RIVERSIDE LAWYER

November 2020 • Volume 70 Number 10 MAGAZINE

In This Issue

The Official Publication of the Riverside County Bar Association

RIZIO LIPINSKY
PERSONAL INJURY & EMPLOYMENT LAWYERS

SERVING THE INLAND EMPIRE SINCE 1995

*" Even when the world shut down due to Covid-19, our firm still sent out the following referral fees. We will always pay out to attorneys who have given us their trust! " **

Greg Rizio, Rizio Lipinsky Law Firm

Best Lawyers
LAWYER OF THE YEAR
GREGORY G. RIZIO
PERSONAL INJURY LITIGATION - PLAINTIFFS
INLAND EMPIRE
2020

ACTUAL REFERRAL AMOUNTS PAID DURING COVID-19:**

$246,667 PAID **$241,548** PAID

$65,000 PAID **$56,250** PAID

$41,667 PAID

888.292.8888

WITH OFFICES IN
SAN BERNARDINO, RIVERSIDE, AND ORANGE COUNTY

*All referrals consistent with California State Bar Rules of Professional Conduct.
**These results do not constitute a guarantee, warranty, or prediction regarding the outcome of future cases.

Publications Committee

Sophia Choi
Donald Cripe
Melissa Cushman
Megan Demshki
DW Duke
Abram Feuerstein
Stefanie Field
Alexandra Fong
Betty Fracisco
Andrew Gilliland
Amy Guldner
Sunny Huynh
Boyd Jensen
Robyn Lewis
Juanita Mantz
Charlene Nelson
David Rivera
Nesa Targhibi
Gabriel White
Jamie Wrage
Lisa Yang

Editor ..... Jacqueline Carey-Wilson
Copy Editors ..... Yoginee Braslaw & Juanita Mantz
Design and Production ..... PIP Printing Riverside
Cover Design .....Serato-Shutterstock/PIP Printing Riverside

Officers of the Bar Association

President
Sophia H. Choi
(951) 955-5400
schoi1024associations@gmail.com

President-Elect
Neil D. Okazaki
(951) 826-5567
nokazaki@riversideca.gov

Vice President
Lori Myers
(949) 300-3596
loriamyers@me.com

Chief Financial Officer
Kelly Moran
(951) 955-6300
kmoran@rivco.org

Secretary
Mark A. Easter
(951) 686-1450
Mark.Easter@bbklaw.com

Past President
Jack B. Clarke, Jr.
(951) 686-1450
jack.clarke@bbklaw.com

Directors-at-Large

Aaron L. Chandler
(951) 826-5567
achandler@riversideca.gov

Megan G. Demshki
(951) 534-4006
megan@aitkenlaw.com

Chris A. Johnson
(951) 695-8700
cjohnson@rhlaw.com

Elisabeth A. Lord
(951) 684-9000
elisabeth@brlfamilylaw.com

Executive Director
Charlene Nelson
(951) 682-1015
charlene@riversidecountybar.com

Officers of the Barristers Association

President
Goushia Farook
(951) 684-9000
goushia@brlfamilylaw.com

President-Elect
Michael Ortiz

Secretary
Lauren Vogt

Treasurer
David Rivera

Members-at-Large
Alejandro Barraza
Ankit Bhakta
Kevin Collins
Braden Holly
Brigitte Wilcox

Past President
Paul Lin

Riverside County Bar Association
4129 Main Street, Suite 100
Riverside, California 92501

Telephone
951-682-1015

Facsimile
951-682-0106

Internet
www.riversidecountybar.com

E-mail
rcba@riversidecountybar.com

RIVERSIDE LAWYER
MAGAZINE

CONTENTS

Columns:

COVER STORIES:

Features:

Departments:

Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:

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

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), 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 $30.00 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

November

9 **Zoom**
Noon
Civil Litigation Roundtable with
Judge Craig Riemer
MCLE

10 **Zoom**
Noon
Civil Litigation Section Meeting
Speaker: William Thomsen
Topic: "The Impact of COVID 19 on Economic Damages, A Valuation & Damages Expert's Perspective"
MCLE

12 **Zoom**
Noon
RCBA CLE Committee Presentation
Speakers: Susan Nauss Exon &
Thomas C. Watts
Title: "Zoom Arbitration: Don't Get Caught with Your Pants Down"
MCLE

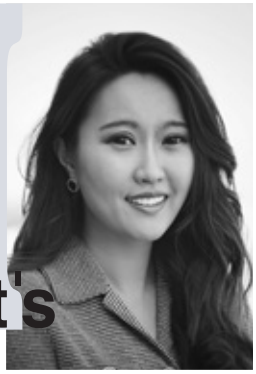
13 **Zoom**
Noon – 1:30 p.m.
General Membership Meeting
Speaker: Obie Anthony
Title: "Sentenced to Life Then Exonerated"
MCLE

18 **Zoom**
Noon
Estate Planning, Probate and
Elder Law Section
Speaker: Jim Cunningham
Topic: "Powers of Attorney – Critical During Incapacity"
MCLE

19 **Zoom**
Noon
RCBA CLE Committee Presentation
MCLE

Please see the calendar on the RCBA website (riversidecountybar.com) for information on how to access the Zoom meetings.

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



President's Message

by Sophia Choi

As we enter the month of November and come close to Thanksgiving, I really reflect upon all the things I am thankful for and thank God for all His blessings. Although 2020 has been a difficult year, I hope that we can all think of the positive things we have in our lives rather than focus on any of the negative. In the words of Roy T. Bennett, "More smiling, less worrying. More compassion, less judgment. More blessed, less stressed. More love, less hate." I know it is often much easier said than done, but I hope that all of us can find more happiness by the reminders of the blessings we have in our lives.

I want to thank everyone for making the Riverside County Bar Association's Inaugural Virtual Installation such a huge success. The December issue of the *Riverside Lawyer* will include detailed information about the installation, but I wanted to make sure I relay my gratitude. Thank you for everything.

The Riverside County Bar Association ("RCBA") board has been having its board meetings via Zoom. The board is working on many new developments that I am excited to report on. As I reported in my column last month, we had planned to order RCBA lapel pins for members to purchase in efforts to fundraise for the RCBA. We have ordered 100 lapel pins. Additionally, we have ordered 100 challenge coins. Each lapel pin costs $5.00, and each challenge coin costs $10.00. I purchased several for myself and my family! Please do not forget to get yours before they are sold out.

In our efforts to increase benefits for RCBA members, the RCBA has also now partnered with National Purchasing Partners ("NPP"), a savings provider, with savings offers from many businesses to include, but not be limited to, Office Depot, Staples, Skechers, Harry & David, 1800flowers.com, and many more. In researching what additional benefits we can provide to our members, I have been looking at many different bar associations' webpages and Instagram accounts and discovered that other bar associations had partnered with NPP as well. We are finalizing the steps necessary to implement and make the benefits of our partnership with NPP available to you, so I hope that you will find the savings opportunities useful. Additionally, not only does the RCBA's partnership with NPP provide discounts for RCBA members, but it provides the RCBA the ability to earn a quarterly revenue share based on member and referral spending.

The board has also been working on partnering with local small businesses to provide discounts to RCBA members. We intend to call the discount program, "RCBA Members' Discount Program." Not only is the goal to increase benefits to RCBA members, but it is hoped that this partnership can also assist local businesses during these difficult economic times and provide for a mutually beneficial relationship. We have received commitment from several local businesses already to be a provider in this program, and we expect to launch the program soon in the upcoming months.

The plan is to have these businesses display a sign at their business locations so that RCBA members can easily identify the participating businesses. The board will also be discussing the method of proof of RCBA membership that will be provided to members to obtain discounts at these businesses. More information will be provided as they develop further, but I am hoping that you will be able to enjoy the increased benefits of your membership and to relay the benefits to your friends and colleagues so that the RCBA can become an even stronger association of even more members.

Our first general membership meeting was held via Zoom on October 16, 2020. RCBA Vice President Lori Myers put together a wonderful program entitled, "How to Navigate the Court Systems During COVID-19." We received valuable information regarding each of the court systems in criminal, civil, juvenile, and family law courts. I am so grateful for the panel of judges who presented to the RCBA members: Honorable John Vineyard, Presiding Judge; Honorable John Monterosso, Assistant Presiding Judge; Honorable Judith Clark, Supervising Judge of Juvenile Court; and Honorable Jennifer Gerard, Supervising Judge of Family Court.

As mentioned in my prior column, the RCBA started an Instagram page (@rivcobar). We are increasingly getting more followers. We have also started a new YouTube page, so please subscribe. You can search for "Riverside County Bar Association" to find it. Our social media presence is definitely increasing, with an active website (www.riversidecountybar.com), as well as our pages on Facebook, Twitter, Instagram, and YouTube. Please support the RCBA as we continue to increase our online presence.

The RCBA building's renovation during Jack B. Clarke Jr.'s presidency is getting much recognition and compliments. Immediate Past President Jack B. Clarke Jr. and President-Elect Neil Okazaki have done a great job in taking the lead on giving the RCBA building a new, modern look. This has certainly attracted new tenants to the building. Not only is the building conveniently located right next to the Family Law Courthouse, it is also across the street from the Hall of Justice and the Historic

Courthouse. If you would like to have your office in the RCBA building, please contact Executive Director Charlene Nelson before all offices are occupied.

The RCBA board will be discussing many other new ideas, which I will report to you as they progress more definitively. I hope everyone has a very nice Thanksgiving. "Gratitude can transform common days into thanksgivings, turn routine jobs into joy, and change ordinary opportunities into blessings." -William Arthur Ward

Thank you for everything, and I hope you stay safe, healthy, and happy. Happy Thanksgiving to you and your loved ones.

Sophia Choi is a Riverside County deputy district attorney, past president of the Leo A. Deegan Inn of Court, inaugural president of APALIE, and past vice president of the Korean Prosecutors Association.

LOCAL REFEREE/
SPECIAL MASTER
15 YEARS EXPERIENCE
REAL ESTATE, DISCOVERY, BUSINESS,
GENERAL CIVIL & FAMILY LAW DISPUTES

REASONABLE FEES
NOMINATE


Don Cripe

DON CRIPE
909-864-5156
DONCRIPE@CAMSMEDIATION.COM

CAMS

Barry Lee O'Connor & Associates
A PROFESSIONAL LAW CORPORATION

REPRESENTING LANDLORDS EXCLUSIVELY
UNLAWFUL DETAINERS/
BANKRUPTCY MATTERS
951-689-9644
951-352-2325 FAX
3691 Adams Street
Riverside, CA 92504
Udlaw2@AOL.Com

Interested in writing?
Seeing your name in print?
Advancing your career?
Addressing your interests?
Being published?
Expressing your viewpoint?
Join the *Riverside Lawyer* staff NOW
and be a part of our publication.

Contact Charlene or Lisa
at the RCBA office
(951) 682-1015
or lisa@riversidecountybar.com

Barristers President's Message

by Goushia Farook

A Brief Tribute to the Notorious RBG

On September 18, 2020, our nation lost an icon and trailblazer for women's right and equality for all. Supreme Court Associate Justice Ruth Bader Ginsberg, a.k.a. The Notorious RBG. She was a legend and social figure so many looked up to. For many women I know and for myself, we lost a personal hero. I have admired the late Justice Ginsberg from childhood and my admiration grew as I pursued a career in law. It is awe-inspiring when I reflect on the life I am able to live without restriction and realize that it can be traced in large part to one woman zealously and tirelessly advocating for my rights. Not just mine of course, but men and women alike. Justice Ginsburg dedicated her career to ending gender discrimination and bias.

