RIVERSIDE LAWYER

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MAGAZINE

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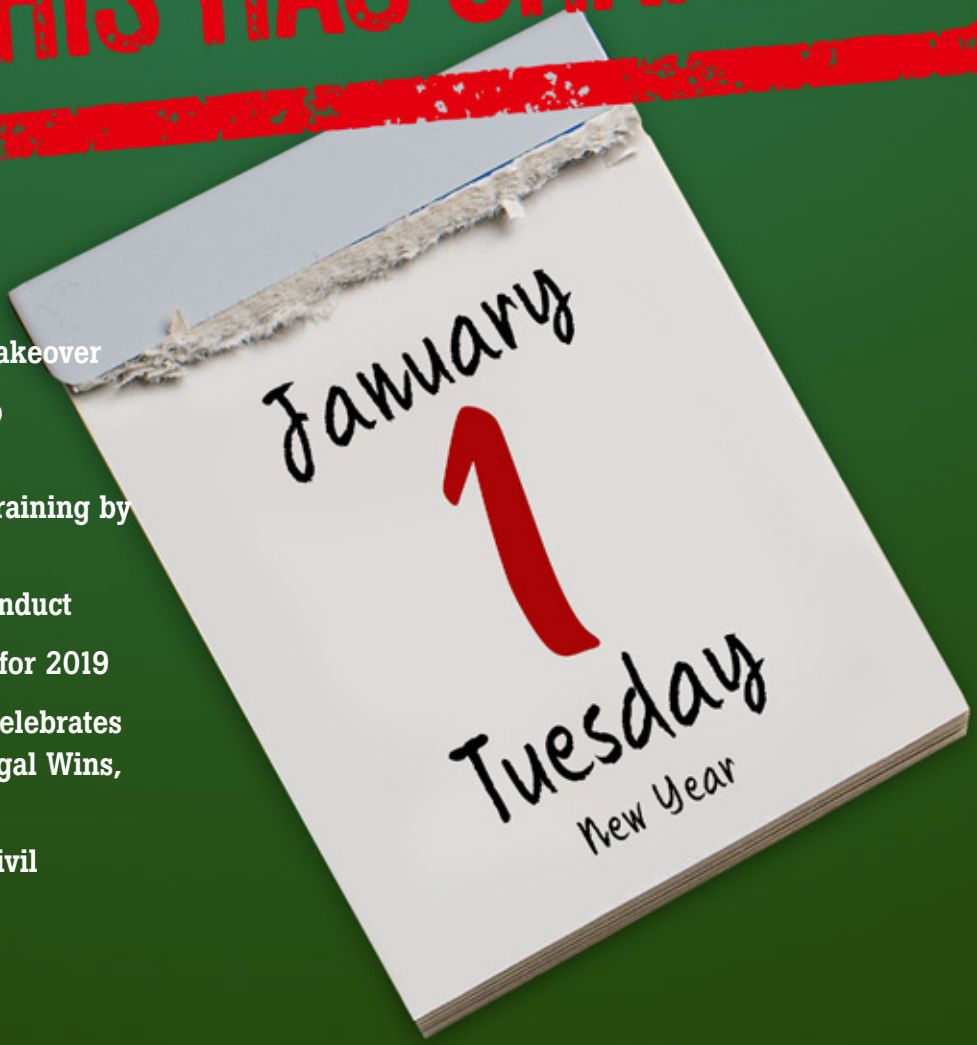

In This Issue

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RIVERSIDE LAWYER
MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:

To serve our members, our communities, and our legal system.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), 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

January

9 **Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Dr. Mohamad Khatibloo, PhD
Topic: "Ethics for the Ethical Defense Lawyer"
MCLE – 1 hour Ethics

11 **Judicial Demeanor Course for Temporary Judges**
1:00 – 4:15 p.m.
RCBA Gabbert Gallery
MCLE - 3 hours General
This course must be taken by all new temporary judges and must be retaken every three years by all continuing temporary judges.

15 **Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Jason Crowley and Ross Garcia
Topic: "Mortgage Financing Strategies in Divorce"
MCLE – 1 hour General

17 **Solo and Small Firm**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: James O. Heiting
Topic: "Solo & Small Firms Disadvantaged in Recovery and Discipline"
MCLE – 1 hour Competence

18 **MCLE Marathon**
RCBA Gabbert Gallery
9:30 a.m. – 2:45 p.m.
MCLE – 1 hour Bias, 1 hour Competence and 2 hours Legal Ethics

25 **General Membership Meeting**
Noon – 1:30 p.m.
RCBA Gabbert Gallery
Speaker: Judge Chad Firetag
Topic: "Ethics of Email and Social Media"

31 **RCBA Night at UCR Basketball**
UCR Men's Basketball v. Cal Poly Pomona
(Please see ad on page 13)

February

8 **Bridging the Gap**
A free program for new admittees
8:00 a.m. – 5:00 p.m.
RCBA Gabbert Gallery

EVENTS SUBJECT TO CHANGE.
For the latest calendar information please visit the RCBA's website at riversidecountybar.com.

President's Message

by Jeff Van Wagenen

Last month, I was helping my son study for his driver's permit test. In every study guide, and on almost every practice test, there was a reference to California Vehicle Code section 15620. The "Unattended Child in Motor Vehicle Safety Act" provides that:

(a) A parent, legal guardian, or other person responsible for a child who is 6 years of age or younger may not leave that child inside a motor vehicle without being subject to the supervision of a person who is 12 years of age or older, under either of the following circumstances:

(1) Where there are conditions that present a significant risk to the child's health or safety.

(2) When the vehicle's engine is running or the vehicle's keys are in the ignition, or both.

(b) A violation of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100)…

According to the DMV, the purpose of this law was to protect the well-being of young occupants inside a motor vehicle and to create a world where no one ever leaves a child alone in a car. To drive the point home, there are countless public service announcements aired across the state every year. (Not to mention the education of every new driver.)

While this law makes sense to all of us, we know that there must have been a tragic story that made its passage necessary. What you may not know, is that that tragedy took place here in Western Riverside County.

Kaitlyn Russell was born on February 8, 2000. She died six months later on August 15, 2000. Kaitlyn lived in Corona with her family. She died alone in the Lake Matthews area when her babysitter left her in a van on a hot summer day.

After Kaitlyn's sad death, her mother, Tammy, redirected her family's pain and anger into establishing a nonprofit, "4 R Kids' Sake." Tammy spoke locally, at statewide conferences, and on national television about preventing such deaths and gave tips to save children's lives. She also pursued legislation. When asked about her motivation, Tammy's answer was simple:

> "Kaitlyn's death was absolutely, 100%, preventable. It should never have happened. It is my goal to affect change in legislation and to bring about public awareness to this type of tragedy. If I succeed in saving one child's life and keeping one family intact and free from this emotionally devastating pain and suffering, I will have accomplished what I set out to do — I will have done one last thing for Kaitlyn."

As a result of Tammy's advocacy, Governor Gray Davis signed "Kaitlyn's Law" into effect one year after her death.

In this month's issue of the *Riverside Lawyer* magazine you will read about a number of new laws that will impact our lives in 2019. It is important to remember that behind each of these, and the countless others that are not covered in this issue, there is a story. And, while we hope that those stories are not as tragic as Kaitlyn's, the fact that there is a reason that made each of these laws necessary is one that we cannot ignore. Moreover, we must recognize that each new piece of legislation travelled the path from dream to reality because there was an advocate hard at work behind the scenes. In a world that can feel as if "the powers that be" spend their time complaining and blaming, instead of legislating, these real world reminders that a voice can be heard and that our actions can lead to tangible results is refreshing.

As the new year begins, resolve to become more involved in our political process, no matter where you find yourself on the political spectrum. The next time you think "there oughta be a law," don't stop there. Take the next step. Then take the one after, and then the one after that. Some of us belong to associations organized to advocate for change. Others will begin as the lone voice. Work with our local representatives at the city, county, state, and federal levels – they work for you and they are great partners. If you can't find a foothold with a local politician, keep looking for an ally. (Did I forget to mention that Kaitlyn's Law was carried by a State Senator from San Mateo?)

Whatever you do, "Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed it is the only thing that ever has" (Anthropologist Margaret Mead and/or *The West Wing*'s President Josiah Bartlett).

Jeff Van Wagenen is the assistant county executive officer for public safety, working with, among others, the District Attorney's Office, the Law Offices of the Public Defender, and the courts.

Barristers President's Message

by Megan G. Demshki

Welcome to 2019. With the beginning of a new year, I wonder what developing area of law will define this year?

I'm sure many of you have noticed the infiltration of motorized rental scooters in Riverside, leaving "Bird droppings" everywhere, from downtown to many residential communities.

California Assembly Bill No. 2989 was signed by the governor and filed with the Secretary of State on September 19, 2018. Assembly Bill No. 2989 was an act to amend Section 21235 of the California Vehicle Code. Section 21235 deals with the operation of motorized scooters.

