *Garcia*, p. 314 especially the cited references in the footnotes.

disorders. Rather the “diagnostic criteria” are helpful in communicating about deeply personal social matters of all kinds, including sex. It is for me, the best single volume with aids to measure the words of your client in myriads of situations.⁶

I went into Folsom imbued with abhorrence, attendant the label “pedophile,” but communicated with the person, an ill-educated, but honorably discharged soldier, a husband, father, and grandfather whose friends and family had long since terminated all contact with him. He despised himself far more than those around him ever would. I learned there was an important role for lawyers, sourced with objective analytical processes, inculcated in the practice of law and that with transparency, using terms with precision, we can lead constructive and useful communication, and even in the most difficult situations can find appropriate resolutions.

Boyd Jensen, a member of the Bar Publications Committee, is with the firm of Jensen & Garrett in Riverside.



⁶ Obviously, lawyers do not have to do everything. There are responsible community service organizations, serving those facing personally challenging times, who are excellent allies and have prodigious resources.

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THE IMPACT OF THE #MeToo MOVEMENT ON OUR PRACTICES

by Daren H. Lipinsky

Following dozens of sexual assault allegations made against infamous Hollywood producer Harvey Weinstein, actress Alyssa Milano issued a call to action on Twitter to those who have survived sexual harassment and assault, asking survivors to join her in tweeting #MeToo.¹ Less than 24 hours later, over 15 million social media users engaged the #MeToo movement by tweeting, reacting, or commenting. The #MeToo movement was actually started in 2006 by African American activist Tarana Burke. Ms. Burke coined and used the phrase in order to bring attention to the prevalence of sexual harassment and assault in our society, particularly against poor and disenfranchised women.² However, it did not enter the mainstream consciousness until it was coopted by digital social media.

Within a few short months, thousands of marches and millions of voices saturated news cycles and raised much needed awareness of this issue. It is therefore long overdue for us, as guardians of justice in our communities to ask: How can we as attorneys support the #MeToo Movement? Coming from a background of over 20 years representing survivors of sexual harassment and assault, I propose the following 3-prong approach:

1. Help **ourselves and our workplaces** by looking inward;
2. Help **our prospective and existing clients** by educating yourself on applicable legal protections and responsibilities; and
3. Help **our next generation** by understanding and taking a position on pending legislation.

Looking Inward

In February of 2018, the Employment Law Alliance (ELA) conducted a survey of attorneys, victims' advocates, corporate leaders, and human resources representatives.³ The survey revealed the following notable results:

- **Words Hurt: Most Common Type of Sexual Misconduct in the Workplace**

Using a scale of 1-10 (high), 43 percent of respondents rated "language, jokes and teasing" an eight

or a nine, making it the most prevalent type of workplace sexual misconduct employers are facing today. It was followed by "comments about looks, dress or physical appearance" and "flirting and sexual advances."

- **Email and Texts Outpace Face-to-Face Harassment**
"Emails and texts" were listed by ELA members as the most-common method employees' use in perpetrating sexual harassment.

- **Alcohol and the Workplace is a Problematic Combination**

70 percent responded that alcohol use among employees has played a part in fostering harassment.

- **A Real Concern that Companies aren't Taking Sexual Harassment Seriously Enough**

When asked if employers are taking sexual harassment training, prevention, and response "seriously enough," 46 percent of ELA respondents indicated that they are not.

- **Harassment Claims Rarely Fabricated**

Only 6.5 percent of ELA respondents said that either "more often than not" (6%) or "most of the time" (0.5%) complaints of harassment were fabricated.

- **A Rush to Judgment When Investigating Harassment Complaints**

More than 70 percent of ELA respondents indicated that clients have concerns that there is a "rush to judgment" when harassment complaints are made.

- **Bracing for the #MeToo Backlash**

A majority of ELA respondents, 57 percent, expressed that they are, either "slightly concerned" (44%) or "very concerned" (13%) that the #MeToo movement will create a backlash against women being promoted or hired.

These responses help us to look inward as both a professional and an individual. As a professional, we as attorneys can take the following inward looking actions:

- 1) Create a clear, concise sexual harassment policy;
- 2) Train your employees about sexual harassment;

1 @Alyssa_Milano Twitter Feed, October 15, 2017.

2 Garcia, Sandra E. (20 October 2017). "The Woman Who Created #MeToo Long Before Hashtags" – via www.nytimes.com.

3 The Employment Law Alliance "#MeToo/Sexual Harassment in the Workplace Survey" (February, 2018).

- 3) Monitor the workplace;
- 4) Encourage employees to come forward; and
- 5) Take complaints seriously and investigate.

As individuals, we can engage in the following behaviors to demonstrate common courtesy:

- 1) Rely on courtesy rather than physical contact in demonstrating comradery, praise, or criticism;
- 2) Use the same sex standards to determine if your behavior is truly not motivated by gender biases or stereotypes;
- 3) Compliment on merit, not appearance. We value ourselves in the workplace by the quality of our work. As business owners and professionals, a compliment directed at work quality is far more motivating and relevant than a compliment about physical appearance;
- 4) Think of how it would look in print. If you wouldn't want your spouse or family reading it, it is wise to think twice about putting it in an office email, text or memo;
- 5) Back off. There is almost always an ability to accomplish the same task without engaging in physical contact or invading one's personal space;
- 6) Speak up. If you are a victim of sexual harassment or assault in the workplace, speaking up will go a long way to solving the problem and encouraging others to come forward as well;
- 7) Be an "upstander," not a bystander. If you witness sexual harassment in the workplace, say something. Expressing dissent even when you aren't the target is an effective way to stop the behavior and help the survivor feel supported;
- 8) Take responsibility for your behavior. If you offend somebody, it's not enough to say you are sorry. Let them know it won't happen again and make sure it doesn't happen again; and
- 9) Put yourself in the other person's shoes. Ask yourself whether you would want yourself, your spouse, or your family to be subjected to the same behavior.

Know the Law

Although many of us do not practice employment or civil rights law on a daily basis, our clients experience such issues regularly and often seek help from you, their trusted counsel. Educating yourself on applicable laws will put you in a much better position to assist these individuals. While a detailed explanation of the law is beyond the scope of this article, in this climate all civil litigation attorneys should have a basic knowledge of the following statutes:

1. California Government Code Section 12940: This statute defines and forbids unlawful harassment, discrimination, and retaliation in the workplace.
2. California Civil Code Section 51: This statute forbids discrimination and harassment motivated by protected characteristics (including gender) in places of public accommodation.
3. California Civil Code Section 51.7: This statute forbids threats of violence or acts of violence motivated by protected characteristics, including gender.
4. California Civil Code Section 51.9: This statute defines and prohibits sexual harassment in professional relationships (e.g. attorney/client; doctor/patient; landlord/tenant; etc.).
5. California Civil Code Section 52.1: This statute prohibits coercion, intimidation, or threats used to interfere with constitutional rights (including the right to be free from gender discrimination).