I hope we continue to pursue the mighty aspirations Justice Ginsburg had for us as a society. I also hope we honor her by being open to diversity and recognizing our commonalities despite our outward differences. I choose to honor Justice Ginsburg by embracing kindness and openness in my daily life. I share her life story with my niece, nephews, and godchildren, so they too will know her impact on their lives.

I will leave you with one of my favorite quotes by the late Justice Ginsburg, which is relevant to our current time: "We live in an age in which the fundamental principles to which we subscribe – liberty, equality and justice for all – are encountering extraordinary challenges. But it is also an age in which we can join hands with others who hold to those principles and face similar challenges."

Inaugural Virtual Installation 2020

I want to take a moment to thank Sophia Choi, Megan Demshki, Daniel Zepeda (technical assistant), Charlene Nelson and all those who made the Inaugural Virtual Installation a success. On behalf of the Barristers, we know this event presented challenges in planning and presentation, but we thank you for your tireless efforts. Your dedication resulted in a seamless presentation. On behalf of myself and the Barristers, I would also like to thank the Honorable Commissioner Belinda Handy for swearing in the Barristers board. We sincerely appreciate you taking your valuable time to get to know us individually and swearing us in. Our installation was made particularly special by your presence.

Barristers Shenanigans

As I write this article in mid-October for the November issue, we have yet to have our first virtual Barristers event. We are looking forward to our first virtual happy hour and hope to see a great turnout. We will be playing games and offering prizes, so be sure to Zoom in! We are also working on arranging virtual MCLE opportunities as the MCLE reporting deadline approaches for many of us. Lastly, we are diligently looking into community outreach opportunities that can be accommodated with COVID-19 restrictions. If you have ideas or resources, please feel free to contact me!

Thanksgiving Greetings

As you are reading this, we will be amidst the Thanksgiving holiday season. Despite how different the holiday season may be this year; I hope we can reflect on all the good we have in our lives. I wish you all a happy and blessed Thanksgiving! I am grateful for a wonderful family, an amazing work family, my niece, nephews, godchildren, and friends.

Upcoming Events

November 17, 2020: Social Distance Hike at Mt. Rubidoux 9:00 a.m. (meet at Ryan Bonaminio Park). Meet at the park at 8:30 a.m.; pets and Furristers welcome!

MCLE (Virtual): Stay Tuned!

Follow Us!

For upcoming events and updates:

Website: RiversideBarristers.org

Facebook: Facebook.com/RCBABarristers/

Instagram: @RCBABarristers

If there are any events you would like to see the Barristers host, MCLE topics you would like to see covered, or community outreach options, please contact us and we would love to explore those ideas with you. You can also reach me personally at goushia@brlfamilylaw.com.

Goushia Farook is an attorney at Bratton, Razo & Lord located in downtown Riverside where she practices exclusively in the area of family law. She is a member of the board of directors of the Inland Counties Legal Services (ICLS) and a member of the Leo A. Deegan Inn of Court and Asian Pacific American Lawyers of the Inland Empire (APALIE). Goushia can be reached at goushia@brlfamilylaw.com.

The Problem with Remote Depositions

by Jean-Simon Serrano

Back in March when businesses and courts first closed due to COVID-19, a panic arose among attorneys: How will we continue to represent our clients and proceed with the handling of cases? Obviously, court proceedings would be stayed, but what about mediations, arbitrations, and especially depositions?

Consumer groups, among others, lobbied Sacramento for rules and regulations to adjust to lockdowns and court closures. The Chief Justice issued emergency rules with the aim of keeping cases moving along.

Among these rules was one that dealt with how depositions would be conducted during the pandemic.

Emergency Rule 11 provides that ". . . a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition."

This rule was to remain in effect until 90 days after Governor Newsom declares that the state of emergency related to COVID-19 is lifted (or until amended or repealed by the Judicial Council).

Concern by some about the sunset provisions for this rule, led to Senate Bill 1146. SB 1146, signed by Governor Newsom in September of this year, codified the rule so that it remains in the law after COVID-19 is a distant memory. Senate Bill 1146 modified Code of Civil Procedure section 2025.310.

Since the emergency orders, I have engaged in numerous remote depositions. As it is, they pose many problems. Here is some of what I have experienced.

In one deposition, it became clear that the deponent was distracted. She seemed to be looking down a lot. She eventually admitted to being distracted by her cell phone. She apologized and said she was going to silence it and that she "was getting messages." When pressed, it became clear that she was receiving messages *from her attorney during the deposition*! Her attorney admitted to sending her messages and she finally placed her phone out of reach and eyesight. However, the damage was done as this was not discovered until at least an hour into the deposition.

In another deposition, the party deponent elected to be deposed at his home. The deponent wore a mask over his nose and mouth, large aviator-style sunglasses, and a face shield. He indicated he did not feel safe removing them. It was difficult to even identify the deponent as the correct party – forget attempting to gauge the truthfulness of the responses given by looking at body language. Eye contact and being able to read body language and facial expressions are very important to an effective deposition.

I participated in one deposition where, after several hours of testimony, another voice was heard from the deponent's feed. It was discovered that somebody had been sitting with the deponent throughout the duration of the entire deposition! It is not hard to imagine this third person feeding answers to the deponent or holding up signs or signaling to her while she was being deposed. Since this, I have started all remote depositions by asking who, if anyone, is present with the deponent.

I have had numerous depositions where the deponent's attorney is sitting in the same room as the deponent but off camera. While I like to think of all of our colleagues as honest and upright about cheating or coaching, I have had too many experiences of contrary behavior. An unscrupulous attorney sitting off-screen could easily provide hand signals and/or hold up notes during the questioning.

These are just some of the things *I have actually experienced* in just the few months that we have been conducting depositions remotely. The mind reels with possibilities available to unscrupulous witnesses and/or attorneys.

Since there's no current way to monitor what is presented on the deponent's computer, it is not unfathomable that a deponent could have pages of prepared notes and/or statements alongside the Zoom program. A deponent could easily have an instant messaging application open alongside Zoom and be fed answers in real-time. There is currently no way to easily prevent this. Having a camera behind the deponent to see what they are seeing is a suggestion made by one member of our firm.

Electronic chicanery aside, there's also so much lost in not being face to face with your deponent. Oftentimes, there is difficulty hearing the question or the response, to say nothing of being able to hear subtle inflection in voices or see nervous tics or facial expressions in a tiny window on one's computer screen. The current state of remote depositions is very dangerous to our client's ability to properly conduct discovery and get truthful testimony. Oftentimes, in depositions with lots of parties present, it is difficult to identify who is talking when an objection is made. Everyone who practices in the state should have serious concerns about this conducting depositions remotely.

What can be done to protect our clients and to improve and preserve the integrity of the deposition process?

It is important to demand, at the outset, that no other persons be present (other than their attorneys) with the deponent during a remote deposition and that they not have access to their phones. If their attorney is to be present, they should also be visible. A program may be developed to lock out all other programs on a device while Zoom (or similar program) is being used. Ideally, another camera would be present with the deponent, so we can see what they are seeing and ensure they are not being fed information, signals, or the like.

After the most recent (and most egregious) deposition, which involved the attorney sending messages to the deponent during questioning, I plan on utilizing the provisions of the newly modified Section 2025.310 which provides:

(a) At the election of the deponent or the deposing party, the deposition officer may attend the deposition at a different location than the deponent via remote means. A deponent is not required to be physically present with the deposition officer when being sworn in at the time of the deposition.

(b) Subject to Section 2025.420, **any party or attorney of record may**, but is not required to, **be physically present at the deposition at the location of the deponent**. (Code of Civil Procedure § 2025.310 [emphasis added].)

I will insist on being present with the deponent; however, I anticipate that protective orders may be sought by the witness or witnesses' attorneys pursuant to Section 2025.420.

> Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. (Code of Civil Procedure § 2025.420(a).)

Except in very limited circumstances, the disadvantages posed to our clients may be too great to take important depositions remotely.

It was ill-advised to codify the emergency orders, allowing deponents to forever elect if they want to appear electronically. I understand the intent was to allow discovery to continue, and that this is extremely important; however, the current state of remote depositions is too undeveloped to adequately protect our clients.

Jean-Simon Serrano is a former president of the Riverside County Bar Association as well as a nine-time Super Lawyers Rising Star. He practices plaintiffs' personal injury in Riverside at the law firm of Heiting & Irwin.

MANUFACTURERS BANK
A MEMBER OF SMBC GROUP

Simplify your banking - Let us do it for you

Our dedicated team of experts has numerous years of experience in Trust and Estate and in providing unique, complex and specialized banking solutions.

Working with Manufacturers Bank provides you with unique solutions including:

- Multiple Administrators, Conservators or Trustees
- Expertise working with court order requirements
- Make accommodations for out-of-state signers
- Access to Multi-Million-Dollar FDIC Insurance*

Bank with us without leaving your office

Visit us at www.manufacturersbank.com

Suyi Chen
VP Team Leader
Office: 213-200-9049
schen@manubank.com

Blanca Alfaro
AVP Relationship Officer
Office: 213-489-8529
balfaro@manubank.com

Madeline Wilson
AVP Relationship Officer
Office: 626-839-0335
mwilson@manubank.com

* Placement of customer funds through the ICS service is subject to terms, conditions and disclosures set forth in the agreements that a participating institution's customer enters into with the institution, including the ICS Deposit Placement Agreement. Limits and customer eligibility criteria apply. Program withdrawals are limited to six per month when using the ICS savings option. ICS, Insured Cash Sweep, and CDARS are registered service marks of Promontory Interfinancial Network, LLC.

Member FDIC
EQUAL HOUSING LENDER
EQUAL OPPORTUNITY LENDER

Proposed Changes to Notice for Termination of Tenancy

by William E. Windham

Prior to January 1, 2020, certain types of termination notices did not require any cause to be stated. There was no requirement in non-rent controlled jurisdictions to provide relocation for tenants or warnings of certain rights in the notices concerning the termination. With the enactment of Assembly Bill 1482, that all changes, for the most part, effective January 1, 2020.

First off, the bill creates Civil Code section 1946.2.[1] This section not only changes some of the procedures that are used, but also codifies some of the reasons that are considered "just cause" and "no-fault just cause" for termination of a tenancy, but there are requirements that must be met before the section applies to a tenant, which are the following:

(A) The tenant must be an occupant for 12 months or more of **residential** real property.

(B) If any adult is added to the lease, before an existing tenant has continuously and legally resided on the property for at least 24 months, then this section shall apply if either of the following apply:

(1) All of the tenants have continuously and legally resided on the residential real property for 12 months or more; or

(2) One or more tenants have continuously and legally resided on the residential real property for 24 months.

If the tenant satisfies either of the above requirements, then termination of tenancy must comply with Section 1946.2.

This section does NOT appear to affect: (1) commercial real property; (2) any tenancy that is less than one or two years, depending on the requirements. It is possible that oral agreements, in some circumstances, do not require the same treatment. The above under (B) requires that in adding a tenant, it must be a lease. This appears to leave the situation open to debate.

If a termination of a tenant requires compliance with the above, Section 1946.2 then goes on to codify some specific examples. There is "just cause" and "no-fault just cause."