Effective January 1, 2019, California removed its helmet requirement for motorized scooters. Under the new state law, only riders under the age of 18 will be required to wear a helmet. Unsurprisingly, the rental motorized scooter company, Bird, was the bill's sponsor.

The new state law also increases the number of roads scooter users can legally travel on. A provision of the state's Vehicle Code that prohibited scooters on streets with speed limits above 25 miles per hour has been amended to allow scooters on thoroughfares with speed limits up to 35 miles per hour, if authorized by local authority by ordinance or resolution. Scooter riders are permitted on roads with even higher speed limits, so long as the road has a dedicated bike lane.

It is illegal to operate a motorized scooter upon a sidewalk, except as may be necessary to enter or leave adjacent property, forcing motorized scooter operators to fend for themselves on the roadways and bike lanes (and now without a helmet).

Barristers on a recent hike on Mt. Rubidoux.
(l-r) Jennifer Voltz, David Rivera, Megan Demshki, Christopher Kielson, Goushia Farook, Paul Lin and Michael Ortiz

Currently, in California, adults are required to wear a helmet when operating a motorcycle, a moped, a Class III electronic bicycle, and an electrically-motorized skateboard.

These changes to the California Vehicle Code seem premature when the implications of rental motorized scooters are still developing. In September 2018, Los Angeles officials reported the first conviction of scooting under the influence, after an intoxicated individual struck a pedestrian on a sidewalk and proceeded to scoot away. This individual ultimately pled no contest to one count of operating a motorized scooter under the influence and one count of hit and run.

Reports are coming in of defective brakes, jammed accelerators, and wheels locking independently, leading to injury of the scooter operator and those around them.

I question who benefits from these changes to the California Vehicle Code. Certainly, loosened safety restrictions do not benefit the novice rental scooter consumer. With a quick app download and a swipe of a credit card, the consumer is headed out on the roadway with no helmet requirement and on busier, faster-paced streets. Unlike learning to ride a bike, there is no slow-paced learning curve on a motorized scooter. Jump on and zoom away.

These changes also add to the burden of our local first responders as they answer an increased number of emergency calls from motorized scooter incidents, while also impacting our emergency rooms. No national data on scooter injuries exist yet, but the *Washington Post*'s research in a recent article quoted spikes in the number, and severity, of scooter related injuries nationwide. In Salt Lake City, one hospital says it has seen a 161 percent increase in the number of visits involving scooters after comparing its latest statistics with the same three-month period a year earlier. The number of motorized scooter fatalities is rising. The U.S. Centers for Disease Control and Prevention has launched a study surrounding this concern.

These changes to Vehicle Code section 21235 seem to have come too rapidly, without due consideration for the safety, fiscal, or health implications of the rental motorized scooter insurgence.

While I have yet to handle a matter involving injury on a motorized scooter, I have a horrible feeling that the first one will be coming, heightened with the repercussions of not wearing a helmet. Even a relatively low speed collision, caused by striking another motor vehicle, a pedestrian, or even a pothole, can have lifelong, or fatal implications.

As explained in the August 23, 2018 Assembly Floor Analysis, "A study of 6,000 bike-related injuries in the United States found that riders wearing helmets had 52% lower risk of brain injury and a 44% lower risk of death compared to unhelmeted riders…. This bill gives adults the freedom to choose whether or not to wear a helmet when riding a motorized scooter."

Unfortunately, that freedom to choose whether to wear a helmet, when not required by law, may not seem necessary until it is too late (and after agreeing to many of the rental companies' binding arbitration clauses). That freedom to choose whether to wear a helmet while operating a motor vehicle disguised as a toy has the potential for lifelong, tragic implications for pedestrians, other motorists, the consumer, their families, and our larger community.

Finding a balance between managing safety and fun is always a challenge. I hope I am wrong about these changes to the law and that the number of motorized scooter incidents does not continue to climb. This year is sure to tell.

Upcoming Events:

- Join the Barristers for Happy Hour on **Friday, January 25** at 5:30 p.m. We will be meeting at the Presidential Lounge located within the Mission Inn.
- Meet up with the Barristers at Romano's downtown rooftop for Happy Hour on **Friday, February 8** at 5:30 p.m. This event is graciously sponsored by Varner & Brandt LLP.
- Keep your eye out for registration for **Motion to Strike** bowling night with the Barristers on **Friday, February 22**! This event is kindly sponsored by Melissa Baldwin Settlements.
- Learn more about upcoming events by following @RCBABarristers on Facebook and Instragram or visiting our website, www.riversidebarristers.org.

Looking to get involved?

Whether you are eager to start planning the next great Barristers gathering, or just looking to attend your first event, please feel free to reach out to me. I would love to meet you at the door of a Happy Hour, so you don't have to walk in alone or grab coffee to learn more about how you want to get involved. The easiest ways to get ahold of me are by email at Megan@aitkenlaw.com or by phone at (951) 534-4006.

Megan G. Demshki is an attorney at Aitken Aitken Cohn in Riverside where she specializes in traumatic personal injury, wrongful death, and insurance bad faith matters. Megan can be reached at megan@aitkenlaw.com or (951) 534-4006.

The Zeitgeist of 2017-2018
Public Safety Gets an Extreme Makeover

by Laura Arnold

The 2017-2018 legislative session reflected an ongoing trend in California's criminal justice system, as lawmakers continue to move away from costly mass incarceration (which has drained state and local government coffers over the past quarter-century, with very little bang for our taxpayer buck) and toward the adoption and implementation of evidence-based practices[1] and individual-based approaches to making California's communities healthier and safer. This past year, the legislature issued several mandates to criminal justice stakeholders by enacting laws which incentivize local government to build community partnerships, so that local problems can be tackled with local solutions. In addition, the new laws eliminated California's fundamentally unfair, unsafe, and unconstitutional system of bail schedules, along with expanding the power of the judiciary to sentence a convicted defendant based on the circumstances of the offense and of the offender, in accordance with the interests of justice.

Reforms have occurred across the board. One change allows piercing the shield of confidentiality that blocks Californians from learning of sustained complaints of dishonesty, brutality, and sexual misconduct committed by California's police officers. Another change provides incentives for justice players to continue learning about severe mental illness, which effects more than half of all incarcerated males and approximately eight-five percent of all incarcerated females. This change will allow symptoms and behaviors to be managed with treatment, in hopes of ending the cycle of homelessness, leading to arrest, then incarceration and/or hospitalization, and then release.

In this writer's opinion, the most innovative and exciting of these reforms was the creation of a program of diversion for those suffering from a treatable mental disorder. Often times a mental disorder plays a substantial role in the commission of a criminal act. This new law will allow a defendant to be treated in the community, so long as the person's mental disorder can be adequately managed and treated, without creating an unreasonable risk that the person will, commit a specified crime of violence or enumerated sex crimes. This program, geared toward reducing the number of incarcerated, imprisoned, and hospitalized persons with a mental disorder who are in need of meaningful treatment, many of whom are arrested, often-repeatedly, for low-level nuisance-type offenses and status crimes relating to their chronic homelessness, was created by a budget trailer bill and into effect on June 27, 2018. Thereafter, this law was modified by a Senate Bill 215 and signed by Governor Brown on September 30, 2018.

Senate Bill 215 specifies that individuals charged with enumerated crimes are not eligible for diversion, requires that diverted defendants be ordered to pay restitution to crime victims, and provides for a prima facie determination, subject to a later evidentiary determination.[2] Even defendants who are found incompetent to stand trial as a result of a mental disorder, may be diverted from the criminal justice system and given the opportunity to obtain treatment and to earn dismissal of their pending criminal cases.

One of the most controversial and potentially far-reaching criminal justice reforms of the last legislative session was the change to California's felony murder rule with Senate Bill 1437. The felony-murder rule allowed a defendant who was a minor participant in a dangerous felony resulting in a person's death, but who never killed or even tried to hurt anyone, to be convicted and sentenced for murder. For example, a teenaged getaway driver for companions who intend to steal a six-pack of beer from a gas station, could be convicted of murder and imprisoned for life if, in the course of the theft, someone used a weapon and caused the death of another person. This has been the case even when the driver did not know that anyone was armed, and even if the driver never set foot inside the store. Under the new law, only someone who was a "major par-

1 The term evidence-based practice (EBP) was initially used in relation to medical care. EBP refers to individual-based, outcome-focused approaches and interventions that have been scientifically tested and proven to be effective in achieving outcomes. In criminal justice, these interventions typically employ what is known as the "risk/needs principle." Essentially, this requires identification of unfulfilled needs, which underlie the criminal actor's illegal conduct, assessment of the actor's relative risk of recidivism (in comparison to others convicted of similar crimes) and identification of "risk factors," which precipitated commission of a crime. Put in its simplest form, a person's criminogenic needs are meaningfully addressed and identified; risk factors are managed and kept at bay, with consistency, accountability, and a level of supervision appropriate to the actor's relative risk level. As a result of using EBP, the likelihood of recidivism is significantly reduced, resulting in fewer crime victims and enhanced public safety.