Several of these statutes have particular statutes of limitations, exhaustion procedures, and penalty recovery requirements. It is important before actually taking on one of these cases to intimately familiarize yourself with these requirements or associate with someone who has such familiarity. Regardless, having a basic understanding of these statutes will at least put you in a position to give your victimized client some basic direction.

Be Aware of Pending Legislation

Given the recent groundswell of awareness and recognition of a sexual harassment epidemic, it is no surprise that the California legislature has introduced legislation to make it easier for victims to come forward and for such behavior to be stopped. As attorneys, we should be aware of the following proposed bills:

AB 1870

Currently, a harassment victim must file a pre-litigation claim with the Department of Fair Employment and Housing (DFEH) within one year of the unlawful act, he or she will face an absolute time bar and will be unable to seek administrative or civil redress in court. Low wage earners are particularly harmed by the short filing time. Most low wage workers who suffered harassment or discrimination are not aware of their legal rights and do not know that they are time barred if they do not file with the DFEH within a year. By the time they realize harassment is against the law, they are usually past the time to file or close to having their statute expire. Victims also often suffer trauma, which delays filing in most cases. AB 1870 would extend the time for filing harassment and discrimination claims under California's Fair Employment and Housing Act (FEHA) from one year to three years, allowing victims additional

time to seek redress, making it more consistent with the filing time limits for other statutory actions.

AB 1867

Under current California law, no cohesive, uniform statute exists that applies to all employers with respect to the maintenance and preservation of records relating to complaints and investigations of complaints of sexual harassment, sexual assault, discrimination, or retaliation. AB 1867 will require all businesses in California employing 50 or more to retain records of sexual harassment complaints for 10 years. In addition, if an employer violates that records retention requirement, the state Department of Fair Employment and Housing may seek an order requiring the employer to comply.

SB 820

Under California law, confidentiality agreements are not enforceable if they involve a felony charge of sexual assault or rape. Likewise, elder and dependent adult abuse cannot be hidden by secret settlements. However, sexual harassment and other types of non-felony sexual assault are still allowed to be shielded from the public eye via employer mandated secret settlements. Film executive Harvey Weinstein has been accused by at least 80 women of sexual misconduct, including rape, sexual assault and harassment. For decades, his predatory behavior was kept secret in part due to the

legal instruments that allowed him to hide behind the guise of confidentiality through secret settlements or lifelong nondisclosure agreements (NDAs) crafted to protect him. The settlements commonly included draconian penalties for breach of confidentiality or disclosure. Such agreements barred victims from ever sharing their stories. The use of NDAs or secret settlements in these cases allows repeat offenders to continue to harass while silencing victims. SB 820, known as the STAND (Stand Together Against Non-Disclosures) Act would ban employer mandated secret settlements (confidentiality provisions in settlement agreements) in cases of sexual harassment, sexual assault, and sex discrimination. The bill would permit the claimant to request confidentiality if she/he so chooses.

Conclusion

By looking inward, knowing the law, and understanding what changes and improvements to the law are being proposed, we can be a valuable resource for those touched by the #MeToo Movement in the workplace and beyond.

Daren H. Lipinsky has been practicing civil rights and employment law for over 20 years in the Inland Empire exclusively representing plaintiffs.



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INLAND EMPIRE FAMILY LAW MID-WINTER GALA

by NaKasha Ruegg

The Inland Empire Family Law Mid-Winter Gala, held on November 18, 2017 at the Victoria Club in Riverside, was a fantastic evening for everyone! Dinner, drinks, dancing, and comradery—it was certainly an occasion that bears repeating! Though the purpose of the evening was largely to bring the family law bench together for a purely social function, Judge Jackson Lucky (of Riverside) and Commissioner Michael Gassner (of San Bernardino) were the first two recipients of the Inland Empire Family Law Legacy awards; celebrating the meaningful and lasting impact they have had on our courts. The last “social event” our family law section had was for the retirement of Michael Clepper, and it was long past due for this incredible group of lawyers and judicial officers, both past and present, to come together for an evening without the courtroom of family drama; to be reminded that we really do like each other (on our off days!). For anyone who missed it; the highlight for most was discovering Judge Lucky has serious dance moves! And for that alone—make sure this year’s gala makes it onto your calendar for Saturday, December 1, 2018!

Though the gala was not designed as a fundraising event, our sponsors and our legal community came together and raised funds for charity anyway. Olive Crest is an incredible organization dedicated to the preservation of the family, protection of children, and domestic violence prevention, was present to receive donations from attendees, which were generously matched by Dayn Holstrom of Holstrom Block & Parke.

A huge thank you to the event sponsors: BNY Mellon Wealth Management; Bristol & Haynes, APLC; David T. Ruegg QDRO Division; Donald Mowery, The Mowery Group; Holstrom Block & Parke, APLC; Laurel Starks, Starks Realty Group; Our Family Wizard; Ron J. Anfuso, CPA/ABV; and Soberlink. The night could not have been possible without these incredible sponsors or the organizers of the event, David Ruegg, Laurel Starks, and Joyce Holcomb, as well as the generosity and assistance of Bill and Pam Bratton. It was an wonderful evening, which we expect to be a continuing tradition in years to come. This year’s gala is already in the planning stages. Please contact David or NaKasha Ruegg in Riverside or

Joyce Holcomb in San Bernardino, if you are interested in helping to organize or sponsor.

NaKasha Ruegg, co-chair of the RCBA Family Law Section, is with the Law Offices of Ruegg & Ruegg. She can be reached at (951) 523-7376 or nakesha@qdrodivision.com.

Photos by Jeff Malet Photography.



Commissioner Kenneth Fernandez and Judge Jack Lucky



Kamola Gray, Judge Irma Asberry, Shauna Albright, Presiding Judge Becky Dugan, Samantha Armijo and Goushia Farook



Judge Jack Lucky wowing the crowd with his serious dance moves!

RECENT REGULATIONS ON HARASSMENT AND TRANSGENDER ISSUES WILL HAVE REAL WORKPLACE IMPACT

by Joseph Ortiz

Over the past couple of years, California has seen real changes to the regulations affecting employer obligations as to harassment, investigation policies, and transgender rights. Two of the most impactful are (1) the April 2016 regulations setting forth additional employer harassment and investigation policy requirements and (2) the July 2017 regulations setting forth new regulations regarding transgender identity and expression.