A. Just cause is listed as follows:

(1) Default in payment of rents;

(2) Breach of a specific term of a written agreement, per Code of Civil Procedure section 1162(3);

(3) Maintaining, permitting or committing a nuisance or waste on the property per Code of Civil Procedure section 11614);

(4) The tenant refuses to agree to a written extension of the lease, after owner made a written demand for same. Certain conditions do apply; and this only applies to leases that expire on or after January 1, 2020;

(5) Criminal activity or criminal threat on the property and common areas by the tenant directed at the owner or agent of owner of the property. Does not appear to apply to same activity directed against anybody that resides on premises.

(6) Any unpermitted, prohibited or illegal subletting or assignment of the premises, without written consent or permission of owner;

(7) After a legal request by the owner to enter into the residence, tenant refuses to comply;

(8) Failure of an agent, employee or licensee to vacate the premises, after termination of that position;

(9) After the tenant gives notice that the tenant is terminating the tenancy and/or the owner has accepted the tenant's termination of tenancy and the tenant fails to vacate the premises.

B. No-fault just cause is listed as follows:

(1) Intent by the owner, spouse, domestic partner, children, grandchildren, parents or grandparents. For leases entered into on or after July 1, 2020, this will apply only if **the tenant agrees in writing to the termination** or there is a written provision that allows termination for the reason stated in here. This provision may be added to new or renewed leases.

1 All references to statutes are to the California Civil Code unless otherwise stated.

(2) Withdrawal of the property from the residential market.

(3) The owner complies with one of the following:

(i) An order concerning habitability issued by a government agency or court requiring the tenant to vacate;

(ii) A local ordinance or statute that requires the tenant to vacate; and

(iii) A order by a government agency or court that requires the tenant to vacate.

(4) Intent to demolish or substantially remodel the premises. Several reasons are listed, but if the remodel requires the tenant to vacate for 30 days or more, this statute applies. If it is cosmetic or work that can be performed safely without leaving the premises, then it does not qualify.

(5) Before a termination notice, for just cause, that is curable, a 3-day notice to cure covenant must be served on tenant. If the violation is not cured, then owner may issue a 3-day notice to quit.

(6) If termination is issued under (5) above, then owner must, regardless of tenant's income, do one of the following:

(i) Assist tenant with relocation by paying one month's rent in effect when notice was issued. Payment of the monies must be within 15 days of service of the notice; or

(ii) Owner shall waive, in writing, the final month's rent payment, prior to the rent coming due.

(7) If the owner issues a termination for a no-fault just cause reason, then owner shall notify the tenant to their right to either relocation assistance or a rent waiver. If the owner elects to waive the rent, then the amount of the rent waived shall be stated in the notice and state there is no rent due.

Recent Changes in the Area of Unlawful Detainer

While the job of an attorney that routinely handles unlawful detainers (evictions) is not easy and often contentious, changes in the law tend to make the environment even more difficult and tense between the parties, counsel, and the courts. In the last year, due in much part from the input and wishes of Governor Newsom and the legislature, there have been several changes in the law. These changes have given much reason to the casual practitioner to avoid handling eviction cases and many dedicated attorneys to either limit or retire in the wake of those changes. Regardless of which side of the argument one stands on, this review will be brief simply due to the lack of space and time to cover the effects of these changes.

AB 1482

Last summer, Assembly Bill 1482 was passed and went into effect, for the most part, on January 1, 2020. The law generally applied only to residential properties. Prior to this law, rent control over the entire State of California, did not exist. There was rent control in various jurisdictions, mostly the more populated cities. There were various partial ordinances, but limited to particular types of tenancies, such as for mobile home parks, senior communities and the like. For the most part, there really was no rent control for any jurisdiction within the counties of Riverside or San Bernardino.

With the enactment of Assembly Bill 1482, certain types of landlords and tenancies became subject to rules requiring a completely different treatment than before the law was passed. For example, if the owner of the property was a corporation, limited liability corporation, or real estate investment trust (REIT), the landlords were now subject to rent control. This rent control, in part, required giving new types of notices, requiring paying some form of relocation fees or credits for the tenant, and requiring multiple notices before commencing any action to recover possession of the property.

The tenant was also entitled to the right to renew a tenancy in certain circumstances and the landlord was required to give that option to the tenant, in advance of the expiration of the term. Assembly Bill 1482 also created "At Fault" and "No Fault" reasons for the landlord to serve notices on the tenant. While the reasons for each outlined in the statute, whether the tenant was protected by the new law or not, the landlord was required to give the tenant notice of their rights. Lastly, Assembly Bill 1482 imposed caps on rent increases uniformly throughout the state.

The COVID-19 Pandemic Emergency Declaration

While the shutdown of our society due to COVID-19 by the federal and state authorities in mid-March, Governor Newsom's declaration of emergency and the Judicial Conference Emergency Orders are not news to any of us, the effects on the area of unlawful detainer practice have been profound. What few people know is that many cities passed their own moratorium ordinances. A field

that was once governed by California state law primarily, was now governed by federal, state, city, and administrative law, most of them conflicting with each other. Most of the initial orders were set to expire sometime in May 2020. Based on these orders, all pending actions were stayed with the closure of the courts. Existing hearings initially were made telephonically or simply continued 60 days. Virtually all evictions were stayed by moratorium. While all monies continued to be owed by the tenants, under guidelines of the governor's order, tenants were not required to pay rents that were due or would come due.

Under the Judicial Conference Emergency Orders, once the governor ended the moratorium, then landlords would have to wait an additional 90 days from the date the governor issued the order. On the federal level, the CARES Act created similar restrictions as to actions that were taken against federally insured or funded properties. While the CARES Act expired on July 29, 2020, it was extended by President Trump under executive order to expire on December 31, 2020. As to Governor Newsom's executive orders, they were extended to July 31, 2020 and again to October 15, 2020. The Judicial Conference Emergency orders were extended to August 5, 2020.

COVID-19 Tenant Relief Act (Assembly Bill 3088)

On August 31, 2020, the legislature passed and Governor Newsom signed Assembly Bill 3088, the COVID-19 Tenant Relief Act (CTRA) into law. CTRA is a temporary remedy provision, set to sunset on January 31, 2021. The law applies only to residential properties. The law implements new procedures (again) for meeting requirements to commence unlawful detainer proceedings. An important part of the law was to end all moratoria on evictions that were either ended or superseded by CTRA. Some evictions could be commenced as of September 2, 2020, while others could be commenced on or after October 5, 2020.

Any action filed before March 1, 2020, based on a demand for monies of any kind, due for the month of March 2020, were declared invalid. Any case that demanded monies under a 3-day notice for monies due in March 2020 were declared void. Instead of 3-day notices, 15-day notices were required. Before the notices were served, the landlord was required to advise the tenant that they had new rights under CTRA and provide a letter advising the tenants of those rights. When the notice was served, the landlord was required to serve with the notice a blank declaration for the tenants to return to the landlord advising the landlord that the tenants were somehow affected by COVID-19. If the declaration was returned, all efforts were stopped or suspended. If suspended, the tenant had until January 31, 2021 to pay 25% of the monies demanded. Non-receipt and/or non-payment would allow the landlord to commence the eviction.

Due to the passage of CTRA, many issues have arisen as to whether notice issued prior to March 1, 2020, but expired after that date or notices issued after that date, are valid. Some read CTRA to bar all evictions, while others read it to permit evictions that have carefully walked the procedural line to permit filing. To date, there is no easy answer. While there is nothing in CTRA to invalidate termination notices of any kind, there is passing language that calls into question the validity of these notices. Unfortunately, CTRA leaves a lot of questions unanswered and it remains to be seen if the law is permitted to sunset. Only time will tell.

William E. Windham has been a member of the RCBA landlord-tenant section for 20 years and has been a recent contributor to the RCBA concerning the recent changes in the law.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective November 30, 2020.

Sam Christopher Allevato – Law Office of Sam C. Allevato, Tustin

Darryl L. Exum – Exum Law Offices, Riverside

Meghan E. Nihan – Varner & Brandt, Riverside

Kathryn E. Romo – Law Student, Highland

Craig A. Sterling – Solo Practitioner, La Quinta

Be Ready for the New Normal

-with-

Custom - High Quality Full Color Signage Kits

$999.99 +Tax

- ***(1) 10 ft. Aluminum Frame Canopy Tent Graphic Package Full Color** (carrying bag included)*
- ***(2) 14 ft. Full Color Feather Flag** (Single-Sided, base included)*
- ***(1) 6 ft. 4-Sided Table Throw Full Color***

***Graphic Design Services available upon request**

Pricing based on customer provided print ready .pdf files.
Art charges may apply if print ready .pdf files are not provided.
Digital proofs available upon request ($20.00)

printmystuff.com IS PIP PRINTING RIVERSIDE / CORONA

Riverside *4093 Market Street • Riverside, CA 92501*
P: 951.682.2005 • Fax: 951.682.1619

Corona *501 East Sixth Street • Corona, CA 92879*
P: 951.737.1820 • Fax: 951.737.0338

Basic Civil Procedure — Legislative Response to COVID-19

by Boyd F. Jensen, II and Betty Fracisco

A visitor to California might justifiably become quizzical about the role of elected officials. Why do initiatives during elections require the public to authorize complicated bonds and funding,[1] protect local transportation provider[2] and the privacy of consumers;[3] besides voting with minimal information on important topics such as kidney dialysis,[4] the money bail system,[5] and parole restrictions for "certain offenses?"[6] Are not legislators elected, authorized, and empowered to make these decisions after hearings, study, and patient consideration? And some legislative enactments are so contrary to public sentiment, that the ballot process provides an effective avenue for rejection.

Not so for Senate Bill 1146, passed and approved in September. The legislature seeks to aid civil practitioners and the persons whom they represent. During a difficult time and under challenging circumstances, the legislature has provided stabilizing guidance in basic civil procedure. What follows is an attempt to elucidate that legislation from its almost 8000 words down to approximately 1000.

Trial Postponement—Civil Code of Procedure section 599:[7] A **continuance of a trial date extends any deadlines** after 3/19/20, including discovery, exchange of expert witness information, mandatory settlement conferences, and summary judgment motions. The deadlines are extended for the same length of time as the continuance of the trial date. This section runs from 3/4/20 (Governor's state of emergency date) to 180 days after the end of the pandemic, per Section 1010.6

Electronic Service—Section 1010.6: Electronic service is service of a document on a party or person by electronic transmission, or notification. It may be performed by a party or person, by an agent of a party, including the party or other person's attorney, or through an electronic filing service provider. **For cases filed on or before 12/31/18**, electronic service of a document is not authorized unless the other party has agreed to accept electronic service, or the court has so ordered. **For cases filed on or after 1/1/19**, electronic service of the document is authorized if a party has expressly consented to it in this case, the court has ordered electronic service on a represented party, or the document is served electronically pursuant to procedures listed in subdivision (e) of this section.

Express consent to electronic service may be accomplished by 1) serving notice on all parties and filing the notice with the court or 2) giving affirmative consent electronically to the court or its electronic filing service provider and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent. If a document is required to be served by certified or registered mail, electronic service of the document is not authorized.

In any action in which a party or person has provided express consent to accept electronic service, or in which the court has so ordered, **the court may electronically serve** any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents, and this service has the same effect as service by mail. **Electronic service of a document is deemed complete** at the time of the electronic transmission or at the time the electronic notification of service of the document is sent.