2 See Penal Code section 1001.36.

ticipant" in the commission of the felony (here, robbery), or who aided the actual killing in some way, can be charged with murder. Current inmates, who were convicted under the prior version of the law, will be permitted to ask courts to resentence them. It is believed that between 800 and 1000 inmates may be eligible for relief.[3]

The legislature also expanded the power of judges to exercise individualized discretion in sentencing defendants convicted of a violent felony in Senate Bill 1393.[4] This revision in the law is in line with the change in the "use-a-gun-and-you're-done" laws, which now permits judicial officers to consider the interests of justice when deciding whether to impose previously-mandatory additional terms of imprisonment (from 3 to 20 years) upon proof that a defendant used or possessed a gun when committing a felony. This past session, the legislature gave state court judges, for the first time, the ability to consider the interests of justice when deciding whether to impose a formerly-mandatory additional five-year term of imprisonment ("nickel" prior), in cases where it is proved that a defendant convicted of a violent felony has, at any time in his or her adult life, been previously convicted of a violent felony.[5]

Another change in the law came in response to several highly-publicized recent cases involving fatal shootings by police of unarmed male adolescents and adults. The legislature passed Senate Bill 1421, which allows previously-confidential records from internal investigations of police officer shootings and other use-of-force incidents, in which someone died or was seriously injured, and records regarding sustained complaints of on-duty dishonesty and sexual assault, available with a request under the Public Records Act.[6] Assembly Bill 748 requires the release, within 45 days, of body camera footage from a use-of-force incident, subject to limited exceptions.[7]

Finally, recognizing that California's current money bail system punishes poor people simply for being poor, requiring them to languish in jail pretrial (although presumptively innocent) for no reason other than they cannot afford to post bail, and compromises public safety, permitting demonstrably dangerous people to buy their freedom, the legislature enacted Sentate Bill 10. This new law at least facially does not discriminate based on wealth.[8] According to Senator Robert Hertzberg and Assembly Member Rob Bonta, by passing this legislation,

> *We abolish a predatory, for-profit money bail system and we enhance public safety by determining whether a person should be released before trial based not on their wealth, but on an individual assessment of their risk to the public and the likelihood they will show up in court.*
>
> *SB 10 permits defendants who don't pose a safety risk to be released with the least restrictive conditions. And amendments made to the bill guarantee that there will be no cost to defendants for their release, such as an electronic monitoring device.*
>
> *Our bill will reduce the number of people accused of nonviolent, non-serious offenses held in jail solely because they can't afford to buy their freedom. At the same time, the current version of SB 10 will give crime victims even greater input. Counties will maintain flexibility to develop pretrial assessment services that best fit their needs. And we will closely watch the implementation of SB 10, including the required reporting, to make sure that bias and racial inequities don't influence decisions.*

Will Senate Bill 10 truly become operational, as planned, in October 2019? Will California's predatory system of money bail truly become a thing of the past and will California follow in the footsteps of other progressive states with an individual-based and evidence-based bail system? Will the electorate, by ballot initiative, undo what lawmakers, judicial officers, police officers, prosecutors, public defenders, probation officers, civil libertarians, victims' rights advocates, and social justice groups have worked so long and hard to create? Change can be hard. Only time will tell.

Laura Arnold has been a deputy public defender since 1995 and supervises the writs and appeals unit of the Law Offices of the Public Defender, County of Riverside. Ms. Arnold is the treasurer of the California Public Defenders Association (CPDA), has served on CPDA's legislative committee for several years, and currently chairs CPDA's juvenile justice/youthful offender committee and mental health/civil commitment committee. Laura also serves as a member of the criminal law and the appellate law advisory committees to the California Judicial Council, by appointment of the chief justice of the California Supreme Court.

3 See Penal Code section 189.

4 Notably, a "violent" felony includes petty shoplifting, if the apprehended person tries to get away and struggles, in any way, with store security, without first discarding the stolen property. (See, e.g., *People v. Estes* (1982) Cal.App.3rd 23.)

5 See Penal Code sections 667 and 1385.

6 See Penal Code sections 832.7 and 832.8.

7 See Government Code section 6254.

8 There are certainly socioeconomic factors which come into play with regard to many of the relevant factors to be weighed when ordering pretrial detention (or release) of a defendant under SB 10. It remains to be seen whether California's new evidence-based bail system, will disparately impact minorities and the poor, and whether it is determined to be consistent with the state and federal constitutions.

Review of Significant Changes to Employment Law in California

by Geoffrey Hopper

The following are some of the more relevant statutes and cases that have come into effect in California and/or applying to California in the last 12 months. It is important to keep in mind that these are just summaries and every disclaimer that I can possibly think of applies regarding these summaries but they do provide some general guidance as to what is taking place. It is always recommended that you consult with qualified legal counsel as to the applicability and interpretation of these matters as it relates to your own particular situations.

Case Law

- ***AHMC Health Care, Inc. v Superior Court* (2018) 24 Cal. App. 1014:** Court of Appeals rules that when an employer uses a rounding system that systematically is detrimental to the employee for the purposes of calculating wage and hours, such is unlawful. Employer's now have to look at their system of keeping track of employee's hours and, if they have a rounding off system, whether or not such is systematically detrimental to the employee. Previously, rounding off time periods for calculations of employee's wages when they clock-in and clock-out between three and five minutes has generally been permissible but this case raises some possible exceptions to the rule.
- ***Alvarado v Dart* (2018) 4 Cal. 5th 542:** In this California Supreme Court decision, the Court has indicated that when calculating an employee's overtime, an employer may be required to include in that calculation the bonus that the employee received if the bonus was non-discretionary. Typically, Christmas bonuses, etc., would be considered discretionary but bonuses tied to performance that are non-discretionary and are typically flat sum bonuses are required to be calculated into the employee's compensation on top of their regular hourly wage when ascertaining overtime.
- ***Dynamex v Superior Court* (2018) 4 Cal. 5th 903:** This California Supreme Court ruling shifts the burden to the employer to prove that the person the employer claims is an independent contractor is actually an independent contractor as opposed to an employee and further, it concludes that the "suffer or permit to work" definition must be interpreted broadly to thereby treat employees as those who are workers who would ordinarily be viewed as working in the hiring business and adopts an ABC test to make that determination.
- ***Golden v California Emergency Physicians* (2018) 82 F. 3d 1083:** In this 9th Circuit decisions, the court struck down a settlement agreement that employees signed, waiving the rights of the employee to again work for that prior employer with the definition of the prior employer included language as to affiliates and/or with whom the prior employer had contracts with as being a violation of Business Professions Code §16600 which prohibits covenants not to compete (do not make your release agreements too general or vague or they may be unenforceable as to waiver of rights to reemployment).
- ***Troester v Starbucks Corporation* (2018) 5 Cal. 5th 829:** In this recent California Supreme Court decision, the Court ruled that California laws do not allow employers to mandate employees to routinely work (i.e. round off hours). To put it another way, if the employer is rounding off the time routinely works to the determent of the employee, such will not be permitted.

Legislation

- **Amended Labor Code §515.5(a)(4):** Overtime exemption for computer software employees now mandates that they make not less than $45.41 per hour or a monthly salary of not less than $7,883.60 or an annual salary of not less than $94,603.25 in order to be deemed exempt otherwise, they must be paid hourly and there are substantial penalties of liability and exposure for failure to do such, this being effective as of

January 1, 2019. Accordingly, carefully review your IT person's exempt versus non-exempt status.

- **Assembly Bill 1008:** This is the "ban the box" law which precludes an employer from putting on an employment application whether or not the applicant has committed a felony. Rather, this law mandates that an employer is first required to make a conditional offer of employment and then goes through an interactive process to determine whether or not if the applicant has committed a felony of a serious nature, so as to justify their refusal to hire that applicant.
- **Assembly Bill 1565:** This applies to contracts entered into on or after January 1, 2018, now requires, in some situations, a general contractor, otherwise known as a direct contractor, to be responsible for its subcontractor's employees' unpaid wages and fringe and other benefit payments or contributions.
- **Assembly Bill 1976:** This mandates that employer's provide lactation accommodations for their employees in an area temporarily used only for lactation purposes and not to be a bathroom.
- **Assembly Bill 2034:** Mandates that on or before January 1, 2021, businesses that might have a high likelihood of coming into contact with human trafficking such as passenger rail, light rail, bus stations, adult stores, etc., must not only have posters on the premises about human trafficking but must also provide training to their employees about how to identify and report such trafficking.
- **Assembly Bill 2282:** This law prohibits an employer from relying on the salary history and/or arguably asking anything whatsoever about a salary history of an applicant for a job and continues to permit the applicant and/or existing employee to request, and be able to obtain from the employer, a pay scale from the position that they are working which also requires the employer, if there is a differential, to explain essentially why such is not discriminatory or retaliatory.