The Harassment Policy Regulations: On April 1, 2016, the California Fair Employment and Housing Council (FEHC) enacted new regulations requiring employers (read: your clients) to develop and distribute anti-harassment and discrimination policies with specific required elements. The regulations require employers to create a formal internal complaint process to address harassment and discrimination concerns. Employer anti-harassment policies must:

- Be in writing;
- List all categories protected under the Fair Employment and Housing Act (FEHA);
- Expressly indicate that coworkers, third parties, supervisors, and managers are prohibited from engaging in discrimination, harassment, or retaliatory conduct;
- Provide a process to ensure complaints are kept as confidential as possible, handled in a timely manner, investigated by qualified unbiased personnel, and resolved in a timely fashion;
- Establish a complaint mechanism that does not require an employee to complain directly to an immediate supervisor;
- Instruct supervisors to report any complaints of misconduct for internal resolution;
- State that confidentiality will be kept by the employer to the extent possible;
- Indicate that, if misconduct is found, appropriate measures will be taken; and
- Make clear that retaliation for filing a complaint or participating in the investigation is prohibited.

Notably, the Department of Fair Employment and Housing (DFEH) also created additional resources for

employers, including a Workplace Harassment Guide, Sexual Harassment Posters, and a Sexual Harassment Brochure. These resources are available at www.dfeh.ca.gov.

The Transgender Regulations: As of July 1, 2017, new regulations clean up language to eliminate the binary reference to male or female and include protections for transgender, gender fluid, and transitioning employees. “Transitioning” is expressly defined in the new regulations as a process some transgender people go through to begin living more fully and consistently with their gender identity. The process may include changes to name, pronoun usage, facility usage, hormone therapy, and surgeries, among other things. Here are some of the important take-aways from the regulations:

- *Protections for Those Transitioning :* Employment-related protections specifically prohibit discrimination against employees who are transgender, gender fluid, or “transitioning.”
- *Gender-Related Job Duties:* Employers must permit employees to perform jobs or duties that correspond to the employee’s gender identity, regardless of the employee’s birth gender.
- *Use of Facilities:* Employers must permit employees to use facilities that correspond to the employee’s gender identity and must designate single-user toilet facilities as available for all genders.
- *No Test or ID to Establish Gender:* Employers may not subject employees to exam or require them to provide identity documentation in order to use facilities related to their gender identity.
- *Dress Standards:* Employers may not impose any standards on appearance, grooming, or dress that are inconsistent with an employee’s gender identity.
- *Demanding Disclosure of Gender:* Employers may not demand disclosure or require proof of an applicant’s gender during the application for employment process. Gender information may only be requested on a voluntary basis.

- *Preferred Gender, Name & Pronoun*: Employers must comply with an employee's request to be identified with a preferred gender, name, and pronoun.

The Transgender Identity & Expression regulations are available here: www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/FinalTextRegTransgenderIdExpression.pdf


Your clients need to understand that they may no longer demand disclosure or require proof of an applicant's gender during the application process. For many employers, this will mean that application forms will need to be updated and hiring personnel will need to be trained on the new regulations. The only exceptions to this prohibition are where gender is disclosed on a voluntary basis for recordkeeping or where the employer can show a legitimate business purpose for the need for disclosure.

Finally, employers must refer to employees by their chosen name, gender, and pronoun, regardless of any other gender noted on identification provided by the employee. Note that some gender fluid individuals prefer the use of plural pronouns, such as "they," in order to avoid the assigning of gender in usage. This may be

confusing for some employers who are reluctant to use a plural pronoun to refer to a single individual.

Joseph Ortiz is a partner in the Labor and Employment Practice Group at the law firm of Best Best & Krieger LLP in Riverside. He was appointed to the California Fair Employment and Housing Council in 2017. He is active in local human resources professional groups and regularly lectures on employment law issues.





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REPAIRING CALIFORNIA'S "ONE SIZE FITS ALL" SEX OFFENDER REGISTRATION

by Souley Diallo

There is no other category of crime that generates more public outrage than the commission of sexual offenses. The term "sex offender," invokes the worst images of the child predators that capture the public's attention. In reality, sex crimes represent a broad and disparate category of offenses and offenders, ranging from the serial child molester to the teenage "sexter." Traditionally, out of legitimate concern over rates of recidivism amongst those who commit sexual offenses and a reaction to the public fear over such offenders, the law presented a one size fits all solution; persons who are convicted of any registerable sex offense must undergo a lifetime registration.

California is only one of four states imposing a lifetime requirement for all registered sex offenders. Under the sex offender registration law, codified in Penal Code section 290 et. seq., a person convicted of a listed offense must register with law enforcement within five days of his/her birthday and within five days of changing addresses.¹ Courts have interpreted the provisions of Penal Code section 290 strictly. A person can be in violation for failing to register when they fail to contact local law enforcement in a jurisdiction that they visit temporarily.² Failing to register is punishable as a felony with up to three years in the state prison.

Sex offender registration comes with severe collateral consequences. Registered sex offenders names, addresses, photographs, and criminal history are published on the Megan's Law website.³ In the internet and smart phone era, such information is readily available to the general public, subjecting registrants to the scorn of the communities in which they reside. Registrants are often targeted for protest, harassment, and on occasion violence due to the publication of their information. Access to housing is severely limited due to tenancy restrictions banning registered sex offenders. Further, employment prospects for registrants are often impaired for a lifetime.

Relief from the lifetime registration requirements previously were limited by statute. Even reduction of

wobbler offenses to misdemeanors or expungement pursuant to Penal Code section 1203.4 did not relieve a person from 290 registration.⁴ Under the current law, the only available relief from lifetime registration was the onerous prospect of obtaining a certificate of rehabilitation or a governor's pardon.⁵

The unintended consequences of the one size fits all approach have been significant. California has over 100,000 registered sex offenders.⁶ The sex offender registry has grown so large that it has effectively undermined one of the principal purposes of registration: the identification of potential suspects in sex crimes. Law enforcement officials have complained that the sex offender pool has grown too large to produce meaningful leads in investigation. Further the monitoring of the large pool of registered sex offenders has strained resources and has become increasingly difficult.

In addition, the wide imposition of lifetime sex offender registration has imposed an exceptionally harsh penalty on some low risk offenders. Teenagers who have engaged in consensual sex with their high school boyfriend or girlfriend have been subject to lifetime registration. People have been subject to lifetime registration for offenses as minor as urinating in public. Further, lesbian, gay, bisexual, and transgender activists have complained that the sex offender registry includes individuals who were convicted of crimes decades ago for sex among consenting gay adults, in a different era where discriminatory law enforcement practices targeted gay men.⁷

In the fall of 2017, the California legislature sought to remedy the "one size fits all" approach of Penal Code section 290. Senate Bill 293 was drafted with the support of an usual coalition of law enforcement, prosecutors, victims' rights advocates, and the criminal defense bar.