Any period of notice or right or duty to respond within any period or on a date certain after the service of the document (prescribed by statute or rule of court) shall be **extended after electronic service by two court days, <u>not to apply to the following</u>:**

1) A notice of intention to move to vacate judgment under Section 663a;
2) A notice of intention to move for new trial;
3) A notice of appeal.

Any **document served electronically between 12:00 a.m. and 11:59 p.m. on a court day** may be deemed served on that day. Express consent to accept service electronically may be withdrawn with the completion of the appropriate Judicial Council form. **Confidential or sealed documents** shall be electronically served through encrypted methods. When a document requiring a sig-

1 State Measures 14 and 15.
2 State Measure 22.
3 State Measure 24.
4 State Measure 23.
5 State Measure 25.
6 State Measure 20.
7 All future references are to the California Code of Civil Procedure unless otherwise noted.

nature not under penalty of perjury, **the document is deemed signed** by the person who filed the document electronically. When a document requires a **verified signature**, the document is deemed signed by that person if filed electronically and if either of the following conditions is satisfied:

a) The person has signed a printed form of the document before and the attorney/person filing the document represents that the declarant has complied; or

b) The person has signed the document using a computer or other technology set forth in a rule of court adopted by the Judicial Council.

Electronic Filing—Section1010.6: **Any document received electronically** by the court between 12:00 a.m. and 11:59 p.m. on a court day shall be deemed filed. The court shall issue a confirmation that the document has been received and filed. Upon electronic filing of a complaint, petition or other document that must be served with a summons, a trial court, upon request of a party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party.

Oral Depositions—Section 2025.310: **At the election of the deponent or deposing party**, the deposition officer may attend the deposition at a different location than the deponent via remote means. A deponent is not required to be physically present with the deposition officer when being sworn in at the time of the deposition. Though not required, any party or attorney of record **may be physically present at the deposition** at the location of the deponent.

The last sentence of Senate Bill 1146 says it all: "This act is an urgency statute necessary for the immediate preservation of the public peace, health and safety. . . In order to ensure the effective operation of the courts during the COVID-19 pandemic, it is necessary that this act take effect immediately."

Thank you Governor Newsom and our California Legislature!

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

Betty Fracisco is an attorney at Garrett & Jensen in Riverside and a member of the RCBA Bar Publications committee.

Mediation Confidentiality Revisited: An Ethics Primer

by Susan Nauss Exon

This issue of the *Riverside Lawyer* magazine is focusing on legislation, so when asked to write an article about mediation it seems fitting to focus on confidentiality. Mediation confidentiality is codified at Evidence Code sections 1115 to 1129.[1] Those who participate in mediation, whether as mediators or as attorney advocates representing parties, may feel that they already know enough about mediation confidentiality—basically what is said in mediation stays in mediation. That is not the entire story. It is a good idea, therefore, to review mediation confidentiality principles periodically to keep reminded of the purpose and impact that it plays in mediation. This short article focuses on some key nuances of California's mediation confidentiality statutes and then discusses interesting dilemmas involving a mediator's duty to maintain secrets and confidences of parties.

Key Principles of California's Mediation Confidentiality Statutes

During the past two decades, I have examined Mediation Codes of Conduct and corresponding legislation regarding confidentiality in all fifty states. Indeed, I just finished writing a chapter on Mediation Codes of Conduct and Mediator Ethical Advisory Opinions in the forthcoming book, *Mediation Ethics: A Practitioner's Guide* (Omer Shapira, ed., American Bar Association). Mediation confidentiality can be considered a rule of evidence or a privilege. California's confidentiality rule is written like no other state's rules I have examined. California's main rule, found at Section 1119, is considered a privilege and applies to all participants in the mediation. Whether orally spoken or submitted in a writing, information that is presented "for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is [not] admissible or subject to discovery . . . in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding. . . ." California legislation does not preclude participants from subsequently discussing mediation occurrences with family or friends. They are simply precluded from discussing the information in a subsequent civil proceeding.

Along with the provisions of party self-determination and mediator impartiality, confidentiality is a central hallmark of mediation. Its purpose is to encourage open and frank discussion so that an outside, neutral mediator may facilitate the parties' communication and settlement discussions.[2] Mediators hear things differently than the parties and attorneys who are entrenched in their legal battles and often so focused on their position and arguments that they fail to recognize potential avenues of settlement. Thus, it is critical for mediators to develop a good rapport with mediation participants and garner parties' trust through assurances of confidentiality of their secrets.

The California Rules of Court deem confidentiality so important that they require a mediator to provide a general explanation of mediation confidentiality at or before the mediation session,[3] including the "confidential nature of private caucuses."[4] To comply with these obligations, mediators generally require all mediation participants to sign a confidentiality agreement at the beginning of the mediation session. I recently learned from a mediator colleague that he does not use confidentiality agreements, relying instead on the statutory mandate of mediation confidentiality.

I believe the better approach is to openly discuss confidentiality with all parties and gain their express agreement by signing a confidentiality agreement. This simple act highlights the importance of confidentiality. Studies show that people are more willing to follow through with their promises when they take some affirmative action. Additionally, the act of signing a confidentiality agreement facilitates a mediator's enforcement of confidentiality during mediation when he or she can reference and acknowledge the agreement that all participants made at the beginning of mediation.

For example, during a mediation that I conducted years ago, defense counsel told me in a private caucus that their client was willing to settle as a business decision to save the expense of future attorney fees; however,

1 All references to statutes are to the California Evidence Code unless otherwise stated.

2 *Rojas v. Superior Court* (2004) 33 Cal.4th 407, 415-16.

3 California Rules of Court, Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases, Rule 3.854(b).

4 *Id.* at Rule 3.854(c).

if plaintiff was not willing to settle, defendant was going to file a motion for summary judgment. Apparently, in that federal diversity of citizenship action, plaintiff had filed a first amended complaint, seeking $29,000 in damages despite the jurisdictional requirement to be in excess of $75,000. Defense counsel authorized me to share the fact that there was a "major procedural defect" in the action as an inducement to settle. But, I was not authorized to share the specific defect. When I relayed this information to plaintiff and his counsel, the young associate attorney pressed me for specific information. At that moment, I reminded her of the confidential nature of caucuses and the agreement that we had all signed that morning. I assured her that I would likewise maintain confidences of any secret information that she shared with me. My actions led to negotiating a final settlement of the matter.

Now that I have laid the foundation of mediation confidentiality, I want to point out a few key points that individuals may overlook. These small nuances are critical to ensure compliance with California's mediation confidentiality statutes.

First, keep in mind the general nature of confidentiality and the fact that it does not prevent disclosure of information outside of civil matters. A statement that everything in mediation is confidential, therefore, is not true, unless the parties have established a more absolute rule of confidentiality in their agreement to mediate.

Second, keep in mind the time period in which mediation confidentiality applies. It begins the moment a mediator is selected and continues until the mediation session ends. It is important to understand exactly when mediation ends. Pursuant to Section 1125, a mediation may end generally upon settlement of a matter, when a party exercises his or her right of self-determination to call it quits, and when a mediator notifies the parties in writing that he or she is terminating the mediation. Many people forget a specific provision that if there is no communication between the mediator and parties for ten days, the mediation will be deemed concluded. Mediation participants may agree to extend or shorten that ten-day period. It is critical, therefore, that when participants agree to continue their mediation session to a future date, they comply with the ten-day period. The best way to preserve confidentiality for a period in excess of ten days is to put an agreement to continue in writing.

Third, all attorneys should be aware of the impact of *Cassel v. Superior Court*,[5] in which the California Supreme Court held that communications between an attorney and client in preparation for mediation were deemed confidential even when made outside the presence of a mediator. Thus, the court held that in a subsequent malpractice action against the attorney, the former client was precluded from introducing evidence of attorney-client conversations.[6]

As a result of *Cassel* and after extensive study and debate, the California Law Revision Commission recommended an exception to mediation confidentiality for attorney malpractice actions. The California legislature did not follow the CLRC's recommendation and took a more measured approach by enacting Section 1129, effective January 1, 2019. This statute requires an attorney to provide a client with a written disclosure form that presents the confidentiality restrictions of Section 1119 and obtain the client's signature, acknowledging that he or she has read and understands the confidentiality restrictions. The notification procedure is to take place as soon as reasonably possible "before the client agrees to participate in mediation or mediation consultation."[7] The exact language and requirements of the printed form are included within the text of Section 1129;[8] the notification procedure is between attorney and client and does not require any action by a mediator. Surprisingly, some attorneys still are not aware of this requirement, so as mediator I continue to provide a complimentary form to attorneys.

Fourth, in order to add teeth to any mediated settlement agreement or a settlement terms sheet, Section 1123 offers an exception to mediation confidentiality. A *party* (as opposed to attorney) must sign a settlement document, which includes the words that it is "admissible," "subject to disclosure," "enforceable" or "binding," or words to that effect. By inserting any or all of these words, the parties demonstrate their direct intent to be bound by the settlement and the settlement agreement becomes discoverable.[9] If an attorney is present without a client and wants to invoke this exception to mediation confidentiality, the attorney must have a Power of Attorney to sign the document. Otherwise, an opposing party could refuse to comply with the agreement and it could not be used for enforcement purposes.

There are other important aspects of the California Evidence Code; I am merely highlighting a few nuances that some may forget. Keep in mind that in addition to Section 1123, there are other statutory exceptions to mediation confidentiality.

5 51 Cal. 4th 113 (2011).

6 *Id.* at 138.
7 Evidence Code § 1129 (a) (2919).
8 *Id.* at (c) & (d).
9 *Fair v. Bakhtiari* (2008), 40 Cal.4th 189.

Ethical Dilemmas Involving Mediation Confidentiality

Standing alone, mediation confidentiality seems easy to comprehend. Query whether a mediator may post on Facebook that he was able to "get the plaintiff $3 million to settle a PI case?" Since Section 1119 constitutes a privilege limited to subsequent legal proceedings, a mediator may legally make the posting. Pragmatically, however, I would caution mediators not to post information about mediations on social media because of the perceptions that it creates. For example, the statement that he was able to "get the plaintiff $3 million" appears to favor plaintiff, and therefore, may pose impartiality challenges for the mediator.

Ethical dilemmas are more challenging when confidentiality is juxtaposed with other mediator ethical concerns. For instance, in a lender liability case between a small business and a local bank, if a mediator learns in caucus that defendant's business is still operational when the bank has the mistaken perception that the business has discontinued operations, can the mediator set the record straight with the bank? Confidentiality mandates say, "no." Now combine this authority with the fact that a mediator is not obligated to ensure the substantive fairness of an agreement,[10] and may suspend, terminate, or withdraw from mediation when he suspects that one party cannot "participate meaningfully in negotiations."[11] While I normally equate this latter provision to a party who may be too emotional or under the influence of a substance to meaningfully negotiate, this could also apply to a situation in which a party does not have accurate information to meaningfully negotiate.

The ABA Committee on Mediator Ethical Guidance has issued an opinion regarding this dilemma based on the ABA Model Standards of Conduct. Those Standards are slightly different from California authorities because they encourage informed decision-making by parties and encourage a mediator to promote honesty and candor between parties. The opinion is noteworthy because it states a mediator is not required to correct a mistake in facts that is not a result of fraud or misleading representations by the opposing party. On the other hand, a mediator is required to protect the integrity of the mediation process and to promote open and honest communications; if a party refuses to correct the misperception or allow the mediator to correct the false impression, the mediator should resign or terminate the mediation.[12]

Conclusion

Confidentiality is a fundamental principle of mediation. The California Evidence Code provides detailed information regarding the rules of confidentiality that should guide civil mediations. Ethical dilemmas may arise when confidentiality mandates influence other mediation ethical requirements. One must carefully consider all ethical rules when deciding on appropriate behavior. When questions arise, a mediator should consult peers, books and educational materials, and mediator ethical guidance opinions.