- **Assembly Bill 2770:** This provides that if an employer is asked whether or not they would rehire an employee, they may disclose, and such disclosure will be treated as a privileged communication, that they would not rehire the person because of a complaint, or complaints, of sexual harassment.
- **Senate Bill 396 and Senate Bill 1300:** Gender identify, gender expression, and sexual orientation applies as to those employers with 50 or more employees to provide two hours of the already existing sexual harassment training but also to be included in that training are the topics of gender identity, gender expression, and/or sexual orientation to be done once every two years on an ongoing basis for existing supervisors and managers.
- **Senate Bill 63:** Otherwise known as the Baby Bonding Act, this mandates that certain size employers (typically 20 or more employees) are required, under certain circumstances, to provide unpaid baby-bonding time for up to twelve weeks for their employees.
- **Senate Bill 820:** This prohibits a provision of a settlement agreement that prevents the disclosure of factual information regarding claims of sexual assault, sexual harassment, or harassment or discrimination based on sex. Any such agreements containing such language entered into on or after January 1, 2019, are to be considered void as a manner of law and against public policy.
- **Senate Bill 954:** This mandates that, except in class or representative actions, an attorney is required to provide to their client for a mediation (in advance of a mediation) a pre-printed form explaining the process and while the failure to provide such will not invalidate what takes place at the mediation, said form may be used in evidence as it relates to any disciplinary action as it relates to the attorney.
- **Senate Bill 970:** This bill requires specified employers who may come into contact with human trafficking to provide at least 20 minutes of prescribed training and education to their employees as it relates to the topic of trafficking to be done before January 1, 2020.
- **Senate Bill 1343:** This bill mandates the requisite sexual harassment training, which has also been specified as applying to supervisors and managers, to apply to all employers with five or more employees for all of their employees for a one-hour duration to be completed by January 1, 2020, and also provides that the Department of Fair Employment and Housing is to develop an online training program itself on its website.
- **Senate Bill 1412:** Previously, California law prohibited an employer information about an applicant regarding a pre-trial or post-trial diversion and/or program questions about criminal convictions regarding the same. The new law clarifies that an employer may seek such information if state or federal law requires such information and/or the applicant is required to possess a firearm for their job and/or the applicant, as part of their conviction, is prohibited from holding the position sought, even if the conviction has been expunged, sealed, eradicated, or dismissed.
- **Minimum Wage:** Effective January 1, 2019, employers with one to 25 employees under state law, are required to pay $11.00 per hour minimum wage, and those with 26 or more employees would be required to pay $12.00 per hour; however, note that specific cities and counties may require greater amounts.

Geoffrey Hopper is the principal of the Law Offices of Geoffrey H. Hopper & Associates, located in Redlands, CA, and has practiced for over 30 years in handling labor and employment matters as well as being the past president of the Riverside County Bar Association. He can be reached at (909) 798-9800 or ghh@hopperlaw.com.

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Mandatory Sexual Harassment Training by Employers

by DW Duke

Sexual harassment and sexual discrimination have been endemic in the workplace since the beginning of recorded history. In the United States it remained a common condition until the latter part of the 20th Century when legislators began to recognize the need for protection of victims. Even then the courts were often slow to recognize the viability of sexual harassment claims. The Civil Rights Act of 1964 (Title VII) protected victims of sexual discrimination in that sex was specifically enumerated as a protected class, but it was not until 1986 in *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986), that the United States Supreme Court ruled that speech in itself can constitute a hostile environment which violates the law.

It has been a long fight to secure protections from sexual discrimination and sexual harassment in employment. In certain industries, such as the entertainment industry, sexual harassment remained a cost of obtaining work, until within the last decade victims began to tell of their experiences at the hands of such celebrities as Bill Cosby and Harvey Weinstein. It was commonly said that if a woman wants to work in Hollywood, she must pay the price and keep her mouth shut, or someone else will be cast in her place. And most recently in the Senate hearings for the nomination of Brett Kavanaugh to the U.S. Supreme Court, the entire world watched in disbelief as our highest governing body was turned into a media circus reminiscent of a third world country.

What is the solution to sexual harassment and sexual discrimination? How does the world protect its women, and sometimes men, from the pathetic creeper who feels that exercising financial dominance for sexual gratification is the only way of securing romance? Years, ago I met a young woman who had immigrated to the United States from Russia. She explained to me that in Russia, when she entered the workforce, it was expected that female employees would provide sexual favors. It was commonly known and assumed to be the case. When I expressed disbelief and asked how women protect themselves from this abuse, she shrugged and without a smile said, "You do your best to get a really good-looking boss."

It seems that the best protection from sexual harassment is education. This education begins at home with the children. They must be taught that using dominance to achieve sexual gratification is wrong. It is wrong just as bullying and racial discrimination or mocking a disabled individual is wrong. This is difficult to teach, especially in a world where children are inundated with sexual messages from the time they turn on their computer, until the time they go to bed. When is the appropriate age to begin teaching our children about the evils of sexual harassment when they are faced with constant sexual stimuli on a daily basis? Perhaps it is never too soon.

Clearly, education about sexual harassment should occur early in life and needs be taught in the workplace at the very latest. The California State legislators are taking steps to ensure that education about sexual harassment occurs in the workplace. Beginning January 1, 2020, any California employer who employs five or more employees, "including temporary or seasonal employees," is required "to provide at least two hours of sexual harassment training to all supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every two years thereafter, as specified."[1] In addition, the Department of Fair Employment and Housing is required to develop or obtain one or two-hour online training courses on the prevention of sexual harassment in the workplace and to post the courses on the department's website.[2]

Under existing law, the California Fair Employment and Housing Act renders certain employment practices unlawful. Among those is harassment of employees by the employer directly or by agents of the employer. The act requires that employers with 50 or more employees provide at least two hours of training and education pertaining to sexual harassment, abusive conduct and harassment based on gender, to all supervisory employees within six months of assumption of a supervisory period and once every two years.

Eradicating wrong is never an easy task. For those who are obtaining sexual harassment training for the first time in employment it is late, but as has often been said, "Better late then never."

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.

1 See Govt Code §12950.1, subd.(a).
2 Govt Code § 12950.1, subd. (k) and (l).

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Revised Rules of Professional Conduct

by Robert A. Hawley

Newly Adopted Rules of Professional Conduct

After about 18 years, the California Supreme Court adopted revised California Rules of Professional Conduct (Revised Rules), submitted to it by the State Bar, to apply in California effective November 1, 2018. The Revised Rules conform to the ABA Model Rules of Professional Conduct in format and numbering and continue many of the philosophical underpinnings of the former California rules, while trying to adapt to the ABA's model standard.

The California Rules of Professional Conduct, not the American Bar Association (ABA) Model Rules, are the disciplinary standards in California.[1] A lawyer can be disciplined in California only by the State Bar (as the Supreme Court's disciplinary agency) and only for violations of California's standards, which are articulated in the California Rules of Professional Conduct and in the California Business & Professions Code.

California Professional Responsibility In General

The practice of law in the United States is a judicial branch function. The legal profession is regulated by the various high courts in each U.S. state and territory. There is no nation-wide regulation. Lawyers are admitted before and regulated by each state's and territory's high court. The regulatory rules are adopted by each jurisdiction's high court to be binding on the attorneys subject to its regulation. This is different from the model followed in many of the world's jurisdictions, where lawyers are regulated centrally through a law society or other non-governmental, non-judicial entity.

U.S. attorneys are often referred to as "members" of the bar. They are actually licensees in a profession regulated by the high court in each state and territory. In California, the regulatory agency is the State Bar of California, an agency created by statute, and placed in the judicial branch of state government by constitutional amendment to assist the California Supreme Court regulate the legal profession.[2]

The ABA promulgates, among other things, Model Rules of Professional Conduct. The ABA is NOT a regulatory agency with any enforcement powers. It is the national trade association for U.S. lawyers. It promulgates Model Rules to be considered for adoption by the various state high court, judicial branch, attorney regulators in the United States. The California Supreme Court has regularly adopted its own version of the governing rules, which are similar, but not identical to, the ABA Model Rules. The California Supreme Court first adopted the California Rules of Professional Conduct in 1928, with the statutory creation of the State Bar. These rules were revised in 1975, 1989, 1992, and now again, effective November 1, 2018.

In other states, regulation of the legal profession is left exclusively to the high court of the state, which usually has ultimate authority to regulate attorneys over the state executive or legislative branches on a constitutional "separation of powers" basis. In California, the California Supreme Court has observed that, in the field of attorney-client conduct, the judiciary and legislature are "partners" in regulation. The legislature regulates through statute, articulated in California Business & Professions Code, Chapter 4 [Attorneys], section 6000 et seq. The Supreme Court does so through the Rules of Professional Conduct it adopts. Although the legislature co-regulates attorneys in California with the Supreme Court, the California Supreme Court retains plenary authority over the regulatory process.[3]

The California Rules of Professional Conduct, pre- and post-November 1, 2018, can be found with a host of other regulatory and ethics resources at: http://www.calbar.ca.gov/Attorneys/Conduct-Discipline. The ABA Model Rules of Professional Conduct, ABA/BNA Manual on Professional Responsibility, and other resources can be found at the ABA's Center on Professional Responsibility: https://www.americanbar.org/groups/professional_responsibility.