4 Pen. Code, § 290.007; *Doe v. Brown*, 177 Cal. App. 4th 408, 422-425, 99 Cal. Rptr. 3d 209 (4th Dist. 2009).

5 Former Pen. Code § 290.5 (2017).

6 "California will soon end lifetime registration of some sex offenders under bill signed by Gov. Jerry Brown," *Los Angeles Times*, October 6, 2017.

7 Current law does contain a provision allowing persons to seek relief from 290 registration for consensual acts that were later decriminalized. See Penal Code § 290.019.

1 Pen. Code, §§ 290, subd. (b), 290.012, subd. (a).

2 See *People v. McCleod* (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B.

3 Penal Code § 290.46.

Governor Brown signed SB 384 into law in October of 2017 and it goes into effect on January 1, 2021.⁸

SB 384 provides that, in lieu of mandatory lifetime registration for all offenses listed in Penal Code section 290, registration would be categorized into three “tiers” of offenses. The first tier provides for registration for a period of ten years. It applies to all persons convicted of any misdemeanor registerable offense under Penal code section 290. It also applies to most felony registerable offenses, with the exception of those that constitute serious or violent felonies under the Three Strikes law, or felony offenses, or certain felony offenses related to unlawful sexual acts with a minor.⁹ SB 384 also eliminated the public posting of biographical information, addresses, and photographs on the Megan’s Law website for most tier one registrants.¹⁰

The second tier provides for registration for a period of 20 years. Tier two offenses include most serious felony sex crimes under the Three Strikes law, incest, and crimes involving sexual acts with a person legally incapable of giving consent due to a disability. Tier two also applies to persons with multiple convictions of Penal Code section 647.6, annoying and molesting a child, and under certain conditions, out of state convictions for which a person is required to register as a sex offender.¹¹ Although tier two offenders still have their names, photographs, and biographical information posted on the Megan’s Law website, SB 384 eliminated the posting of addresses. Instead, tier two offenders have their zip code and community of residence publicly listed.¹²

The third tier retains the lifetime registration requirements under the previous law and applies to thirty specific aggravated sexual offenses. Tier three also applies to persons who have been committed to a state hospital as a sexually violent predator, and persons with prior convictions for serious felony registrable offenses.¹³

SB 384 also made substantial changes to juvenile sex offender registration requirements. Registration for offenses committed by minors adjudicated in juvenile court are limited to nine specific aggravated sexual offenses. Moreover, SB 384 eliminated lifetime registration for sex offenses adjudicated in juvenile court, and instead imposed two tiers of registration. Tier one consists of a five year registration requirement for any

non-serious or violent felony adjudication requiring registration.¹⁴ Tier two consists of a ten year registration requirement for serious or violent juvenile adjudication requiring registration.¹⁵

Persons subject to lifetime registration under the previous version of Penal Code section 290, but fall under tier one or tier two of the current law, may petition the court to terminate the registration requirement after July 1, 2021. The District Attorney may object to the granting of the petition if they can establish at an evidentiary hearing that “community safety would be significantly enhanced by continued registration.”¹⁶

The changes to the law brought by SB 384 seek to preserve sex offender registration as a viable tool for the control and monitoring of sex offenders, while remedying the unintended consequences of rigid lifetime registration for all varieties of sex crimes. Time will tell if legislation will accomplish the goals for which it was intended.

Souley Diallo is a deputy public defender for the County of Riverside, where he practices in the Complex Litigation Unit.



¹⁴ Penal Code § 290.008 (effective January 1, 2021). The only non-serious or violent felony juvenile adjudication listed under the amended version of Penal Code section 290.008 is Penal Code section 647.6, annoying or molesting a child.)

¹⁵ *Id.*

¹⁶ Penal Code § 290.5 (effective July 1, 2021).

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2018.

Lindsay N. Frazier-Krane – Solo Practitioner, La Verne

William Gregg (S) – Law Student, Homeland

Heather Lynn Holmes – Law Offices of Heather L. Holmes, Rancho Cucamonga

Jacob Husen (S) – Law Student, San Diego

Isaac Juarez (S) – Law Student, Indio



⁸ Penal Code § 290 et seq. (effective January 1, 2021).

⁹ Penal Code § 290 sub.(d)(1) (effective January 1, 2021).

¹⁰ Persons convicted of Penal Code § 647.6- Annoy and Molest a Child, are treated as tier two offenders for purposes of Megan’s Law publication. See Penal Code § 290.46 (effective January 1, 2022).

¹¹ Penal Code § 290 sub.(d)(2) (effective January 1, 2021).

¹² Penal Code § 290.46 (effective January 1, 2022).

¹³ Penal Code § 290 sub.(d)(3) (effective January 1, 2021).

NEW FEDERAL SEX TRAFFICKING LAW ATTACKS WEBSITES THAT INTENTIONALLY PROMOTE OR FACILITATE SEX TRAFFICKING OR PROSTITUTION

by *Opal Singleton*

The past 30 days have delivered historic changes in the world of sex trafficking and social media exploitation. On April 13, 2018, President Trump signed H.R. 1965, “Allow States and Victims to Fight Online Sex Trafficking Act of 2017” (FOSTA). This bill was designed to minimize immunity provided under Section 230 of the Communications Decency Act (CDA Section 230). The bill was designed to encourage internet companies to demonstrate more responsibility over content that was related to commercial sex websites.

This law provides civil remedies for victims of sex trafficking who have been advertised through online sites. FOSTA makes it a crime for websites and internet services to intentionally promote or facilitate prostitution. This bill is certain to have wide ranging impact on internet freedoms as well as sex workers. One of the more controversial aspects of FOSTA is its attempt to give the law a retroactive effect and applies even to activities that occurred prior to the enactment of the law.

The week prior to the signing of FOSTA, the offices of Backpage.com were raided in Arizona and Texas by U.S. Justice Department representatives. The website was shut down, evidence was seized and the feds levied 93 separate charges against seven Backpage.com executives. The indictment includes more than 40 counts of money laundering and summarized the experience of 17 victims trafficked through the website. According to a spokesman for the U.S. Attorney’s Office in Phoenix, a customer killed one victim he met through a Backpage.com ad and several of the victims were as young as 14 years old when they were trafficked.

Subsequently, Carl Ferrer, CEO of Backpage has pleaded guilty to state and federal charges, including conspiracy and money laundering. He has agreed to testify against the other executives and to make the company’s data available to law enforcement as investigations and prosecutions continue. He is required to help the



Opal Singleton

government seize all the company’s assets. According to New York Times reporter, Maggie Astor, Ferrer acknowledged that he and other Backpage.com executives had used cryptocurrency processing companies and shell bank accounts to conceal their source of revenue.