Susan Nauss Exon is a full-time arbitrator and mediator on several panels, including the California Arbitration and Mediation Services (CAMS), the Riverside County Court Mediation Panel, and DRS of the Riverside County Bar Association. She is Professor of Law Emerita at the University of La Verne College of Law, where she taught mediation, negotiation, civil procedure, professional responsibility and related topics for 21 years. Website: https://susanexon.com. Email: snexon@camsmediation.com.

10 California Rules of Court, Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases, Rule 3.857(b).

11 *Id.* at Rule 3.857(i).

* ATTENTION RCBA MEMBERS *

How would you like to receive (or read) the *Riverside Lawyer* magazine?

Some members have told us they prefer reading the online version of the *Riverside Lawyer* (available on our website at www.riversidecountybar.com) and no longer wish to receive a hard copy in the mail.

OPT-OUT: If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email (rcba@riversidecountybar.com).

Thank you.

JAMS is reimagining ADR

Solving today's complex problems requires a fresh perspective. We're devising new ways to meet your dispute resolution needs during uncertain times, including:

- Virtual mediation or arbitration to avoid delays and keep cases on track
- Accelerated processes like early dialogue, neutral facilitation and expedited arbitration to minimize business disruption and preserve critical relationships

Learn more at jamsadr.com.

Local Solutions. Global Reach.™

JAMS®

Practicing Responsibly & Ethically: Rules of Professional Conduct and Civil Liability

by David Cantrell and Brad Zurcher

As attorney malpractice is a creature of the common law, no recent legislation has affected the contours of this species of tort. But if we think of legislation more broadly—not as something handed down from legislators, but as something codified in liability-creating rules of which responsible attorneys must be aware—then there is indeed new "legislation" in this area: the (relatively) recently amended California Rules of Professional Conduct. Since the theme of this issue is new legislation, we thought it an appropriate time to begin a new series discussing the relatively new Rules, which were retooled and renumbered in the fall of 2018. Our series of articles will touch on the Rules and other topics related to professional responsibility. In this first installment, we discuss Rule 1.0 defining the purpose and function of the Rules.

Rule 1.0 self-consciously sets a boundary upon the use of the rules in civil litigation against an attorney: "A violation of a rule does not itself give rise to a cause of action for damages caused by a failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others." Comment 1 doubles-down on this limitation, explaining that "the rules are not designed to be a basis for civil liability," and that, at most, they may be used as "evidence" of breach of a pre-existing duty.

Yet, California courts routinely *do* allow the Rules to be used as the "basis" for civil liability, not just as "evidence" of a breach of a duty of care. Even those cases cited in the comments to Rule 1.0 bristle against the Rules' purported self-limitation. In *Mirabito v. Liccardo* (1992) 4 Cal. App. 4th 41, the Court of Appeal explained that an attorney's duties are "conclusively established" by the Rules in a malpractice action. *Stanley v. Richmond* (1995) 35 Cal. App. 4th 1070 similarly proclaims that the "scope of an attorney's fiduciary duty may be determined as a matter of law based on the [Rules]." *In Mirabito* and *Richmond*, the duty was established through expert witnesses who relied on the Rules in forming their opinions.

But where the lawyer's conduct is egregious, the court may not require expert testimony. For a colorful example, consider *Day v. Rosenthal* (1985) 170 Cal. App. 1125. There, the Court described the various shortcomings of Jerome Rosenthal, then-attorney for the famous Doris Day Melcher. According to the lower court, Mr. Rosenthal's representation of Ms. Day "ooze[d] with attorney-client conflicts of interest, clouding and shading every transaction" he performed on Ms. Day's behalf. A 25-million-dollar judgment was entered against Mr. Rosenthal in the trial court.

On appeal, Mr. Rosenthal sought reversal because Ms. Day had failed to present any expert testimony establishing the standard of care for an attorney. Unpersuaded, the Court of Appeal expressed the now well-established rule that expert testimony is not required when the attorney's misconduct is so egregious that even a lay person could recognize the breach of the standard of care. In the absence of expert testimony on the standard of care, the Court of Appeals said the trial court could take judicial notice of the Rules of Professional Conduct—indeed, it *must* do so.

What we find even more interesting, though, is the Court's commentary on the inverse of Mr. Rosenthal's question. In an appropriate case, a jury need not hear testimony in support of the standard contained in Rules. Understood. But in an appropriate case may an expert testify contrary to the standard contained in the Rules? The Court unequivocally said no: "The standards governing an attorney's ethical duties are *conclusively* established by the Rules of Professional Conduct. They cannot be changed by expert testimony. If an expert testifies contrary to the [Rules], the standards established by the rules govern and the expert testimony is disregarded." In other words, the Rules do not merely provide evidence of a lawyer's duty; in many cases they conclusively establish the duty.

By highlighting these cases, we do not mean to suggest that the Rules are somehow deficient or that some other standard should govern attorney conduct. To the contrary, these cases provide an important reminder of the importance and centrality of the Rules in the professional life of a California attorney. Violation of a rule places an attorney in serious risk not only of bar discipline but also of civil suit, notwithstanding language in Rule 1.0's comments relegating the rules to mere "evidentiary" status.

David Cantrell and Brad Zurcher are members of the firm Lester, Cantrell & Kraus, LLP. Their practice focuses on legal malpractice and professional responsibility. David is certified by the California State Bar's Board of Legal Specialization as a specialist in legal malpractice law.

We're Open For the Holidays

Trust Expert MRI for all of your imaging needs... during the holidays and any time of year!

- 25 locations throughout California
- Upright, open and high-field MRI options to accommodate ALL patients
- Expertise in orthopedic, neurological and neck/spine injury
- All COVID-19 safety and sanitizing precautions in place
- Accepting most major insurance, including Medicare and Medi-Cal
- Personal injury liens accepted
- 24x7x365 portal for physicians and attorneys

Please email hello@expertmri.com **with any questions or to request a referral kit.**

Extended holiday hours for the convenience of your clients and patients.

EXPERTMRI
Technology | Science | Evidence

ExpertMRI.com
877.MRI.8888

California COVID-19 Employment Law Update

by Jamie E. Wrage

There are major changes affecting California employers and their operations, many driven by the pandemic. These new laws impact employers of all sizes and industries. All employers should familiarize themselves with the notification requirements regarding potential exposures to COVID-19 and immediately determine if they must provide COVID-19 supplemental paid sick leave and develop related policies. They should also review and revise their employee handbooks to make sure their handbooks correctly reflect current law.

AB-1867 (Supplemental Paid Sick Leave for COVID-19)

The COVID-19 Supplemental Paid Sick Leave law is already effective. AB-1867 requires that employers with 500 or more employees nationwide provide up to 80 hours of COVID-19 supplemental paid sick leave to employees who leave their homes to perform work. The law also applies to provide leave to health care employees and emergency responders whose employers opted out of compliance with the federal Families First Coronavirus Response Act ("FFCRA").

This supplemental leave is over and above paid or unpaid leave, paid time off, or vacation time provided by the employer for COVID-19 or otherwise. That said, employers can offset any supplemental COVID-19 leave they already provided to an employee for the covered reasons since March 4, 2020.

The amount of supplemental leave available depends upon the covered worker's schedule, but a worker with a regular 40-hour workweek is entitled to 80 hours of leave if:

(a) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;

(b) The employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or

(c) The employee is prohibited from working by his/her employer due to health concerns related to the potential transmission of COVID-19.

For this supplemental leave, employees are entitled to pay at the highest of their regular rate of pay for the last pay period, the state minimum wage, or the local minimum wage. That said, the amount due is capped at $511 per day and $5,110 in the aggregate. Employees are not required to obtain a medical certification to use this leave, pursuant to related Department of Labor Standards and Enforcement ("DLSE") guidance. In a particularly unusual move, the DLSE has also said that food sector workers classified as independent contractors are also entitled to this supplemental leave if the employer employees at least 500 employees nationwide.

Employers should also make sure to update their pay stubs to comply with AB-1867 by noting the amount of available supplemental leave on employees' pay stubs, or alternatively, by providing a separate writing to employees each pay date with the amount of supplemental leave available.

Finally, employers must put up posters addressing this leave that can be found at https://www.dir.ca.gov/dlse/COVID-19-Non-Food-Sector-Employees-poster.pdf.

This supplemental leave law expires the later of December 31, 2020 or when the FFCRA expires.

AB-685 (Expanded CAL/OSHA Powers and Rules for COVID-19)

AB-685 takes effect on January 1, 2020. It provides Cal/OSHA with enhanced enforcement tools and increases employer reporting requirements related to the pandemic. This bill allows Cal/OSHA to issue Orders Prohibiting Use to shut down entire worksites, or specific worksite areas, that it has determined expose employees to an imminent hazard related to COVID-19. The law also gives Cal/OSHA expanded rights to issue citations for serious violations related to COVID-19 without the standard 15-days' notice before issuance.

Employers must also immediately (within one business day of the notice of potential exposure) provide written notification to all employees at a worksite of potential exposures, COVID-19-related benefits and protections, and the disinfection and safety measures that will be taken at the worksite in response to the potential exposure. Employers also have to notify local public health agencies of an "outbreak" within 48 hours (three or more confirmed cases of COVID-19 cases among employees from different households in a two-week timeframe).

SB-1159 (Presumption for COVID-19 Related Workers' Compensation Claims)

SB-1159 creates a rebuttable presumption that any employee's COVID-19-related illness arises out of, and in the course of, the employment for purposes of awarding workers' compensation benefits. This presumption was originally created by Governor Newsom's Executive Order N-62-20 and was set to expire on July 5, 2020. SB-1159 extended the presumption beyond July 6, 2020, for firefighters, peace officers, fire and rescue coordinators, and certain kinds of health care and health facility workers (and in-home health workers). For all other employees, the rebuttable presumption applies only if the employee works for an employer with five or more employees and the employee tests positive for COVID-19 within 14 days after reporting to his or her place of employment during a COVID-19 "outbreak" at the employee's specific workplace. "Outbreak" is defined as (1) the employer has 100 employees or fewer at a specific place of employment, four employees test positive for COVID-19; (2) the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees who report to the specific place of employment test positive for COVID-19; or (3) a specific place of employment is ordered to close by the health department/OSHA/ school superintendent due to a risk of infection with COVID-19.

Under this law, employers must also report information to the workers' compensation claims administrator when it knows or reasonably should know that an employee has tested positive for COVID-19. Fines for failure to report can be up to $10,000.

Finally, in addition to these pandemic-related laws, there are other new employment laws coming in 2021. Employers should familiarize themselves with all of the changes and remember that on January 1, 2021, the state minimum wage goes up to $14 an hour for employers with 26 or more employees ($13 an hour for employers with fewer than 26 employees).