California Rule Revision Highlights

This is an introduction only. You are commended to the Revised Rules themselves for the best determination of what they require.

The Fine Art of "Snitching": ABA Model Rule 8.3 requires an attorney to report the misconduct of another.

1 *See, e.g., State Compensation Insurance Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644).

2 Business & Professions Code Section 6000 et seq.; California Constitution Article VI, Section 9; *In Re Attorney Discipline System* (1998) 19 Cal.4th 582, 590-594, 598-600.

3 *See In Re Attorney Discipline System* (1998) 19 Cal. 4th 582, 592-594.

California has NOT adopted this rule. California Business & Professions Code Section 6068(o), requires that an attorney "self-report" various actions as noted in the statute. But there is no duty in California to report the misconduct of another.

Performance, Competence and Diligence: The duty of "diligence" is now emphasized in a separate rule from "competence."[4]

In revised Rule 1.1, "gross negligence" is added to the disciplinary definition of "competence," which includes "intentionally," "recklessly" or "repeatedly" failing to perform with competence. The duty to supervise is emphasized in Revised Rules 5.1, 5.2, 5.3. Revised Rule 5.1 also states that lawyers who "possess managerial authority" in a law firm shall make "reasonable efforts to ensure" that the firm offers "reasonable assurance" that all lawyers in the firm comply with regulatory authorities. The duty to communicate with clients about "significant developments" is stated in Revised Rule 1.4, and the duty to communicate settlement offers is retained in Revised Rule 1.4.1. Revised Rule 1.4.2 continues to require the disclosure of no professional liability insurance.

Fees: Revised Rule 1.5 retains California's prohibition on "unconscionable" or "illegal" fees. Revised Rule 1.5 also addresses "non-refundable" and "flat or fixed" fees. All fees are refundable for work not performed. Contingent fees are now expressly prohibited in family law and criminal matters. Revised Rule 1.15 [Safekeeping of Funds and Property] states that funds, including fees and costs, that are not yet earned by the attorney go into the trust account. Flat fees may be deposited directly into the attorney's general account IF the client consents. Advance fees for mortgage modifications are still prohibited by Business & Professions Code Section 6106.3 and Civil Code Section 2944.6-7. California lawyers can still split fees with other lawyers under Revised Rule 1.5.1, if reflected in a writing.

Confidentiality: California continues it heightened protection of client confidentiality in Revised Rule 1.6. Subject to the duty of client confidentiality, lawyers representing clients must be truthful in statements to others under Revised Rule 4.1, including the court, under Revised Rule 3.3. Inadvertent disclosure, addressed in *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal. 3d 807, is incorporated into Revised Rule 4.4.

Conflicts of Interest: The conflict rules adapt to the ABA format, but largely continue the California perspective. Revised Rules 1.10 and 1.8.11, expressly recognizes imputation as a disciplinary standard and also allows "screening" in limited circumstances.[5]

"Don't Threaten Me:" California continues, in Revised Rule 3.10, its prohibition on threats of public charges to gain an advantage in a civil dispute. [6]

Prosecutor's Duty to Disclose: The constitutional duty of prosecutors to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963) is enhanced as a disciplinary rule in Revised Rule 3.8.

No Sex with Clients: California's duty NOT to have sex with clients is enhanced in Revised Rule 1.8.10.

Misconduct: California adopts Revised Rule 8.4 prohibiting lawyers from: assisting others to violate the rules; committing a criminal act that reflects adversely on the lawyers honesty, trustworthiness, or fitness as an lawyer; engaging in dishonesty, fraud, deceit or reckless or intentional misrepresentation; engaging in conduct that is prejudicial to the administration of justice; claiming the ability to improperly influence a public official; or assisting a judge in the violation of the Code of Judicial Conduct.

Discrimination: In Revised Rule 8.4.1, California prohibits "unlawfully" discriminating against or harassing any person in the practice of law or "knowingly permitting" unlawful discrimination or harassment in the operation of the lawyer's firm.

Fairness: Revised Rule 3.4 restates several prohibitions on hiding evidence, lying, disobeying court directives, and asserting personal views as an advocate at trial.

Other Rules: Revised Rule 1.0 continues the purpose and function of the rules forward from the former rules; Revised Rule 1.01 defines terms used in the Revised Rules; Revised Rule 1.2 defines the scope and allocation of authority in a representation; Revised Rules 1.12 and 2.4 address serving as a third-party neutral in a matter; Revised Rule 1.18 addresses prospective clients; Revised Rule 4.3 addresses communicating with an unrepresented person; Revised Rules 6.3 and 6.4 address participating in legal services activities; Revised Rules 3.9 and 2.1 address advocacy in non-adjudicative proceedings and a lawyer's role as advisor; Revised Rule 1.11 addresses conflicts of interest for lawyers in public service. Proposed Rule 1.14 regarding clients with diminished capacity was rejected.

Robert Hawley served as Chief Labor Counsel, Deputy Executive Director and then Acting Executive Director of the State Bar of California.

4 *See* Revised Rule 1.3. Revised Rule 3.2 prohibits undue delay in litigation.

5 *See* Revised Rules 1.10. 1.7, 1.8-1.8.10, 1.8.11, 1.9.

6 *See also, Cohen v. Brown* (2009) 173 Cal.App.4th 302.

New Juvenile Delinquency Laws for 2019

by Maura Rogers

In recent years, juvenile delinquency law and practice has been very dynamic due to substantial changes to the Welfare and Institutions Code (WIC). This year was no different. The following bills were signed into law by Governor Jerry Brown and went into effect on January 1, 2019, with the exception of AB 1812, which took effect on July 1, 2018. I have also included the WIC code sections, which were modified or added in parentheses following the bill numbers.

Transfers to Adult Court – SB 1391 (707) - Eliminates 14- and 15-year-olds from eligibility for transfer to adult court, unless the minor is alleged to have committed an offense listed in 707(b) and is not apprehended prior to the end of juvenile court jurisdiction.

Juvenile Court Jurisdiction – SB 439 (601, 602, 602.1) – Limits juvenile court jurisdiction in delinquency and status offense cases to minors who are between 12 years of age and 17 years of age, inclusive, except for cases involving murder or specific sex offenses. After January 2020, counties will need to put into place school, health, and community-based services "avoiding any intervention whenever possible" for minors under 12 years old.

Sealing – SB 1281 (786) – Amends sealing statute where ward is subject to firearms restrictions until 30 years (29820 PC) then all sealed records shall not be destroyed until 33 years of age and allows DA and DOJ to access sealed records to enforce firearm ban.

Sealing – AB 2952 (786) – Amends sealing statute to allow a Brady exemption where DA must request juvenile court permission to release by identifying the records sought and provide notice requirement to person of sealed record and their attorney of record; the court must independently review and set strict limits to protect confidentiality.

DJJ – AB 2595 (731) – Requires the juvenile court to set a maximum confinement time for any minor committed to Division of Juvenile Justice (DJJ), formally known as California Youth Authority, which cannot exceed the maximum term that could be imposed in adult court and must consider the facts and circumstances of the matter and what is appropriate to achieve rehabilitation.

DJJ – AB 1812 Budget Trailer (607, 1178, 1731.7) 1) Increased the maximum age of a minor committed to DJJ to 25 years old after July 1, 2018, if the minor is adjudicated for crime(s) with an aggregated sentence of 7 years or more, 2) reestablished honorable discharge petitions available 18 months following DJJ discharge, 3) Created transition aged youth pilot project to divert qualified 18- to 21-year-olds from prison to DJJ if they can complete their sentence (including program credit opportunities) by 25 years old. (Took effect on July 1, 2018).

Competency – AB 1214 (709, 712) – Extensive modifications to the competency provisions including specified expert qualifications and report requirements. Requires the expert to consult with minor's counsel about the minor's lack of competence. If the minor is 14 years and younger, the law requires a section 26 Penal Code hearing prior to competency hearing. The burden is a preponderance of the evidence. Requires dismissal if the petition contains only misdemeanors and the minor is found incompetent. Court is required to review remediation services every 30 days for in custody minors and every 45 days for out of custody minors. Within six months of the initial remediation, a hearing shall be held unless the parties stipulate to minor's status. If minor continues to be incompetent and may attain competence, the services will continue for a total maximum of one year (unless a 707(b) offense and best interests of minor and public can be continued for a maximum of 18 months). Rules of Court will be created to identify required training and experience for experts as well as other requirements. Counties are required to create a protocol with input from stakeholders to ensure minors receive appropriate services. (Riverside's 709

protocol is in the final stages of approval and should be available in the near future).

Internet Access – AB 2448 (727, 851.1, 889.1) When a ward is placed outside of their parent's home required age-appropriate social and extracurricular activities shall include access to computer technology and the internet. Minors detained in juvenile hall or other camp or ranch shall be provided access to computer technology/internet for education and may have access to technology to maintain family relationship although Probation has ability to limit or deny due to safety and security or staffing reasons.

Maura Rogers is a supervising deputy public defender in the Juvenile Division.