Co-Founders of Backpage.com, Michael Lacey and Jim Larkin, have since entered “not guilty” pleas against charges of “conspiring to knowingly facilitate prostitution offenses.” In 2017, Lacey and Larkin pleaded not guilty in California on

money laundering charges based on allegations that Backpage’s employees illegally funneled nearly \$45 million through a variety of corporations and created websites to circumvent banks that would not process their transactions. It was common for Backpage to allow advertisers to pay for their ads in Bitcoin once Backpage lost the ability to process standard credit cards.

Commercial sex has been a reality of our society for thousands of years. With the onset of social media, online dating sites and escort services, the past decade has seen a significant expansion of online sites masquerading as dating sites while blatantly advertising sex services. There are literally hundreds of these sites —many of which are pornographic—but the most famous of these was Backpage.com.

Backpage.com was a public advertising site much like Craig’s list. Their web design and format were nearly identical. It did not take long for pimps and traffickers to understand the power of Backpage.com. Backpage executives had evaded previous charges and judges dismissed civil lawsuits based on a federal law that said websites were not liable for postings that others created. As the pressure and visibility increased on Backpage.com executives, the ads changed from graphic photos of mostly nude females to phone numbers and websites linking to other sites. The ads looked more like a White Pages ad, but the link was to other ads providing obvious commercial sex services.

The local impact of these charges was shown in a recent research study; there was an estimated 80,000 ads per year under "Women Dating Men" just for the Inland Empire Backpage site. The title was a misnomer, as most of the photos in this section featured women and sometimes minors in erotic positions and often photos showing sexual poses with no head or face. It was obvious that "Dating" was a stretch of the normal definition. It is believed that Backpage.com brought in half a billion dollars since it began in 2004, mostly through graphic and erotic advertising for escorts and massage services.

The author of this article has worked in combating sex trafficking for years and is aware that many of the photos in the ads were taken of minors or adult women who had been lured, coerced, or forced into the life of sex trafficking. Traffickers would take photos and move the victims from town to town advertising their commercial sex services through Backpage.com. The victims were often drugged before being filmed. The issues will of course be developed further in the Backpage case and subsequent civil and criminal cases based on FOSTA.

The challenge for the public is how to maintain internet privacy and free choice of life style, while still

protecting the vulnerable and innocent. Most likely, there will be a swarm of class action suits on behalf of victims who were advertised on sites like Backpage.com. More likely, sex sites will move off shore and the advertising will become even more perverse and challenge U.S. laws. Foreign corporations are less likely to work with law enforcement to help find missing and exploited minors or adults. Certainly, sites like Backpage.com are the electronic marketing of people's sexual services even while pretending to be innocent non-participants as an uninvolved ad agency. It is a complex issue as the public has a right for free choice of life style. By looking the other way, thousands of sex trafficking victims were exploited and many were minors who deserve justice. We are watching history in the making.

Opal Singleton is president and CEO of Million Kids (WWW.MillionKids.org), the training and outreach coordinator for the Riverside County Anti Human Trafficking Task Force (RCAHT), and the author of Seduced: The Grooming of America's Teenagers.



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TELL THE STORY OF THE MISSION INN HOTEL & SPA

The Mission Inn Foundation is recruiting trainees to become docents at the Mission Inn Hotel & Spa for the 2018-2019 season. Docent training classes are held from September through April. Additionally, docents may attend quarterly educational forums, participate in visits to historic sites in Southern California, and stay at the hotel at a reduced rate during the annual Docent Sleepover.

Founded in 1976, the Mission Inn Foundation interprets the history and significance of the Mission Inn Hotel & Spa through daily hotel tours, monthly public programs and special events, the Hands On History youth educational initiative, and the continued stewardship of the hotel's expansive art, artifact, and archival collections exhibited in the Mission Inn Museum.

Docents will learn the history of the Mission Inn Hotel & Spa, the City of Riverside, and early California; and are prepared to provide visitors a glimpse into the past. If you have an interest in the history of the Mission Inn Hotel & Spa and Riverside, and would like to become a docent, applications are being accepted now until July 31, 2018.

Applications may be downloaded online at www.MissionInnMuseum.org, picked up at the Mission Inn Museum, or requested by mail from Mission Inn Foundation, 3696 Main Street, Riverside, CA 92501. Apply soon; class size is limited. For more information, please call (951) 788-9556.



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NOMINEES FOR RCBA BOARD OF DIRECTORS, 2018-2019

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2018. (See the biographies below, which have been submitted by each candidate.) Please watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



Jeffrey Van Wagenen
President

As President-Elect for 2017-2018, Mr. Van Wagenen will automatically assume the office of President for 2018-2019.



Jack B. Clarke, Jr.
President-Elect

Jack B. Clarke, Jr. is a partner in the Education Law and Litigation practice groups of the Riverside office of Best Best & Krieger LLP. He joined Best Best & Krieger after graduating from law school in 1985. Mr. Clarke is involved in litigation concerning education law, special education disputes, public agency litigation and other types of substantial litigation matters.

Mr. Clarke received his Juris Doctorate degree, with distinction, from the University of the Pacific, McGeorge School of Law, in 1985 and his B.S. degree in Business from the University of California at Riverside in 1980. In law school, Mr. Clarke was elected to the Order of the Barristers, a national honorary society for outstanding achievement in courtroom advocacy, and served as a staff writer on the Legislative Review of the Pacific Law Journal, Vol. 15, January 1984. He also received the United States Law Week Award for Outstanding Contributions to the law school community. He is also a graduate of the National Institute on Trial Advocacy.

In 2001, Mr. Clarke was presented with "The Citizen of the Year" Award by the Greater Riverside Chambers of Commerce. The Riverside County Bar Association awarded Mr. Clarke with the James H. Krieger Meritorious Service Award in September 2010. He has twice been acknowledged as one of the 100 most influential lawyers in California by California Law Business Magazine. In February of 2011, Mr. Clarke was presented with the Omar Stratton Award by the NAACP. The American Diabetes Foundation also presented Mr. Clarke with the "Father of the Year" Award in June of 2011. In 2012, he was awarded the "Terry Bridges Outstanding Attorney Award" by the Leo A. Deegan Inn of Court. More recently, Mr. Clarke was awarded the "Frank Miller Outstanding Civic Achievement Award" by the Mission Inn Foundation in 2015. Mr. Clarke is also a past Chairman of the Board of the Greater Riverside Chambers of Commerce. He currently serves on the Board of Directors of the Riverside County Bar Association.