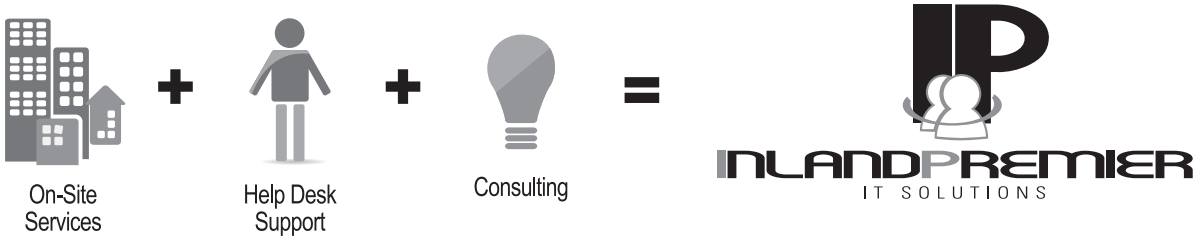
Jamie E. Wrage is a shareholder at Stream Kim Hicks Wrage & Alfaro, PC who practices employment law and complex business litigation.

RUN YOUR PRACTICE
NOT YOUR I.T.

Make your technology work for you and not the other way around by letting Inland Premier I.T. Solutions manage it for you - so you can get back to the business of running your business!

Inland Premier specializes in: Networks | Email & Exchange | Network Security | Data Recovery | Support | Archiving

Quote: RCBA when you call for a free consultation and IT review.



CALL US TODAY: (951) 530-9609 WWW. INLANDPREMIER.COM

What is New in Bankruptcy Law

by Michael Gouveia

Rarely does that question come up in polite dinner conversation. However, 2020 was a banner year for changes in the "California Exemptions from the Enforcement of Money Judgements," which are the state law basis for the exemptions we use in federal bankruptcy practice.

In California, the code sections governing exemptions are found under Code of Civil Procedure sections 703.140(b) and 704.010 et seq.[1] These are dollar amounts on real or personal property that the California Legislature has deemed exempt from the enforcement of money judgements.[2]

The biggest change to bankruptcy exemptions will be an increase in the amount of equity debtors can protect in their residences. This is a simplification, but currently a debtor in bankruptcy may elect to use a California exemption to protect the equity in his or her house. Under the current CCP 704.730 et seq., a single person may exempt $75,000 in equity in his house. A married couple or family unit may exempt up to $100,000, and an elderly, disabled or low income person, under certain restrictions, may exempt up to $175,000 in equity from enforcement of a judgement.

In bankruptcy practice, California residents use the California exemptions to attempt to protect their real and personal property up to the statutory limits, from a bankruptcy trustee and creditors intent on selling their property to pay off the debts.

The heart of bankruptcy practice is effectively using the exemptions to protect a debtor's property, so that he or she can obtain a fresh start after the bankruptcy case concludes. It is beyond the scope of this article for a deep dive into exemption practice as it is a combination California law, federal law, case law, and U.S. Bankruptcy Court interpretation. The following though is a snapshot of the new laws governing bankruptcy practice.

Come January 1, 2021, the California Legislature has done away with the current 3-tiered homestead exemption and replaced it with a county by county determination of the homestead exemption. The new homestead amount will be between $300,000 and $600,000, depending on the county where the homeowner resides, with certain restrictions. This new exemption amount is based on the prior year median single-family home value in the given county.

California Governor Gavin Newsom signed Assemby Bill 1885 in mid-September 2020 and it will take effect on January 1, 2021. The Bill was introduced by State Senator Bob Wieckowski (D-Fremont) who is also a bankruptcy attorney.

"Protecting people's most valuable asset by meaningfully updating the homestead exemptions will keep families from falling deeper into debt and economic insecurity," said Wieckowski, a member of the Senate Budget and Fiscal Review Committee. "The homestead exemptions are currently not nearly reflective of the actual value of residential property in California in 2020. To put it bluntly, they are woefully insufficient. AB 1885 will change that and I applaud the Governor for approving this important update."

In Riverside County, taking into account the median family home value, the new exemption will be approximately $480,000 and in San Bernardino County the exemption will be approximately $370,215. Since Los Angeles, Orange, and San Diego counties have higher median house values, their exemption amount will be $600,000.

Local California Certified Bankruptcy Specialist Jenny Doling, who testified before the California State Senate supporting SB 832/AB 1885 on a Sunday afternoon in August from her living room, said the following: "There was a misconception that the homestead exemption increase may not have been needed because local Riverside Division bankruptcy trustees had not sold many houses in recent years. But many homeowners simply could not file for bankruptcy protection because they would have lost their homes due to the inadequate homestead exemption. In the past two years, I had 72 cases I could not file. Now, those homeowners finally have access to debt relief."

When asked about the new homestead exemption amounts, Riverside Chapter 7 Trustee Larry Simons said the following, "Based upon August 2020 numbers from the California Association of Realtors' website, the homestead for San Bernardino will be approximately $350,000 and Riverside will be $485,000 under the new law. Even under the old scheme, there were very few houses in the Inland Empire that had equity which exceeded $100,000.00, which could be sold."

Mr. Simons, who is also a California Certified Bankruptcy Specialist continued: "Therefore, I don't think there will be a dramatic shift in the trustee practice for the Inland Empire. It will require a little more due diligence on my part. Therefore, I will be looking at title records and sources of down payments for property a little closer."

It will be interesting to see how this dynamic between California Bankruptcy Trustees and debtors and debtors' attorneys plays out. The new more generous homestead

1 Unless otherwise noted, all future references will be to the Code of Civil Procedure.

2 See Judicial Counsel Form EJ-156 https://www.courts.ca.gov/documents/ej156.pdf for the Current Dollar Amounts of Exemptions From Enforcement of Judgement.

exemption amount will allow more people to qualify for filing bankruptcy without having to worry about a bankruptcy trustee selling their home to pay off their debts, but with more people with higher residence equity coming into the bankruptcy system, the bankruptcy trustees will turn more attention to those potential assets for the bankruptcy estate.

Ms. Doling recently presented a statewide webinar for the National Association of Consumer Bankruptcy Attorneys on the new exemption laws in California. She cautioned in that seminar to watch out for 11 U.S.C 522(p)(1) the Federal Bankruptcy statute which may affect the state law by creating a residency period in the residence in order to take advantage of the new exemption.

And she pointed to 11 U.S.C. 522(q)(2) that if the debtor has been convicted of a felony (as defined in section 3156 of title 18)...or any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years, the bankruptcy court may not allow the higher exemption.[3]

In addition to the above, the following bankruptcy law changes occurred in 2020 and some will take effect next year.

In January 2020, the new CCP 704.225 went into effect, which provides:

"Money in a judgment debtor's deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

CCP 704.230 FEMA Benefits

There is no dollar limit on this exemption to money provided to the judgement debtor by the Federal Emergency Management Agency (FEMA). This was effective January 1, 2020.

CCP 704.220 Deposit Account Funds

Effective September 1, 2020, Deposit Account Funds: the exemption increased to $1,788 per debtor and joint case $3,576.00

CCP 704.105 and CCP 703.140 (b)(12)

Golden State Scholarshare Trust Act 529 Savings accounts are now exempt in certain situations and amounts. The new law will be effective January 1, 2021.

Now as you enjoy your Thanksgiving feast, you will have something to add when the conversation turns to the 2020 changes in bankruptcy practice.

Michael Gouveia, Riverside bankruptcy attorney, helps "Moms and Pops" file for bankruptcy protection. www.riversidebkmike.com.

3 For an extended video of my interview with Jenny Doling visit https://youtu.be/x2R5fYaTMDQ

Letter to the Editor

I moved to Oregon 20 years ago and greatly miss my association with the Riverside County Bar Association (RCBA) and its members. I was a trial lawyer with Reid & Hellyer for 20 years before moving to Oregon, where I am a trial lawyer with DC Law in Roseburg. I regularly review the *Riverside Lawyer* and particularly enjoyed Judge Tranbarger's article entitled, "A Criminal Approach to Civil Discovery."

With regard to civil litigation, there are many things we do differently in Oregon than we did in California, but the biggest differences are in the area of civil discovery and pretrial practice.

First, interrogatories are not permitted in Oregon. I can assure that I do not miss them. They were always a waste of time to force compliance and rarely did the adverse party produce any information useful at trial. We do use Requests for Admissions, but the number of requests is limited to 30. More importantly, all expert witness discovery is forbidden.

Similar to Judge Tranbarger' s suggestion, we use paralegals and investigators instead of taking depositions. Rarely do we take depositions of non-party witnesses. Instead, we interview them. It is also considered rude to take the deposition of a party for more than two or three hours. In a typical case, the plaintiffs would be deposed in the morning and defendants in the afternoon. I recently had a case in Coos County that resulted in a $3.2 million verdict in favor of my clients and all of the depositions in that case took 2 days.

To a certain extent, trial becomes unpredictable because many of the witnesses have not been pinned down to their story. Yet this type of trial work requires greater skill on the part of the lawyers and results in considerable savings to the litigants. Also, trials tend to go more quickly when there have not been depositions taken of every witness.

I found that litigating cases in Oregon results in greater job satisfaction because we are not embroiled in discovery disputes. Judges rarely grant sanctions in document discovery disputes. They just order that anything that is not produced by a certain date cannot be used at trial.

In Oregon there is also a culture among lawyers of cooperation and the judges expect cooperation and stipulation to facts and documents not in dispute before trial. For these reasons and more, it is unusual for trials to go longer than three or four days even with a jury.

Finally, I also agree with Judge Tranbarger that the current system of civil discovery is so firmly entrenched in California, it is unlikely to change, but having seen a better way, I would be an advocate for such change.

Dan G. McKinney

Past President of the RCBA, 1993

McCUNE • WRIGHT • AREVALO
ATTORNEYS AT LAW

The Inland Empire's Largest Plaintiff Firm
with Offices in Ontario, Palm Desert, and San Bernardino

Introducing Our New Practice Group: Writs, Motions, & Appeals

McCune, Wright, Arevalo, LLP, (MWA) is thrilled to announce the creation of its Writs, Motions, & Appeals Practice Group led by MWA Partner Steven A. Haskins. With the importance of written advocacy often overlooked and overburdened courts seeking to shorten or eliminate hearings altogether, this new practice will provide co-counseling to law firms and solo practitioners in need of appellate and law and motion support.

The Writs, Motions, & Appeals Practice Group offers a team of 20+ experienced appellate lawyers working on a contingency basis to provide support with appeals for cases dismissed due to dispositive judgments, complex dispositive motions, appeals defending substantial trial verdicts, and appeals for cases lost as a result of improper rulings.

As fewer and fewer cases are provided hearings by courts, organized briefs drafted by attorneys are more important than ever to ensure the trial court has all the relevant information to come to the correct verdict. Sometimes, however, courts may decide the case differently than law requires and a case must be prepared for appellate court. With MWA's Writs, Motions, & Appeals Practice Group, firms have an option that desire the expertise of appellate counsel or simply do not have the time in a busy trial practice to present their cases to appellate court in a compelling, meaningful way.

Since MWA's founding in 2007, the firm has placed immense value on the written word in legal practice. Therefore, all attorneys under the Writs, Motions, & Appeals Practice Group have developed a proven history of written advocacy success for their clients' and co-counsel's cases.

Steven Haskins

Since 2005, Practice Group Leader Steven Haskins has worked extensively with written advocacy, drafting appeal briefs for cases brought before the California Court of Appeals, the Ninth Circuit Court of Appeals, the California Supreme Court, and even the United States Supreme Court. He has also drafted amicus curiae briefs for both the U.S. and California Supreme Courts and the Central District of California. With Haskins at the helm of the Writs, Motions, & Appeals Practice Group, the MWA team is ready to take its reputation for results-driven, powerful, and concise written advocacy to new heights.