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Inland Counties Legal Services Celebrates 60th Anniversary, Significant Legal Wins, and New Leadership

by John Hurtado

Founded in 1959 as Riverside Legal Aid in the Rotunda of the Mission Inn in Riverside, the Inland Counties Legal Services (ICLS) will celebrate its 60th Diamond Anniversary on April, 4, 2019, at the Riverside Convention Center. This gala event will feature keynote speakers of national stature, local honorees for legal services to low income clients, and partnerships with leading legal agencies in the Inland Empire region.

ICLS is the largest legal aid firm in the Inland Empire region with a focus on affirmative impactful advocacy for our indigent clients. The agency is a nonprofit organization providing legal services to low-income persons residing in Riverside and San Bernardino counties. ICLS targets services to seniors in the greatest social or economic need. Legal services are provided by attorneys or paralegals who are under the direct supervision of an attorney. Services include advice and counsel, limited action (negotiations and preparation of legal documents), as well as direct representation before administrative law and civil courts. Legal assistance is provided in areas including housing, family, consumer/civil, public benefits, elder abuse, citizenship clinics, bankruptcies (selected), healthcare access, and domestic violence. ICLS is funded by Legal Services Corporation (LSC), which is an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. LSC promotes equal access to justice by providing funding to 133 independent non-profit legal aid programs in every state, the District of Columbia, and U.S. Territories. LSC grantees serve thousands of low-income individuals, children, families, seniors, and veterans in 813 offices in every congressional district.

Darrell K. Moore, Esq., was appointed by the board of directors of ICLS in May 2018, as the new executive director after serving as deputy director and director of litigation since 2008. Previously, he had served as managing attorney of the Housing Law Services Center (HLSC) after starting as a part-time lawyer in December 2002. For the HLSC, Mr. Moore was responsible for staffing the housing hotline and overseeing two court based projects. HLSC represents low-income clients in civil property law, primarily housing issues. The hotline handled approximately 2,500 calls per year and through the Tenant Landlord Assistance Program (TLAP), it represented over 950 clients in court on eviction proceedings. He was responsible for staff development, conducting of performance evaluation, and all other aspects of employment management. His first experiences with legal aid occurred during his tenure as a partner with O'Malley & Moore when he served on the Legal Aid of Orange County's referral panel for discrimination and wrongful termination cases, handling over 50 referrals per month. Mr. Moore has a bachelor's degree in political science from the California State University, Los Angeles; a Juris Doctor from Whittier College School of Law; and a Master's of Law in Taxation from the University of San Diego. He is admitted to the State Bar of California, the Central District of California, the Southern District of California, the U.S. Tax Court, the U.S. Supreme Court, the 9th Circuit Court of Appeals, and the U.S. Court of Appeals for Veterans Claims.

Mr. Moore is also focused on streamlining and modernizing the agency's operations including the acquisition and implementation of LegalServer, a new state of the art case management system that will allow the agency to be in full compliance with the reporting requirements of the LSC. He has re-organized ICLS' firm structure to meet the changing needs of our clients. Other initiatives by Mr. Moore include the introduction of program group directors (PGDs), a system of management focusing on the specific areas of legal services offered by ICLS. Currently, ICLS offers the following areas of legal service: intake/outreach; consumer; family Law/domestic violence; health law/public benefits; housing; immigration; tax/bankruptcy; systemic/impact litigation; and a new area, education. These practice teams are led by experienced lawyers and vary in size from a single practitioner (education) to a large team of eighteen, including lawyers, paralegals, and legal secretaries in the housing practice. This latter practice, handles over 14,000 cases per year, focusing on unlawful detainers, foreclosures, and other tenant landlord issues with representation for both types of litigants based on their income eligibility.

The systemic/impact practice group focuses on complex cases which will benefit a broad group of persons in each area of law that ICLS prioritizes. The practice group also specializes in advancing and preserving housing for our low-income population utilizing housing element

law. Sang Banh is the practice group director and she leads a team of three dedicated attorneys: Guy Burgwin, Rebecca Eckley, and Anthony Ling Kim. Ms. Banh has been an attorney with ICLS for 12 years. She received her J.D. from the University of Ottawa. Mr. Kim has been a member of the State Bar of California since November 2012, and an attorney with ICLS since October 2013. He graduated with a BA in English language and literature from the University of Michigan in 2003, and obtained his J.D. from the University of San Diego in 2012. Prior to working with ICLS, he worked as an attorney with the Legal Aid Society of San Diego.

The systemic/impact litigation team is passionate about providing equal access to justice for our indigent clients. Recently, Mr. Kim's efforts to combat elder financial abuse resulted in a great win for our elderly clients who were duped into financing solar panels through the HERO program. By way of background, the elderly couple had financial difficulties and was eager to save money on their electricity bills. A door to door salesman came knocking on their door and sold them on the benefits of having solar panels installed on their home. The salesman, speaking to them in Spanish, promised that the couple would receive tax refunds from both the federal and state governments, while also promising that their energy bills would be reduced to zero. He helped our clients secure financing through the HERO program, which unbeknownst to the couple, is a loan that must be paid through their property tax bills. The couple soon found that none of the salesman's promises were true – they were not eligible for any tax rebates, let alone refunds, and the solar panels did not reduce their energy bills to zero. They also discovered that the interest rate on their financing was significantly higher than they expected, meaning that they would pay considerably more than the contract called for them to pay. Furthermore, because their contract had been written in English, they were unable to determine that none of the promises made by the salesman were spelled out in their contract.

The couple contacted ICLS, who assisted them in demanding that the home improvement company that sold and installed their solar panels rescind the contract and refund them their money, and when the home improvement company refused, assisted them in filing a lawsuit for fraud and rescission. The lawsuit was sent to arbitration, and in arbitration ICLS represented the clients and argued their case on their behalf. The arbitrator found that the home improvement company had committed negligent misrepresentation in their dealings with the couple, and awarded them over $20,000 in damages and ICLS was awarded attorney's fees.

ICLS has a team of advocates dedicated to helping seniors and has legal clinics at senior centers in both Riverside and San Bernardino counties. Leading the agency's efforts is Judge Meredith A. Jury, former judge on the U.S. Bankruptcy Court, Central District of California. She has been spearheading ICLS' efforts on behalf of senior citizens regarding abuse and neglect. A graduate of the University of Colorado with a bachelor's degree in English (and double minors in history and journalism), master's degrees, first in economics and then in education, from the University of Wisconsin, and her Juris Doctorate from UCLA, Judge Jury worked for Best, Best & Krieger LLP as a civil, municipal and bankruptcy litigator and was the firm's first female associate and partner. She was appointed to the U.S. Court of Appeals for the Ninth Circuit Bankruptcy Appellate Panel (BAP). Judge Jury oversaw the City of San Bernardino's Chapter 9 filing, a very rare type of case, and rule on the City's eligibility for insolvency on summary judgment given her previous work at BBK municipal cases. Judge Jury described her dual roles as daytime writer and nighttime editor, judging cases by day and evaluating appeals by night.

Judge Jury's retirement in June 2018 did not mean that she stepped away from the court. She has continued to provide mediation services to the bankruptcy bar at no cost. Prior to her appointment to the BAP, Judge Jury had been appointed to the Riverside Mayor's Commission on Aging. In her retirement, she has continued to volunteer to help seniors, focusing on senior financial abuse issues. "I care about the senior population and want to use my skills to help."[1] She also served on the Riverside County Coalition for Alternatives to Domestic Violence, the Riverside County Mental Health Advisory Board, and the National Organization for Women.

ICLS welcomes individual attorneys, partnerships, and larger legal firms to join its team as part of its Private Attorney Involvement (PAI) program. The agency currently partners with the Legal Aid Society of San Bernardino County (LASSBC), and the Inland Empire Latino Lawyers Association (IELLA), and is seeking to increase its service within the large service delivery area (27,000+ square miles) and population (4.8 million residents) in Riverside and San Bernardino counties that comprise the Inland Empire.

John Hurtado is the director of resource development/marketing for ICLS.

1 The State Bar of California, Business Law Section, Insolvency Law e-Bulletin, May 27, 2016; reprinted in the CentralDistrictInsider.com, June 27, 2016, "Nice Bio on Judge Meredith Jury by the Insolvency Law Committee," Cory R. Weber, Co-Chair, et al.

Legislative Changes – General Civil Practice and Public Information

by Boyd Jensen

Amidst the legislative developments, which will impact the civil attorneys' primary practice in 2019 and beyond, this obviously incomprehensive summary attempt to be broad enough to pique the interest of readers, who can then, through research, further their analysis.

Settlement Agreement Confidentiality SB 820 (9/30/18) prohibits a provision in a settlement agreement that prevents the disclosure of factual information relating to certain claims of sexual assault, sexual harassment, or harassment or discrimination based on sex, that are filed in a civil or administrative action. The bill would make a provision in a settlement agreement that prevents the disclosure of factual information related to the claim, as described in the bill, entered into on or after January 1, 2019, void as a matter of law and against public policy. The bill would create an exception, not applicable if a party is a government agency or public official, for a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, if the provision is included within the settlement agreement at the request of the claimant.

