

RIVERSIDE LAWYER

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MAGAZINE

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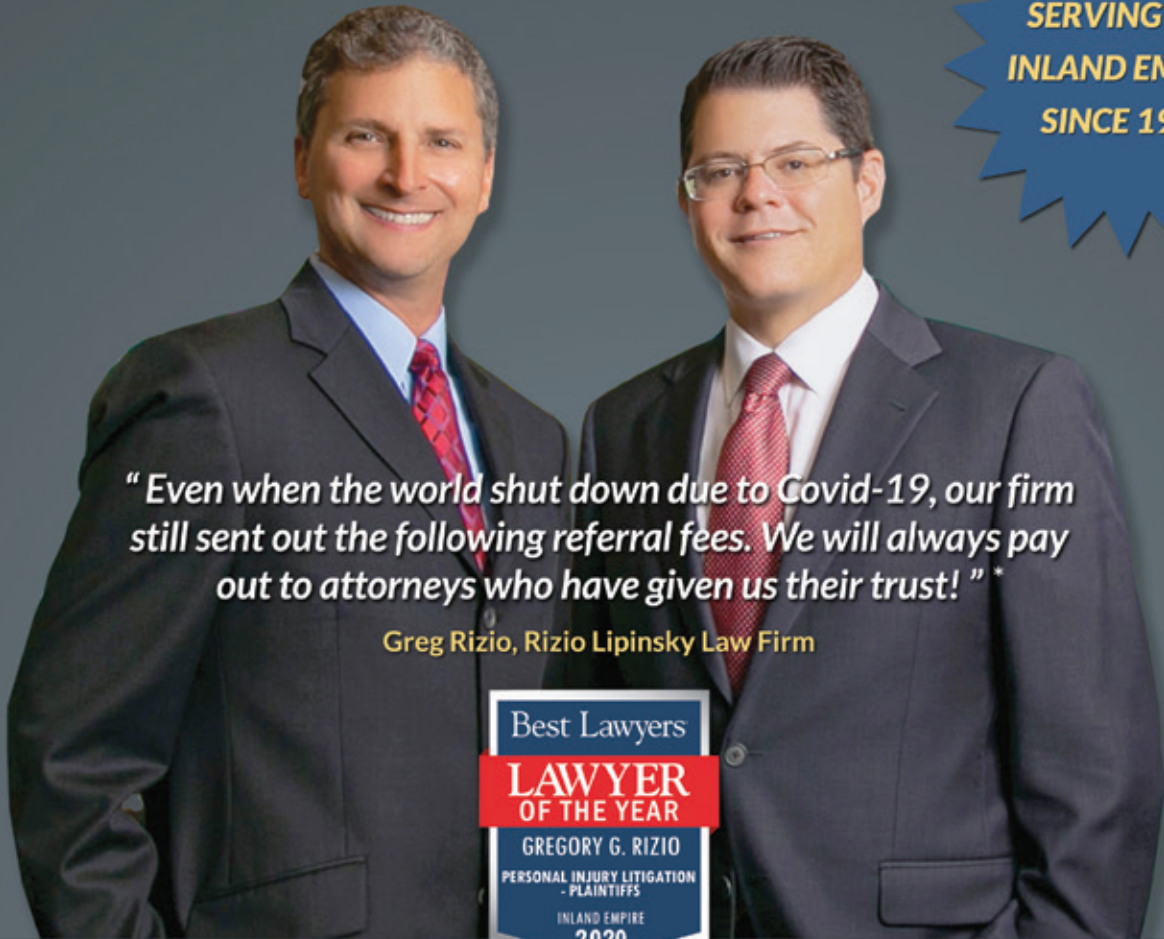


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Design and Production PIP Printing Riverside
Cover Design Michal Sanca/Akkachai Thohtubthai/Ljupco Smokovski/PIP Printing Riverside

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President Sophia H. Choi (951) 955-5400 schoi1024associations@gmail.com	President-Elect Neil D. Okazaki (951) 826-5567 nokazaki@riversideca.gov
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Vice President Lori Myers (949) 300-3596 loriamyers@me.com	Chief Financial Officer Kelly Moran (951) 955-6300 kmoran@rivco.org
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Chris A. Johnson (951) 695-8700 cjohnson@rhlaw.com	Elisabeth A. Lord (951) 684-9000 elisabeth@brlfamilylaw.com

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

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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

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

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

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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

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

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities, Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

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

March

- 1 Civil Litigation Roundtable with Hon. Craig Riemer**
Zoom
Noon
MCLE
- 9 Civil Litigation Section**
Noon – 1:15 p.m.
Zoom
Speaker: Hon. Raquel Marquez, Riverside Superior Court
Topic: “Riverside Superior Civil Division Update”
MCLE
- 12 General Membership Meeting**
Noon – 1:15 p.m.
Zoom
Speaker: David Mann
Topic: “Substance Abuse in the Legal Profession: Prevention, Detection and Treatment”
MCLE – Competence
- 24 Estate Planning, Probate & Elder Law Section**
Noon – 1:15 p.m.
Zoom
Joint meeting with San Bernardino County Bar Association
Speaker: Hon. Tara Reilly, San Bernardino Superior Court
Topic: “New Odyssey Computer Software Roll Out for Probate Cases”
MCLE
- 25 Juvenile Law Section**
Noon – 1:15 p.m.
Zoom
Speakers: Jill Kent & Lynelle Hee
Topic: “Delinquency: Bridging the Gap Between Juvenile and Appellate Proceedings”
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

Happy Spring! It looks like we are moving slowly but surely towards normalcy again, with vaccinations for COVID-19 being distributed and businesses slowly opening back up. As you are probably aware, jury trials will resume beginning on March 1, 2021 as well. Although the Riverside County Bar Association will still be having its events virtually only for now, we have been having many great speakers and presentations, so please continue to check your email inboxes and register for our events.