CALL TODAY TO LEARN HOW WE CAN ASSIST WITH YOUR BRIEF OR APPEAL AND TO DISCUSS OUR REFERRAL FEE ARRANGEMENT

McCuneWright.com | (909) 345-8110

In Memoriam – Tribute to Honorable Jay Thompson Hanks

by Elaina Gambera Bentley

When a great man dies, for years the light he leaves behind him, lies on the paths of men.

- Henry Wadsworth Longfellow

Honorable Jay Thompson Hanks 1944-2020

A true legacy of our Riverside legal community, the Honorable Jay Thompson Hanks, started in the Riverside County District Attorney's Office on July 1, 1974, the same day as his lifelong friend and former colleague, six-term retired District Attorney Grover Trask. Judge Hanks was promoted to supervising deputy district attorney in August of 1981 and to assistant district attorney in November of 1982. In June of 1988, he was elected judge of the Riverside County Municipal Court, filling the vacancy left by the retirement of the Honorable George Miller.

Judge Hanks resigned from the office of the District Attorney on September 23, 1988, to assume his new role as a Municipal Court Judge, where his first jury trial would be a driving under the influence case with then rookie misdemeanor Deputy District Attorney Elaina Gambera (Bentley). His first courtroom was in what is now the basement parking garage of the current office of the Riverside District Attorney. Before his first term was completed, Judge Hanks ran for and won a seat on the Riverside County Superior Court, where he faithfully served for 20 years. His first Superior Court courtroom was in the old morgue where the acoustics were so bad that litigants and court staff had to use clip-on mics. This led to several infamous "hot mike" issues before that was even a "thing."

Judge Hanks is survived by his wife, Kay, of 54 years, and their two children, Deputy District Attorney Emily Hanks, and criminal defense attorney and former Deputy District Attorney Joshua Hanks, and five grandchildren. As the assistant district attorney, Judge Hanks hired many former and a few remaining deputy district attorneys in our office. One of his trademark interview techniques was first to ask if you played softball and if answered correctly, he would take the candidate on a tour of the city, from the Mission Inn to the top of Mount Rubidoux, overlooking the historical graveyard, while explaining to us how close we really were to the ocean (as a crow flies!). This of course would always take place in the winter or early spring — before the smog rolled in.

As the assistant district attorney, Judge Hanks' door was always open to new prosecutors as a friend and mentor. His gregarious personality was infectious. He made a point of getting to know each of us and would take every new prosecutor out to celebrate their first jury trial verdict. Judge Hanks was also a noted Civil War buff, as can be attested to by those who had the privilege of touring Civil War battlefields with him or arguing battlefield strategies with him over drinks. As a judge, he was known to be a tough but fair arbitrator, who rapidly earned the respect of those appearing in his courtroom.

Judge Hanks was born and raised in Beardstown, Illinois. As a child he lived in Riverside for a short time until the family returned to Illinois. A hallmark of our community, Judge Hanks has continuously resided in Riverside County since 1964. A veteran, Judge Hanks served active duty in the United States Navy during the Vietnam War as a Mine Warfare Technician and was stationed for much of his service in Yokosuka, Japan. He thereafter returned to Riverside, where he graduated from University of California Riverside and attended law school at Pepperdine University.

While he prosecuted just about every type of criminal case in our office, his most celebrated case was the infamous Norco Bank robbery of 1980, chronicled in the 2006 movie *Rapid Fire* and the 2019 book *Norco '80 The True Story of the Most Spectacular Bank Robbery in American History*, by Peter Houlahan. There, five heavily armed Militia men attempted a daylight bank robbery of the Security Pacific Bank in the City of Norco. Upon being detected by RSO Deputy Glyn Bolasky, the robbers led local police on the longest, most violent running gun battle in law enforcement history. In the end, Sheriff Deputy James Evans and two of the suspects were killed, and the other three suspects were captured. Judge Hanks was the assigned lead prosecutor of the three remaining gunmen. Due to the publicity of the case, a change of venue motion was granted, and Judge Hanks with former Chief Deputy District Attorney (CDDA) Kevin Ruddy, eventually tried the case in Vista, San Diego. The case took almost 6 months to select a jury and a year to try to conclusion. All three gunmen were convicted of 46 felony counts and in September 1982, were sentenced to life without parole. The case would be retried several years later by then-retired CDDA Kevin Ruddy.

Judge Hanks, you will be dearly missed. To your family, friends, and former colleagues, we send our heartfelt condolences.

Elaina Gambera Bentley is the assistant district attorney in Riverside County.

Opposing Counsel: Elisabeth Lord

by Betty Fracisco

The Riverside County Bar Association has a new board member, and she is a certified multi tasker. Elisabeth Lord, partner in the firm of Bratton, Razo & Lord, is a family law dynamo who has made a name for herself in the Inland Empire. Born in the San Fernando Valley, she admits to being an 80's Valley girl. Her mother was a real estate broker and her dad a retired consultant who died when she was 13 (parents had divorced when she was 8). She grew up with four siblings, playing soccer and taking dance (3rd grade through high school). One of her happiest childhood memories was a family trip to Hawaii when she was in the eighth grade . . . her mother actually surprised the kids to the point that they did not realize they were the ones taking the trip until they were actually on the plane (clearly pre 9/11).

Elisabeth Lord

Elisabeth graduated from Campbell Hall in Hollywood in a class of 65. She played volleyball, was on student council, and held her first part-time job. Then it was off to Porter College at UC Santa Cruz, which had an art emphasis. She spent 6 years earning her linguistics (language studies) degree, during which she learned both Spanish and French and took a year off to go to Europe.

After graduation she took a year off to prepare for the LSAT while continuing to wait tables in Santa Cruz. Law school admission was a difficult challenge, since at the time Santa Cruz had a pass-fail grading protocol, which law schools had trouble accepting. At the ninth hour she was admitted to law school at Golden Gate in San Francisco, commuting from Santa Cruz. She did well, making Law Review and was in the top 10% of her class. However, she decided to transfer to Santa Clara, which had a higher bar pass rate and better prospective job opportunities. She received an Am Jur in contracts, participated in criminal law Moot Court, and worked in the Family Law Clinic. After her first year, she was a law clerk at Walrath & Gilman, where she represented the county in juvenile dependency cases, commuting from Santa Cruz. After her second year, she worked as a certified law clerk at the Public Defender's Office in Santa Cruz where she represented criminal defendants in pretrial motions and arraignments.

Elisabeth passed the Bar in 1999, and went to work for criminal defense attorney Donald Kelly in San Jose, covering misdemeanor criminal calendars in Santa Cruz, San Jose, Palo Alto, and occasionally Monterey and Contra Costa counties. In 2000, she was offered a job with a firm, which she held until 2004. She remained in Santa Cruz for five years and was able to keep her own caseload of juvenile dependency, criminal law, and family law cases in Santa Cruz, Santa Clara, and Monterey counties. She did this in addition to cases she received from Donald Kelly.

Elisabeth was married in 2004, and by 2005, she and her husband were thinking about moving to a place, other than Santa Cruz, where they could afford to buy a house and raise a family. The Inland Empire was appealing, and in 2006 she received a job offer from the Public Defender's Office. She stayed there one year before leaving to start her own firm in Hemet with partner, Julie Clark. She represented parties in family law, juvenile dependency, criminal law, adoption, and guardianship. When she started, 15% of her cases were family law, but over the years this increased to 70%. In 2013 she went to work as a senior litigation attorney with Holstrom Block & Parke, at the time a 5 to 6 attorney firm. She worked exclusively in family law, with occasional cases in juvenile dependency. In 2014, she achieved the status of Certified Family Law Specialist with the California Bar.

In March 2018, Elisabeth joined William and Pamela Bratton and Michael Razo to form Bratton Razo & Lord in Riverside. This provided a better opportunity for her career and her family. She basically practices all family law, although she and Michael Razo handle occasional guardianship of person and juvenile dependency matters. Her cases are all in Riverside and San Bernardino counties. She is a member of the Riverside and San Bernardino Bar Associations and is a past president of the Hemet San Jacinto Bar Association. She has been a member of the Leo Deegan Inn of Court for six years and worked on the Youth Court for two years. She was encouraged to run for the Riverside County Bar Association Board (RCBA) and did so because she likes to be involved in RCBA activities and felt it would be a good way to meet other attorneys in Riverside, especially those outside the family law arena.

Elisabeth lives in Beaumont with her husband of 17 years, and her two sons. She described her husband as a "big dog person," so they have two of them. When asked about a critical aspect of her career, she said one of the most important factors was the fact that she always had mentors, at every stage. This enabled her to avoid many mistakes and led her to focus on family law, leaving behind criminal law and dependency. She is really looking forward to serving the members of the RCBA.

Betty Fracisco is an attorney at Garrett & Jensen in Riverside and a member of the RCBA Bar Publications committee.

The RCBA Elves Program – Season XIX

by Brian C. Pearcy

Since Christmas 2002, your RCBA Elves Program has helped local families in need provide Christmas to their children. While COVID-19 has touched everyone's lives this year to varying degrees, we are all blessed as we head into this holiday season with eight months of experience under our belts in dealing with the challenges that it has brought into our lives. We have learned how to successfully adapt and overcome. As a result, we will not be cancelling the Elves Program, we will push on and continue to provide Christmas to those in need.

This will be your 19th opportunity to show that we care about and do give back to the community that supports us. In doing so, we must all be prepared as a group to patiently face and conquer the challenges and changes that will impact nearly every aspect of our Elves program.

Last year we knew the impending closure of Kmart this year would force us to find a new shopping venue and build new relationships with their management and staff. Little did we know that we would be facing our own Ides of March that would attack our sense of personal and economic well being.

As I write this, I have no sense of the numbers yet, but I am anticipating that we will be facing many more needy families this year than last year. Hopefully things are not as bad as they were when the economy faltered back in 2008 and 2009, but your RCBA will be there to allow the RCBA Holiday Elves to do what we do…. provide opportunities for you, your family, your staff, your colleagues and friends to become an Elf and share your time, talents, and interests with these local families in need. This article will list the changes you can expect this year. After reviewing, please ponder these questions: How many Elf categories do you want to participate in this season, and how many can you recruit to help?

Shopping Elves: Monday, December 14, 2020 at 5:00 p.m. For the past 15 seasons our Shopping Elves component had evolved into a well-oiled machine with a process that had become streamlined and efficient, in no small part thanks to the capable staff at Kmart. Last year we knew that this year we would be facing this year's challenge of who would become our new retailer and where it would be located. I am pleased to announce that we have found a replacement that I believe will provide us an ever greater selection of toys, clothes and household items to shop from. That retailer is **Riverside's Walmart Supercenter** and the location is freeway close, located at **6250 Valley Springs Parkway, Riverside, 92507.**

As a Shopping Elf, you will receive a Christmas "wish list" from your adopted families. Your job is simple—shop and fill your basket with as many gifts as possible within the dollar amount given to you at the start of the evening by our Head Elf, Brian Pearcy. This is a real opportunity to test or show off your "value" shopping skills. Many of our Shopping Elves have made this a family affair using its younger members to assist in selecting the "cool" gifts for the kids while learning about the value of charity and the joy of giving to the less fortunate. Some law offices bring their entire staff and are joined by their families and make this a night of bonding. Whatever the motivation, please put on an Elf cap and come and join us. A good time will be had by all.