Non-disclosure Contracts AB 3109 (9/30/18) provides a waiver of the right of petition or of free speech in a non-disclosure agreement, will be void and unenforceable, if it waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment. The law becomes effective on January 1, 2019 and only applies to a provision in a contract or settlement agreement entered into on or after that date.

Public Records Disclosure SB 1244 (9/17/18) changes the term "plaintiff" in the California Public Records Act mandatory fee-shifting provision to "requester." The act makes specified records exempt from disclosure and provides that disclosure by a state or local agency of a public record that is otherwise exempt constitutes a waiver of the exemptions. When it appears to a superior court that certain public records are being improperly withheld from a member of the public, the court may order the records to be disclosed, or show cause why he or she should not do so. The act requires the court to award court costs and reasonable attorney's fees upon prevailing. And otherwise, requires the court to award court costs and reasonable attorney's fees to the public agency if the court finds that the plaintiff's case is clearly frivolous.

Law Enforcement Agency Public Records SB 978 effective January 1, 2020, police agencies will post on their internet websites all of their current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act. The act further requires every state and local agency to duplicate "disclosable public records," either on paper or in an electronic format, if so requested by a member of the public and he or she has paid certain costs of the duplication.

Civil Actions: Appointment of Guardian Ad Litem AB 2185 (9/27/18) authorizes a court to permit a guardian ad litem to be appointed and appear under a pseudonym if the guardian ad litem establishes facts and circumstances that demonstrate an overriding interest in preserving his or her anonymity.

Contractor/Labor-related Liabilities AB 1701 (10/14/17) is aimed at protecting those in the construction industry from losing out on wages if a subcontractor doesn't pay them. For private contracts starting in January or later (public projects are excluded), general contractors can be held liable for any wages that a sub skips out on paying workers.

Beer Manufacturers Offer Free/Discounted Rides AB 711 (9/11/17) allows alcohol companies and businesses to team up with ride shares, like Uber and Lyft, as well as taxi services, to give out vouchers or promo codes for discounted rides. The intent is to promote public safety and minimize reckless misconduct on the road.

Housing: Immigration AB 291 (10/5/17) forbids a lessor from disclosing to any immigration author-

ity, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the lessor to be associated with a tenant or occupant, as provided, for the purpose of, or with the intent of, harassing or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, unless the lessor is complying with any legal obligation under federal law, or a subpoena, warrant, or order issued by a court. The bill would require a court to order a lessor to pay specified civil penalties and award attorney fees and costs to the prevailing party in an action under these provisions.

Ending Juvenile Administration Fees SB 190 (10/11/17) provides that counties can no longer charge fees to a family for everything from detention to monitoring of juveniles; a policy that critics said hit low-income families and communities of color the hardest. After three years of research on juvenile administrative fees in California, including state law, county policies and practices, state and local data, and the experiences of youth and families in the juvenile system, the Policy Advocacy Clinic has found that these fees were harmful, unlawful, besides costly.

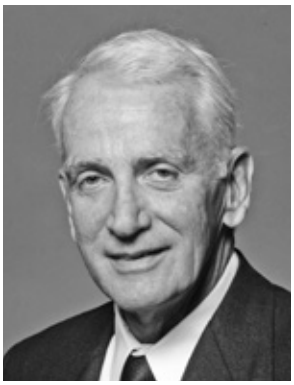
Low Income Motorists Parking Tickets Payment Plans AB 503 (7/1/17) changes requirements under which vehicle registration renewal and driver license issuance or renewal is not granted for having unpaid parking penalties and fees. The law creates a process for low-income Californians with outstanding parking violations to repay their fines and penalties prior to the parking violation being reported to the DMV. It is of particular impact for college campuses.

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

In Memoriam: David G. Moore

by David T. Bristow

The Riverside legal community lost a giant this past year when David Greenleaf Moore passed away on August 12, 2018 at the age of 80, following a stroke that came after a valiant battle with lung cancer. Considered to be one of the finest trial lawyers ever to practice in the Inland Empire, David had been an active member of the legal community since 1964, when he joined the law firm of Reid, Babbage & Coil following his graduation from U.C. Hastings College of Law. As an example of his loyalty and fealty to the institutions he held dear, David spent the ensuing 53 years at the same firm, retiring from active practice with Reid & Hellyer, as it is now known, in 2017. During his career, David established his reputation as a fierce competitor and a consummate trial lawyer, relishing the prospect of championing his clients in litigation, but always as a model for professionalism and civility. Over more than five decades of practice in the Inland Empire, David helped shape the legal landscape, both as an active member of the bar and as a mentor and example for generations of lawyers and non-lawyers alike.



David G. Moore

"I cannot possibly express in words everything that Dave meant to this firm on both a professional and a personal level," said Reid & Hellyer managing partner Michael Kerbs. "Dave was the type of lawyer that everyone wanted to have on their side. He was a warrior with no peers and we as a firm are so blessed to have experienced 53 years of his excellence. Dave was always the first to step up when we needed help and he never offered anything but his best efforts in everything he did. He will be missed greatly."

David was a member of the RCBA for more than 50 years, serving as president in 1984-85. He also served as president of the Leo E. Deegan Inn of Court from 1994 to 1996. An active member of both the American Board of Trial Advocates (ABOTA) and the American College of Trial Lawyers, David was at home in a courtroom, where he could draw upon his deep intellectual capacity, his fierce competitiveness, and his gift for telling a great story. During his 53 years with Reid & Hellyer, David was named both a "Superlawyer" and one of "The Best Lawyers in America," a testament to his professional abilities and standing.

"There are few people we meet who truly make a difference in a person's life, but having the honor to meet and know David Moore for some 35 years, he was that guy," said William Shapiro, a fellow member of ABOTA. "While it starts with being an exceptional lawyer and mentor, it's so much deeper. Dave Moore was a lawyer's lawyer, a mentor's mentor, he was class personified. His savvy, tremendous physical and mental strength was equaled by his humility, humor, and civility. A champion who always gave his all, he expected the same, but was always patient. The loss of Dave Moore is the loss of a dedicated husband and family man, a proud and model Marine, a legal icon, and a person so many of us are so proud to have called our friend."

The son of a decorated and renowned Marine aviator, David lived a remarkable life. When he was five, his family was living on the Hawaiian island of Oahu when the Japanese invaded Pearl Harbor on June 7, 1941. David and his mother hid in a pineapple field until the attack was over. After moving to Santa Ana, David graduated from high school and joined the Marines. Thereafter, he attended U.C. Berkeley and following his graduation, enrolled at U.C. Hastings College of Law. While at Hastings, David, who had a life-long appreciation of the pugilistic arts, became embroiled in a controversy which arose out of a fight in Golden Gate Park between he and his friends on one side, and some fellow Hastings' students, including future San Francisco District Attorney Terrence Hallinan, on the other. When Hallinan attempted to later sit for the bar, he was denied the opportunity by the board of examiners on the grounds of moral character, due to, inter alia, the fight in Golden Gate Park. Hallinan filed a lawsuit to overturn the decision, which was heard by the California Supreme Court. Amongst the witness testimony to be considered by the court was that of David Moore, including the portion wherein Moore stated that, after being punched by Hallinan, he took him to the ground with "a double-eight takedown." The court ultimately ruled that Hallinan was qualified to sit for the bar, and the case (*Hallinan v. Committee of Bar Examiners*, 65 Cal. 2d 447 (1965)) became the first published Supreme Court Opinion featuring David G. Moore.

It was also while attending Hastings that David found his true love, his wife Barbara. They had their first date on June 6, 1962, were married three months later, and were inseparable for the next 56 years. David was fortunate to pass with Barbara and his family at his side. While his affection for his firm and the practice of law was monumental, it paled in comparison to his love for his family. After taking the job at Reid, Babbage & Coil, David and Barbara moved to Riverside from San Francisco and never left, raising two wonderful children, Kristin and Scott, and establishing a network of friends and relationships.

As a lawyer, David was a fearless advocate for his clients who loved the courtroom and relished the prospect of a trial. He could be intimidating and aggressive when necessary, though always civil and professional in his advocacy. He was also a consummate gentleman who never failed to send a hand-written note of thanks or advice to the important people in his life.

"Dave could be so gruff and intimidating; but he was also so kind and encouraging," said Riverside County Public Defender Steve Harmon. "I learned from watching him that a lawyer always needs to be strong and tough, but it's also important to be kind and caring. He would often send me handwritten personal notes of encouragement. Although I could never read his terrible handwriting, I still treasure each one. He was a real hero to me and I will never forget him."