As we see promising signs that we are moving away from this pandemic, I hope that it has been a time to reflect and truly appreciate the family and friends in your lives. On that note, I wanted to take this opportunity to thank and appreciate my family.

My parents were both born and raised in Korea and came to the United States as adults. They met in college in San Francisco. Both of my parents became Certified Public Accountants. After some time working as CPAs, my mom eventually decided to devote her focus on raising my sister and me, and my dad started his own courier business, which flourished with a huge corporate clientele. Despite his busy work schedule, my dad always spent time with family and made sure we went on fun family trips. I was blessed with parents whose primary focus and attention were given to the upbringing of their children. My mom's whole life goal has been to properly raise her two daughters, and to that end, she devoted her whole life. My dad's life goal was to provide a comfortable living for his family, even if that meant commuting over two hours (over four hours round trip) in

traffic every day to where his company was located to provide a comfortable living for his family.

I really appreciate my parents' efforts to ensure that I would never lose touch with my Korean heritage. While growing up, I was usually the only Korean at my schools. I met many people who did not know or even recognize Korean nationality. However, I grew up very proud of my Korean heritage. My parents had me only speak in Korean at home, exposed me to delicious Korean home-cooked meals, took us to Korea every year, and did everything they could to make both my sister and me feel proud of being Korean. Because of this upbringing, I never went to school thinking that I stuck out like a sore thumb or that I did not fit in. Instead, I went everyday with the mindset that there is so much to appreciate and be proud of for being Korean. And, with that attitude, the students at school were receptive and wanted to learn more about Korea, its food, its music, and its language. Although there is now "KPOP" fandom, Korean pop music was not a worldwide phenomenon when I was growing up. My parents have taught me to never lose sight of where I came from and my deeply-rooted heritage.

My grandparents have equally played an important role in my life. They have always been there to support in any way they can with more love than you can imagine possible. Both my grandfathers have passed now, but I will always remember the love they have given me. When my maternal grandfather passed away a couple of years ago, I was completely devastated. I stayed by him during his last days in the hospital, and I experienced so much sadness, hurt, and helplessness. I had wished I had spent more of my free time with him because he would be so happy to see me. I am so blessed to have my grandmothers in my life, and I love them so much. The elders in our lives and our communities are so important, so precious, and so valuable. Their life experiences can teach us very important lessons. I hope that none of us will take them for granted and that we all treat them with the respect and love that they all deserve.

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.





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BARRISTERS PRESIDENT'S MESSAGE

by Goushia Farook



To the Ladies Who Get It Done

March is National Women's History month and has been celebrated annually in the United States since 1987. The month observes contributions made by women in history, culture, and society. Names such as Ruth Bader Ginsberg, Rosa Parks,

Susan B. Anthony, and Sojourner Truth come to mind (to name but a very few).

The topic of this month's article is elder law and in conjunction with it being National Women's History month, it made me think of all the women in our lives who raise us, support us, love us, and guide us well into their old age. I think of mothers, grandmothers, the blessed great-grandmothers and all those women who have taken on similar roles. The unsurmountable value they bring to our lives and the wisdom they impart.

Personally, I think of my late grandmother who raised me from childhood and made me the woman I am today. Her sacrifices for our family to raise her grandchildren after raising her own family. Not because she had to but because she chose to step up and do more than she was ever required to do. While her loss was devastating, the love and lessons left behind by her are with me daily.

I am reminded of the sisters, aunts, nieces, mothers, daughters, friends, and role models who form the intricate web of support in the lives of my family and friends. I have no doubt such women play an intricate role in your lives. As we observe Women's History Month this March, I encourage us to think not only of the contributors to history but the contributors to our personal history. The values we hold and pass on to our younger generations often stem from these great contributors of love, compassion, time, energy, and endless support. To all the amazing men who do the same, I see you and do not discount your contributions. This month just happens to be for the ladies!

Charlene, This One is for You

Since we are on the topic of amazing women, I want to specifically acknowledge Charlene Nelson. When I was President-Elect, Charlene asked me at an MCLE event if I was excited about doing the articles for the magazine. She told me I did not have to write about the topic of the month and could write about anything I wanted. I jokingly asked, even an article

about tacos! Charlene said she would love to read an article about tacos. Well, Charlene, here we go!