Sophia Choi
Vice President

Sophia Choi is a Deputy County Counsel for Riverside County and has been with the office since 2006. She graduated from Notre Dame High School in Riverside as Valedictorian. She received her B.A. degree from the University of California, Los Angeles with highest Latin honors. She was a member of the Alpha Kappa Delta Sociology Honors Society and served as the general manager for the Southern California Korean College Students Association. Sophia Choi received her J.D. degree at the age of 22 from Southwestern University School of Law in the SCALE two year J.D. program and was co-editor in chief for the Advocates. She received the CALI Excellence for the Future Award in Constitutional Perspectives. During law school, Sophia did an externship with the California Attorney General's Office in the Criminal Appeals, Writs, and Trials Division.

Sophia was the co-founder and inaugural president of the Asian Pacific American Lawyers of the Inland Empire. She has received special recognition from the City of Riverside, being honored as a recipient of the HRC Riverside Heroes Award by the Human Relations Commission and Mayor Ron Loveridge for her community involvement.

Sophia Choi has been active in the Riverside County Bar Association for many years. She has been a contributing writer of the Riverside County Bar Association's Bar Publications Committee, for which she has written numerous articles, including judicial and attorney profiles and feature articles. She has also been the co-chair of the Law Day Committee, through which efforts were made to contribute to the general public of the Riverside County community. Sophia participated as a scoring attorney in the Mock Trial program for several years. She further served as the director-at-large for the Riverside County Barristers Association and is currently the secretary-treasurer of the Leo A. Deegan American Inns of Court. She has also served as a director-at-large and secretary of the RCBA and currently serves as its chief financial officer. Sophia Choi would love the opportunity to continue to serve the Riverside community as the RCBA vice president. Riverside has been her home since the age of seven, and she would love to work actively to contribute to the advancement of the RCBA. Please vote for Sophia Choi.



Nick Firetag
Chief Financial Officer

I am honored to be considered for the position as the RCBA's Chief Financial Officer. I am a life-long Riverside resident. I graduated magna cum laude from the University of California, Riverside in 2000. During my time at Pepperdine Law School I won the National Moot Court Criminal Procedure Competition in San Diego, was the editor-in-chief of the Dispute Resolution Law Journal, and graduated cum laude.

After graduating in 2005, I started working in the litigation department at Gresham Savage Nolan & Tilden. I am currently a shareholder with the firm.

From 2007–2014, I was an adjunct professor for CBU's School of Business. In the Fall of 2007, I taught an undergraduate course entitled "Introduction to Business Law." From 2008-2014, I taught two MBA courses entitled "Legal Issues for Management" and "Managerial Ethics."

I am actively involved in several bar association groups and other non-profit charities. I previously served a two-year term as a director-at-large for the RCBA and am currently serving as the secretary. During my term, I was honored to have the opportunity to help create a new RCBA mentorship program in coordination with the Riverside Probation Department's Bridge Program, wherein attorneys are paired with at-risk young adults to help them end their cycle of crime. I am also serving as a committee member for another RCBA program, the Lawyer Referral Service, which provides referrals to attorneys.

In addition to my work with the bar association, I also serve on the board of directors for Riverside Habitat for Humanity (where I am the secretary), which provides low-income housing for individuals residing in Riverside County. I also serve on the board of directors for Glocal Outreach, which has the dual goal of providing medical assistance in emergency situations nationwide and assistance with small, local churches.

My wife and I will celebrate our 18th wedding anniversary this July. We have three beautiful children.

I am proud to work in a legal community that puts such a strong emphasis on civility and ethics. I would consider it a great honor to continue representing all of our members on the board of directors as your chief financial officer.



Lori Ann Myers
Secretary

Lori Ann Myers was born in Huntington Beach, California and grew up in Lake Forest. Prior to attending law school, she received a real estate license, which she still maintains. She received her law degree from Western State University College of Law. She has practiced exclusively in the area of criminal defense. Working as a clerk for the Orange County Public Defender's Office in law school, cemented her belief that criminal defense was her calling. Ms. Myers' first job as an attorney was with the Riverside County Public Defender's Office.

Currently, Ms. Myers has a vibrant private practice, which includes representation of clients in the counties of Riverside, San Bernardino, Los Angeles, Orange and San Diego. She has tried multiple homicide cases and meets the State Bar requirements to represent clients charged in capital cases in which the death penalty is sought. She has tried, to verdict, cases involving sexual molestation, rape, driving under the influence, vehicular manslaughter, assault, robbery and gang allegations. Ms. Myers was recognized by AVVO with an award as Top Attorney for 2017 with a superb Attorney rating by the Legal Community and was also recognized by the American Institute of Criminal Law Attorneys as one of the 10 Best Attorneys in 2017 for Client Satisfaction in Criminal Law in California.

Her involvement in the community has included participation as a scoring attorney for various Mock Trial competitions and a volunteer with VIP Mentors. This organization, formerly

called Volunteers in Parole, contracts with the State Bar of California to provide volunteer attorneys who serve as mentors to parolees. The program helps facilitate a successful re-entry into society by providing the parolee with much needed guidance and advice from a reliable mentor. Currently, she is on the Board of Directors as a director-at-large and is the co-chair of the Criminal Law Section for the RCBA.

In addition to her private practice, Ms. Myers provides representation to indigent criminal defendants. The Public Defender has many cases in which a conflict of interest is present. In these situations, the defendant is still entitled to a defense attorney. The County of Riverside contracts with entities to provide defense attorneys to indigent defendants who cannot be represented by the Public Defender. Ms. Myers has been working within this system of court-appointed counsel for almost 14 years.



Matthew Strickroth
Secretary

I am proud to call myself a member of the Riverside County Bar Association and a deputy district attorney for the County of Riverside. I received my Bachelor's degree from the University of Notre Dame, and my law degree from Chapman University.

The Riverside legal community has been my home since I began my career with the Riverside County District Attorney's office in 2008. As a deputy district attorney, I strive to uphold the highest standards of integrity, work ethic, and professional conduct.

For the last two years, I have been honored to serve as a director-at-large on the RCBA Board of Directors, and I welcome the opportunity to continue to serve on the board as secretary. The RCBA is an exceptionally valuable organization for the Riverside legal community. It is an essential forum to address issues that impact our local justice system and the attorneys who practice in Riverside County.

My wife, Lauren, and I are active members in the community. I am a regular hearing officer for the Jurupa Unified School District Student Youth Court program and annually participate in the RCB Foundation's many community service programs, including the Mock Trial Program and Christmas Elves. I also look forward every year to reading to Riverside students at the annual Adopt-a-School Reading Day.