A life-long athlete, David played as hard as he worked. He enjoyed black diamond skiing, fast cars, and physical combat, including wrestling. He was known to engage in impromptu wrestling matches in the law library at Reid & Hellyer with Harlan Kistler, who was a collegiate champion wrestler at Iowa State. At the tender age of 70, David received a black belt in karate, and remained an active member of his dojo. In fact, he became known around the office as "OKB" – "Old Karate Buzzard" – and referred to himself as "Buzzard" thereafter. He would often play two sets of tennis at Victoria Club on Saturday mornings before going to his karate dojo for a workout. Yet for all his physical toughness, he was a kind and devoted friend, who was known for his concern and care for all of those with whom he interacted, from courthouse personnel, to his closest friends.

"My deepest memories of Dave are of the many acts of random kindness he willingly and sincerely gave to others in times of need," recalled his long-time friend and colleague Terry Bridges. "A call out of the blue. His many handwritten notes. An outlandish comment evoking laughter, when laughter was needed. Perhaps most of all, his deep love for special people in his life and his profound and lasting sadness at their loss."

"'Semper Fi' is Latin for 'always faithful' or 'always loyal.' It's the motto of the United States Marine Corps, which meant so much to Dave," recalled Shapiro. "Those who knew him well believe 'always faithful, always loyal' was Dave's motto as well. He'll be missed by masses, but never forgotten. Semper Fi!"

David is survived by his wife Barbara, daughter Kristin Moore Hermann and son-in-law Christopher Hermann, son Scott Moore and daughter-in-law Amy MacWilliamson, and grandchildren Timothy (Katt Pham) Hermann, Elizabeth (Eric) Stankis, Arlo and Imogen Moore, and great granddaughter Maddison Stankis.

David T. Bristow is general counsel for the Entrepreneural Corporate Group. He served as U.S. Magistrate Judge from 2009-2017. He was President of the RCBA in 2006.

Opposing Counsel: Todd Turoci

by Michael Gouveia

On the eve of trial, the defendant's attorney sends you a short email with the defendant's bankruptcy case number, citing 11 U.S.C. section 362, and making threats about violating the automatic stay. Months of discovery and hours of attorney time is evaporating before your eyes. Now what do you do?

When I get these frantic calls from state court attorneys, I refer them to Todd Turoci. Todd has over 25 years of experience in consumer and business practice. He has handled over 5,000 consumer chapter 7 cases, thousands of chapter 13 cases, and his firm is one of the leading filers of chapter 11 petitions in the Riverside Division. He also represents chapter 7 trustees and creditors. His ten-person firm, located in Riverside and Los Angeles, focuses primarily on bankruptcy law and litigation.

I sat down with Todd recently to discuss his practice at the Woodfire Grill in Riverside, a short walk from his Riverside office. After passing the Bar, Todd started out as a deputy district attorney in San Bernardino County covering Barstow and Needles. He loved the work, especially the trials, but did not like being so far away from his young family.

"You have been in the Riverside/San Bernardino bankruptcy community for many years. Why did you decide to practice bankruptcy?"

In 1993, when I came out of the District Attorney's Office, I wanted to start my own firm and be a real estate and business lawyer. Unfortunately, we were in the middle of a recession and there was little real estate or business work. But there was plenty of bankruptcy work with people struggling to pay their debts and save their homes. That's how I became a bankruptcy lawyer.

Over the years, Todd has bought several bankruptcy practices from other attorneys. The practice continued to grow and grow, as did his satisfaction in the work he was doing. "A lot of lawyers tend to look down on bankruptcy, but I find it incredibly satisfying. It's the one area of law where I feel like I can really help my clients."

"Why do you think you attract so many business bankruptcy cases?"

I believe our firm speaks the language of the business owner. I have been a business owner for over 25 years. I know the stress of making payroll each month. The bigger firms have excellent attorneys who know the law, but they cannot relate to a person who has given his life blood to his business and now sees no way out of a difficult situation. These lawyers know the law, but not what the business owner faces day to day.

As Todd talked, I could hear the passion in his voice when he recalled the many times grown men had wept in his office over the sense of failure they felt while creditors were ripping apart their family business.

Todd related that his family were entrepreneurs, and he grew up believing in the importance of small business. Todd grew up in Hesperia, California and attended California State University at San Bernardino. After college, he joined the U.S. Marine Corps and served his country for three years. After the Marine Corps, Todd attended McGeorge Law School in Sacramento.

"Why is it difficult for business owners to contemplate bankruptcy?"

For most people, deciding to file a bankruptcy petition is hard; it's perceived as a failure. For a small or medium-sized business owner, their businesses are the biggest part of their lives. They started it, they watched it grow, they made it into what it now is – it's like a child to them. That sense of failure is much bigger. It is hard for them to be objective and frequently even harder for them to be realistic. A good bankruptcy lawyer will discuss with a potential client not just the dollars and cents aspect of bankruptcy, but also the emotional side of bankruptcy, including how it's going to affect their personal lives. It's important to make clients, especially business owners, explore all the ramifications of bankruptcy, whether it's pulling the plug in a chapter 7 or trying to make it viable through chapter 13 or chapter 11.

Now 26 years later, Todd is a certified specialist in both business bankruptcy as well as consumer bankruptcy.

"Did you ever question your decision to become a lawyer?"

Of course. I think everyone does at some point.

In 2003, he walked away from the law. He sold his practice and spent time in Guatemala. He spent time with his young children. He went to guitar school in Hollywood. He also ran a few small businesses. But he soon felt the call to return to the law and bankruptcy and restarted a small practice in 2007.

In 2015, with his children now grown, the divorced father decided to take his firm in a new direction — to concentrate on litigation and chapter 11 cases while at the same time serving the regular consumer clients.

"What do you see for the future of bankruptcy?"

"I think student loans will be the next major bankruptcy issue. With over $1.5 trillion dollars in student loan debt and a 10% delinquency rate, Congress, or the courts, will have to develop a better solution than currently exists. Right now, student loans are only dischargeable in cases of undue hardship and the burden is on debtors to prove it. Now that there is more uncertainty in the future of income-based administrative remedies, I think more debtors will look to the bankruptcy system for relief from what is becoming staggering student loan debt. Also, we are due for another recession in early 2020, and it is going to be painful. We are seeing record levels of consumer debt, and it will come crashing down."

"What would you tell our civil litigators to do when they sense the other side is contemplating filing BK?"

Settle, quick! Several times in a month, I talk to litigators who call me facing similar scenarios. I tell the plaintiff's lawyer to reach out and settle. Get some security and save time and money. A part of something is a whole lot better than all of nothing.

Last fall, Todd invited recently retired U.S. Bankruptcy Judge Meredith Jury to join the firm. She is focusing on pro bono work and mediations.

Todd continues practicing guitar and enjoys the occasional poker game when he's not working.

Michael Gouveia is a bankruptcy attorney, an author, a speaker, and a coach who writes a popular blog on "All Things Chapter 13" at RiversideChapter13.com.

Riverside Legal Aid: It's What We Do

by Michael H. White

A six-year-old, whom I will call Vicente, came to the Indio office of Riverside Legal Aid (RLA) last month and handed Theresa Metoyer his school photo. Theresa is the supervising paralegal in the Indio office of RLA. "You saved my life," he said, as he handed her the photo. Vicente's grandmother, whom I will call Estrella, smiled.

Six years ago, the grandmother received a call from her son, then incarcerated. She was asked to come pick up the baby, then a day old. Estella did not even know that a child was expected, let alone actually alive. The mother was strung out on drugs and the child had drugs in his body at birth.

Estrella took the child to rear. At the time, she had been diagnosed with lupus and cancer. She came to RLA to help her to obtain legal guardianship over Vicente. Doing so kept the child out of the foster care system and with a family member who cared. This was done nearly six years ago, and each year, Estrella and her grandson come to the office in Indio for Theresa to prepare the annual report in connection with guardianships as required by the court.

"I am still here and in remission to care for this little person. Vicente keeps me going," Estrella says. Adoption of him may be her next step. According to Theresa, Vicente has had a wonderful role model in his guardian/grandmother. "He is so well-mannered and polite for his age," she says.

And Vicente says to Theresa, "You saved my life."

It's what we do. Riverside Legal Aid.

Michael H. White is the executive director of Riverside Legal Aid (a dba of the Public Service Law Corporation).

Classified Ads

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

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

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 Announces Reopening of Corona Courthouse
(Release Date: December 18, 2018)

The Superior Court of California, County of Riverside, is pleased to announce that the Corona Courthouse will reopen services to the public on January 7, 2019.

The Corona Courthouse will be open Monday through Friday from 7:30 a.m. to 4:00 p.m. Calendars will consist of limited civil, civil harassment, infractions, small claims, and unlawful detainer (eviction) cases. In addition to judicial and clerical staff, the location will provide self-help and collections services to assist litigants.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective January 30, 2019.

Seno Bamgbose – Law Student, Corona

Danielle V. Hernandez – Best Best & Krieger, Riverside

Samantha C. Larkin – Holstrom Block & Parke, Corona

Victor D. Lee – Court of Appeal, Riverside

David A. Hancock – Law Office of Luis E. Lopez, Riverside

Dale D. Mann – Mann & Mann, Riverside

Ulea M. Sargis – Solo Practitioner, Murrieta

ATTENTION RCBA MEMBERS

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

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

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