While everyone has learned over the past 8 months that COVID has probably affected their regular shopping experience the least, please allow yourself a little more time to be present on shopping night than you have in the past. Since we are now breaking in a new staff and have social distancing requirements to contend with, this year I would ask that every shopping Elf stay with their shopping cart through the initiation of the check out process to ensure that the shopping carts are moved through queue efficiently.

And, if you'd like to stay and help with the checking out and bagging gifts at the registers we would welcome the help.

Wrapping Elves: After the Shopping Elves finish their job, Wrapping Elves swing into action. Wrapping Elves must ensure that all the gifts are tagged and assembled, by family, for easy pick up and distribution by the Delivery Elves.

This is the one area of the program that has the most COVID-related uncertainty at the time of this writing. While things were opening back up late this summer and gatherings were allowed, at the time of my writing this article, Riverside County has just slid back from the red tier into the purple tiers. Where we may be in 45-60 days from now is a little hard to predict. Thus, we need to be flexible and adaptable in how this component will be implemented.

Thus, we have prepared two alternate plans (listed below) and we will decide which direction to go based on the "status of things" at that time.

Plan A - If we are in the State's red or less restrictive tier, we will conduct our two wrapping nights at the RCBA just as we have in the past: **Tuesday, December 15 and Wednesday, December 16, starting at 4 p.m.** We meet in the RCBA boardroom (on the first floor of the Bar building) and wrap all the gifts purchased. Depending upon the requirements in place at the time, we may have to spread out a little further and even use the upstairs meeting room. Specific directions on social distancing will be provided to the Wrapping Elves at that time. As in the past, the Wrapping Elves will enjoy the holiday music, food and camaraderie of wrapping gifts together and will help even the biggest Grinch shake off the "bah humbug" blues and get them into the holiday spirit.

Plan B - If we are still in the State's purple tier or the City and County implement more restrictive gathering directives that preclude us conducting our wrapping nights at the RCBA building, then we will ask the Wrapping Elves to come to the RCBA at a designated day and time to pick up a bundle of gifts and wrapping supplies. You will then have 2 days to take the gifts back to wrap at your home or office (fun for the whole

family or staff!) and return the gifts to the RCBA offices so they can be made ready for the Delivery Elves to pick up.

If you happen to be one of those very generous Elves who wraps and delivers, then you will not have to return the wrapped gifts back to the RCBA, but you will have to return to the RCBA to turn in your wrapping supplies and pick up the delivery instructions and gift cards so you can make arrangements to deliver to the families that work within your schedule.

To help us plan, I would like all Wrapping Elves to contact the RCBA by no later than December 10 to identify themselves and their email address so they can be contacted as late as a day before the designated wrapping days on the process that will be implemented. Remember, excellent wrapping and organizational skills are welcomed, but are not required.

Delivery Elves: If you need a way to kick-start the warm holiday glow inside and out or just want to feel like Santa on Christmas Eve, this is it!

Depending on the total number of families adopted, Delivery Elves are needed to personally deliver the wrapped gifts to each of our families from **December 18 to 22,** picking up your packages at the RCBA. This part of the program has been designed to accommodate your personal schedules.

Over the years, many members have expressed that delivering gifts to the families was by far one of the most heart warming Elf experiences. It is also a good opportunity to teach your young ones early the rewarding feeling of helping those less fortunate than themselves. When signing up, please inform us of the type of vehicle you have, so we can match the number and size of gifts to the storage area available in your vehicle.

We will leave it to you to communicate with your designated family about your preferred COVID-related protocol at the time of delivery.

Money Elves: The Money Elves provide the means necessary for the other Elves to shop, wrap, and deliver presents to the families we adopt. Donations received will fund gifts purchased from Walmart and the purchase of gift cards from Stater Brothers, so the families can buy food for a nice holiday dinner, and the purchase of gas cards so they can get to the grocery store.

One of the past benefits of working with Kmart was we received a 10% discount that really stretched our dollars donated. We don't have that benefit this year. While we have applied for a community grant from Walmart, and since this is our first year working with them, we have no way to predict how much/if any assistance we will receive. Therefore, we need to collect more money this year just to "stay even" compared to last year. The more money we raise means a greater number of families we can assist. (Remember our goal is 60+ families this year.)

Because of all the COVID-related uncertainties, you can really help us by sending in your donation early since it allows us to determine our budget for the number of families we help. The majority of funds need to be donated no later than December 13, to allow for the big shopping night, but late donations can still be used for the food and gas cards. Please note, even if you are a procrastinator, we will accept money after December 20. Monies received this late will be applied to any last minute "add on" families or will be saved to get us ahead on donations for next year.

Please make your checks payable to the RCB Foundation and write "Elves Program" in the memo section of the check. The RCB Foundation is a 501(c)(3), so all donations for this project are tax deductible. The RCB Foundation Tax ID# is 47-4971260. Please send your checks directly to the RCBA. We thank you in advance for your holiday generosity.

To become a Shopping, Wrapping, Delivery, or Money Elf (or a combination of these), please phone your pledge to the RCBA at (951) 682-1015 or email your name and desired Elf designation(s) to one of the following: Charlene Nelson (charlene@riversidecountybar.com), Lisa Yang (lisa@riversidecountybar.com), Brian Pearcy (bpearcy@bpearcylaw.com), or Mr. Pearcy's assistant, Anna Gherity (agherity@bpearcylaw.com). You can also reach Anna at 951-686-1584.

To those who have participated in the past, "Thank you" and to those who join us for the first time this year, we look forward to meeting you. Don't forget to tell a friend or two or three!

Brian C. Pearcy was president of the RCBA in 2002 and is the chairperson (i.e. "Head Elf") of the Elves Program.

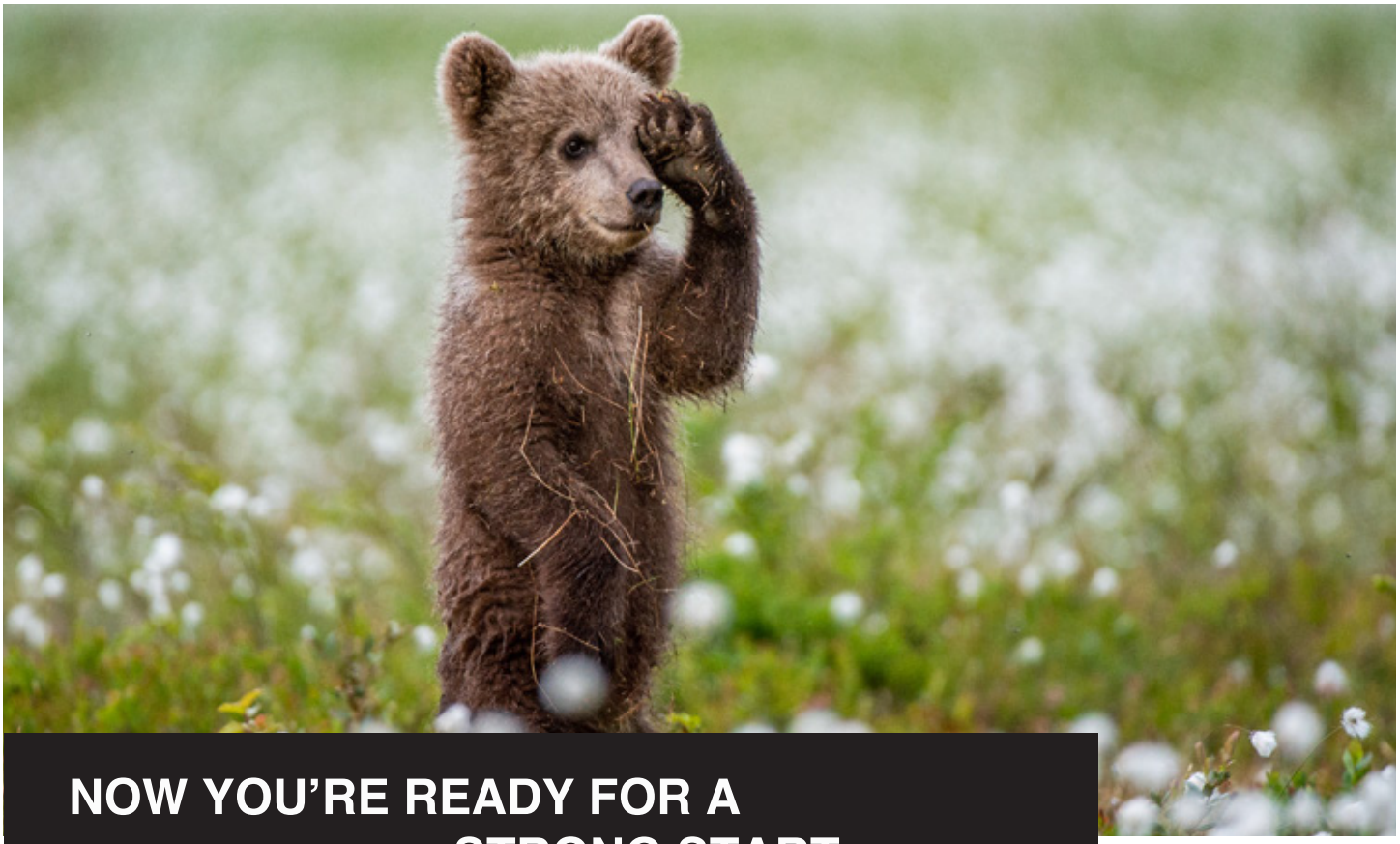
Classifieds

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 or rcba@riversidecountybar.com.

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.

Opportunity / Position Available
Thriving Estate Planning, Trust and Probate law practice in Carlsbad, California for 36 years. Qualified attorney(s) will need to obtain Certified Specialization. Five years legal experience required, ten or more preferred. Inquiries: (760) 729-7162

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.



NOW YOU'RE READY FOR A STRONG START...

Your Strong Start Program is specifically designed to provide a foundation for your new practice to thrive.

Cost effective, easy to apply for and providing the essential tools for your practice to grow stronger.

Your Strong Start Program is waiting for you with a first year **premium of $500**.

Start with $100,000 **per claim** / $300,000 in the **aggregate**.
Start with Free $100,000 **cyber coverage**.
Start with Free access to **Fastcase** legal research.
Start with Free access to lawyer-to-lawyer **hotline**.
Start with Free **Continuing Legal Education**.

Protect yourself. Protect your clients. Protect your future.

www.lawyersmutual.com

LAWYERS' MUTUAL
INSURANCE COMPANY

Our strength is your insurance

Riverside County LAWYER

Riverside County Bar Association
4129 Main St., Ste. 100, Riverside, CA 92501
RCBA 951-682-1015 LRS 951-682-7520
www.riversidecountybar.com rcba@riversidecountybar.com

PRSRT STD
US POSTAGE
PAID
PERMIT #1054
RIVERSIDE, CA

ARBITRATION & MEDIATION SERVICE PROVIDER

RCBA Dispute Resolution Service, Inc.

You be the Judge.

Over 100 experienced Riverside County Bar Association mediators
2 out of 3 private mediations reach full settlement
3 out of 4 Family Law cases referred to our Court program reach full settlement
No administrative fees! Competitive hourly rates!

DRS is a nonprofit public benefit corporation proudly serving Riverside County since 1995.
DRS is the approved mediation service for the Riverside County Superior Court.
Located across from the Riverside County Historic Courthouse at 4129 Main Street, Suite 100.

(951) 682-2132
www.rcbadrs.org
DRS