I welcome the opportunity and privilege to continue to serve on the board of directors for the Riverside County Bar Association.



Erica Alfaro
Director-at-Large

Erica Alfaro is staff counsel at State Compensation Insurance Fund where she practices workers' compensation law defending state agencies. A native of Riverside, she obtained her undergraduate and legal education at the University of

California, Davis. Erica has been active in the Riverside County Bar Association for several years. She most recently served as president of the Barristers, the new and young attorney organization of the RCBA, and was instrumental in reviving the organization. As Barristers'

president, Erica helped establish the Annual Judicial Reception and supported RCB Foundation, including the Elves Program, which assists needy families in Riverside County. She attended the inaugural foundation fundraiser in 2017 and also served as a volunteer for Adopt-A-School Reading Day.

For the past two years, Erica has served as a board member for Inland Counties Legal services, which is a nonprofit organization providing legal services to low-income individuals residing in Riverside and San Bernardino counties. She is a member of the Leo A. Deegan American Inn of Court. Erica previously served as a volunteer attorney at Inland Empire Latino Lawyers (IELLA) and is a past participant of the RCBA New Attorney Academy.

Erica is honored to have been nominated for director-at-large and would love the opportunity to continue to serve the Riverside Community as an RCBA board member.



Mark Easter

Director-at-Large

Mark Easter is a Partner at Best Best & Krieger LLP, where he has worked since graduating from U.C. Davis Law School in 1989. Mark serves on BBK's Recruitment Committee, Associate Development Committee, and Nominating Committee.

Mark specializes in real estate litigation, receivership litigation, public agency acquisitions, eminent domain, and inverse condemnation. Mark is a board member and is actively involved in the Inland Empire Chapter of the International Right of Way Association ("IRWA"), a professional organization that focuses on public agency acquisitions, right of way, and valuation. Mark has taught courses and seminars on eminent domain, expert witnesses, and trial advocacy for the IRWA, the Appraisal Institute, CLE International, and the RCBA.

Mark has been actively involved in the Riverside County High School Mock Trial program for over 25 years, as an attorney scorer from 1992-1995, as a member of the Steering Committee from 1996-2004, as an attorney coach for Woodcrest Christian from 2004-2014, and as an attorney coach for Valley View in Moreno Valley since 2015.

Since 2010, Mark has assisted in RCBA's Elves Program as a money elf, wrapping elf, and delivery elf. Since 2014, Mark has served on RCBA's Bench Bar Committee. Mark is interested in serving on the RCBA Board to help promote attorney professionalism and civility, continuing legal education, and attorney outreach to the community.



Abram Feuerstein

Director-at-Large

Since my appointment in September 2009, I have served as an Assistant United States Trustee employed by the United States Department of Justice. As an Assistant U.S. Trustee, I supervise the Riverside District Office of the Office of the United States

Trustee, and represent the United States Trustee. The mission of the United States Trustee Program is to serve as a "watchdog" to help protect the integrity and promote the efficiency of the nation's bankruptcy system.

Prior to joining the U.S. Trustee Program, I was a principal of the Central Valley, California based law firm, Suntag & Feuerstein, where I practiced business litigation with an emphasis on bankruptcy. Previously, I practiced business litigation and bankruptcy with two large national law firms based in San Francisco, California: Thelen, Marin, Johnson & Bridges (1987-1990); and Heller, Ehrman, White & McAuliffe (1990-1992). I then became a partner in the small-to-mid-sized San Francisco based firm Feldman, Waldman & Kline, where I continued to practice business litigation and bankruptcy, with an emphasis on the representation of Chapter 7 bankruptcy trustees. I attended Vassar College (A.B. 1984) and Boston University School of Law (J.D. 1987).

Before moving to the Inland Empire, I served on the Board of Governors of the San Joaquin County Bar Association and chaired the county bar association's continuing legal education committee. In San Joaquin County, I was a founding member of the local Inn of Court.

I have co-chaired the RCBA CLE Committee for the past three years and in that role institutionalized the committee's January CLE Marathon. I also enjoy serving on the RCBA Publication Committee and frequently contribute articles for *Riverside Lawyer Magazine*. Because my position with the Department of Justice makes it difficult to write about legal issues falling within the scope of my job, I have published articles on Perry Mason's creator, Earl Stanley Gardner; walking up Mount Rubidoux; the 200th Anniversary of Mary Shelley's *Frankenstein*; the World War I Museum in Kansas City, Missouri; the Sherlock Holmes collection at the University of Minnesota; the Shaw Memorial at the National Gallery of Art; and frameworks for understanding modern terrorism, minimum wage laws, and flat tax proposals. For the past four years, I have participated as a member of the Leo A. Deegan Inn of Court. I am honored to serve currently on the RCBA's Judicial Evaluation Committee.



Brandon Mercer

Director-at-Large

I am a senior deputy city attorney with the City of Riverside working in the litigation section of the office. I began my career with the city back in 2005 when I was hired as a law clerk during my last year of law school. I have been involved with the RCBA

CLE Committee for the past several years.

I received my J.D. from the University of La Verne in 2006. While at La Verne I was an articles editor and staff writer for the law review. I received my B.A. in Political Science from Rutgers College, Rutgers University. While at Rutgers, I was an active member of the Sigma Chi Fraternity.

Since 2013, I have been an adjunct professor at California Baptist University. I usually teach one or two classes a year. I have taught Human Resources Management, Business Law, and Comparative Politics. Prior to teaching at CBU, I taught an Advanced Evidence Practicum at University of La Verne College of Law for a few years.

I've been married for almost 20 years to my wonderful wife Sierra. We have two children, one in college and one in high school. We will be empty nesters in the next year or so, and my wife and I are looking forward to the next stage in our lives.

I thank you for your consideration to continue my active involvement with the RCBA.



JUDICIAL PROFILE: HONORABLE EMMA SMITH

by Juanita E. Mantz

If you walk into the criminal courtroom of the Honorable Emma Smith, the first thing you will notice is the atmosphere. Department 41 is calm and the judicial presence on the bench has a smile and a gracious, but firm, demeanor. One would think that Judge Smith has been doing this for a decade or more, but she just took the bench this year. Watching her on the bench, she clearly is a judicial rock star in the making, especially when you hear her story. (As an aside, I am well qualified to tell her story because I started as a deputy public defender with Judge Smith at the Law Offices of the Riverside County Public Defender on the same day, January 6, 2009.)

We sit down in her chambers and I am immediately comfortable chatting with her in her new persona. Judge Smith, despite the robe, is still the intelligent and kind person we have all come to admire in Riverside. Judge Smith's chamber is already tastefully and fully decorated. I look around and see her father's plethora of publications and her diplomas on the wall, along with a large black and white photograph of the pier near her home by the beach. On her desk sits a picture of her with her husband, deputy district attorney Alan Smith, and their two children.

Judge Smith was born in the Bay area, specifically Redwood City in Northern California. Her parents came from the United Kingdom to work and study at Stanford. Her father came to complete his post doctorate work in metallurgy, for which he is widely published. Judge Smith's mother came to work as a researcher at Stanford in software engineering, a male dominated field both then and now.

Since an early age, Judge Smith's mother was always "striving to be treated as an equal among men." Her mother was one of the few women in the software computer engineering field for decades and never wanted her gender to be considered in the perception of her as an engineer. Despite that wish, it often was. This had a profound impact on Judge Smith's philosophy and made her aware of the possibilities for women, as well as the hurdles women might face.

Judge Smith knew early on that law was her career of choice. She attended high school in Menlo Park and received her undergraduate degree at American University in Washington D.C., where she graduated early with a Bachelor of Arts degree in Law and Society. During her tenure in D.C., Judge Smith worked as an intern at a large,



Honorable Emma Smith

global corporate law firm (Covington and Burlington LLP), but she soon realized that corporate life was not for her and thus, she began interning with the public defender's office. While there, Judge Smith realized that she was called to work in public service.

Judge Smith then attended Santa Clara Law School (choosing a law school close to her mother's residence) and again interned at a public defender's office, this time as a law clerk. After passing the bar, Judge Smith worked for a year at Apple practicing employment law in house and then quickly made her

way to giving back by working for the California Appellate Project in San Francisco. While there, Judge Smith traveled the country doing habeas appellate work for death row inmates and researched and investigated issues related to the penalty phase such as trauma, environment, lineage, and mental health issues. This experience would later put her in good stead for her work as a deputy public defender in Riverside.

Although it was difficult to leave the work she loved, Judge Smith knew she had to act when she saw an opening at the Law Offices of the Public Defender ("LOPD") in Riverside County. Judge Smith quickly applied, interviewed, and was hired immediately. She started, like myself, in the misdemeanor unit. While in Department 21, she appeared before then Commissioner Moyer, (now the Honorable Bambi Moyer), and who, as fate would have it, is Judge Smith's next door neighbor sitting on the bench in Department 42.

At the LOPD, Judge Smith was quickly promoted into domestic violence trial court where she tried approximately thirty cases to verdict and was then promoted to preliminary hearings and then to the felony department. During this time, Judge Smith managed to have two children, a boy and a girl. Judge Smith never considered not coming back to work as she always felt that she "could be a better mom as someone who had an identity at work as well as at home. I always felt so much more refreshed as a working full-time mom," Judge Smith said with a wide smile, her eyes twinkling with sincerity.

Soon, Judge Smith was promoted to a leadership position at the LOPD, supervising the calendar as lead attorney for the vertical court in Department 41, before Judge Becky Dugan, and then in Department 63, before Judge Helios

Hernandez. Judge Smith credits her fast rise at the LOPD to her being a quick learner and being able to “learn by doing” and “not being afraid to ask questions.”

I asked Judge Smith to further expand on how those skills are put to use in her new role as a still learning judge. Her response illustrated the dedication and humility that typifies her personality. She said, “Being on a stage can be scary, but you need to be able to be confident enough to know what questions to ask and to do your research. My goal is to be purposeful and present every day on the bench.”

When I asked her how different it was being a deputy public defender versus a judge in a robe in a courtroom, her answer illustrated how humble and down to earth she has remained despite her ascent to the bench. Judge Smith responded, “I was surprised at first by people’s reactions to me as a judge, the respect and deference... it is a badge of honor to be on the bench. And I need to be able to take the praise and respect, and not be made uncomfortable by it, because it is part of honoring our judicial system.”

According to Public Defender Steven L. Harmon, “Emma is a natural born leader. She is a woman of strength, determination, and persistence. But she is also kind, compassionate, and humble. She has great people skills and has a very generous spirit. She is not afraid to make a decision and stand by it. She is a woman of the highest character and integrity. She will make a great judge for our entire community. Our office misses her every day.” Public Defender Harmon said it all and I was honored to share her story.

Juanita E. Mantz is a deputy public defender in Riverside County where she works in the mental health court specializing in incompetency proceedings under Penal Code section 1368, is a memoir writer whose stories have been widely published in literary journals, and a member of the Publications Committee of the Riverside Lawyer.



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

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Prime downtown Riverside office space for lease. Ideal for a CPA, Insurance or Legal Office. Approximately 1288 sq.ft. Price per sq. ft. is negotiable from \$2.55, full gross lease. Free parking. Walking distance to all courts. Great freeway access. Receptionist available – to be negotiated. Please email stamiso@tclaw.net.

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Legal Aid Clinic Manager Staff Attorney

Seeking attorney to join IELLA Legal Aid in Riverside. Candidates must have a J.D., Spanish speaker preferred. Responsibilities include legal aid clinic management, document writing and some court appearances. Salary based upon experience. Anticipated start date in April/May 2018. Please contact Sylvia Quistorf, Executive Director, at Squistorf@iellaaid.org or 951-369-3009. Full job description at www.iella.org (Get Involved tab, Employment).

Conference Rooms Available

Conference rooms, small offices and the Gabbert Gallery meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@riversidecountybar.com.

Riverside Superior Court – Expansion of Interpreter Services

Effective Monday, April 2, 2018, the Riverside Superior Court expanded interpreter services to non-English speaking civil litigants countywide, at no cost in several case types as follows: All Family Law Cases, including Domestic Violence Cases; All Elder Abuse Cases; All Civil Harassment Cases; Unlawful Detainer Cases; Termination of Parental Rights Cases, and cases that involve custody or visitation of children; Conservatorship and Guardianship Cases.

The court will also continue to provide interpreters in all mandated areas as follows: Criminal, Traffic, Juvenile Delinquency, Juvenile Dependency, Child Support (AB1058), Mental Health.

The expansion of interpreter services was made possible by a change in statewide policy regarding court interpreter funding. The Riverside Superior Court is committed to providing language access to all case types. However, interpreters for case types other than those listed above will be subject to the availability of qualified interpreters.

Litigants, agencies, and counsel can request an interpreter when filing their case at the clerk’s office, by mail or e-mail at InterpreterServicesDivision@riverside.courts.ca.gov. Parties should inform the Court that they need an interpreter as far in advance as possible of their court date. If an interpreter is not requested in advance, or is not available, the Court may continue the case until one can be assigned.

Other information regarding interpreter services can be found on our Court website at: <http://riverside.courts.ca.gov/interpreter/interpreter.shtml>.



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