Tacos, what can I say, I love them! The variety is exceptional: carne asada, chicken (pollo), barbacoa, carnitas, and fish are a few options. Even the tortillas can be a variety ranging from: corn, flour, white corn, whole grain, and even lettuce works! The toppings, oh goodness, where does a girl start? Dealers choice really, chopped onions, shredded cheese, cilantro, pickled carrots, jalapeños, lime, pico de gallo, sour cream, guacamole, avocado slices, hot sauce, and lettuce. The list just goes on! My favorite part, the salsa! For me, the spicier the better but red, green, mild, or hot, there is a menagerie of flavors!

Tacos are more than just the food itself, there is a culture behind them, a history. There are traditions and memories. Netflix currently has a great docuseries titled Taco Chronicles which explores the origins of the types of tacos, the different methods of preparing tacos and how tacos have been given a modern twist on an old classic! If you are looking for a fun weekend watch, check it out but eat beforehand because you will get hungry!

My favorite taco spots are in San Diego, but I am slowly discovering some legitimate places around Riverside. Do you have a favorite taco spot in Riverside? If so, let me know because we Barristers also happen to be a bunch of foodies and we love exploring new food locations!

Upcoming Events

March 13, 2021: Hike at Mt. Rubidoux (Round 2 of getting a chance to meet your pets!) Meet at flagpole at Ryan Bonaminio Park at 10:00 a.m.

Follow Us!

For upcoming events and updates:

Website: RiversideBarristers.org

Facebook: [Facebook.com/RCBABarristers/](https://www.facebook.com/RCBABarristers/)

Instagram: [@RCBABarristers](https://www.instagram.com/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.





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IS NETFLIX'S *I CARE A LOT* A CAUTIONARY TALE ABOUT PREDATORY CONSERVATORS?

by Mark Flory

On February 19, 2021, Netflix released *I Care A Lot*, a film by writer and director J. Blakeson. The film tells a fictional story about a professional conservator and con-woman who uses the court-appointed conservatorship system to defraud and steal from elderly victims, with the help of corrupt doctors and a (fictional) court system that fails to provide any meaningful oversight. (In the film, the character is called a “guardian” which is the term used in many states.)

Writer and director J. Blakeson has indicated in interviews that while the story and the characters are fictional, inspiration for the story is drawn from real life headline grabbing stories across the country of predatory guardians and conservators who exploit the guardianship and conservatorship system to take advantage of elderly, vulnerable wards and conservatees. The film has received positive reviews, earning a Tomatometer Rating of 81% (Certified Fresh) on Rotten Tomatoes, and a Golden Globe Nomination for Rosamund Pike for Best Actress in a Motion Picture-Musical/Comedy. The film also stars Peter Dinklage, Eiza Gonzalez, and Dianne Wiest.

Based on the torrid tale of conservatorship abuse depicted in *I Care A Lot*, should we be worried that conservatees in California are at risk?

Contrary to the systems (or lack thereof) depicted in the film, California has a robust statutory framework designed to protect vulnerable conservatees from potentially unscrupulous conservators. These protections include:

- Any conservator with more than two conservatorships is deemed a professional conservator and is required to be licensed by the California Professional Fiduciaries Bureau. Licensing requirements include education, a background check, and passing of a licensing examination.
- Conservators are required to be bonded by a licensed surety company in an amount sufficient to protect the conservatee in the event that a conservator absconds or misuses a conservatee's assets.
- Conservators are required to file an inventory and appraisal listing all of the conservatee's assets at the time of appointment. Conservators are also required to serve a copy of the inventory and appraisal, along with a notice of how to object, to the conservatee's spouse and family members.

- Conservators are not permitted to sell a conservatee's residence without specific permission from the court, notice, and court supervision of the sale. Clear and convincing evidence is required to overcome the presumption in favor of a conservatee staying in their personal residence.
- Conservators do not have the right, absent a specific order from the court, to restrict a conservatee's right to visitors, mail, and telephone calls.
- Conservatees have the right to be present at court hearings.
- Conservatees have the right to a trial, including the right to trial by jury, on the issue of whether a conservatorship is needed.
- Conservatees have the right to be represented by court-appointed attorneys who must advocate for their rights and wishes.
- Conservators must generally file accountings with the court every year (or biennially if allowed by the court), including the filing of bank statements, investment statements, and care facility statements.
- All compensation from the conservatees estate requested by a conservator, and the conservator's attorney, must be approved by the court prior to payment.

I Care A Lot depicts an exciting and scandalous version of conservatorship abuse and intrigue. Fortunately for California conservatees who need the protection and assistance of a conservator, the legislature and courts have devised significant safeguards to protect conservatees. The courts act as “super-fiduciaries” in their role of supervising conservators, for the purpose of protecting both the conservatees' rights and their assets.

As is generally true, Hollywood has succeeded in telling a compelling and exciting story in *I Care A Lot*, which thankfully does not depict reality for California conservatorships.

Mark Flory is a Certified Specialist in Estate Planning, Trust and Probate Law with Brown White & Osborn LLP. During the pandemic, he has seen his consumption of Netflix programming increase dramatically.





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HOPE I DIE BEFORE I GET OLD – WAS PETE TOWNSHEND WRONG?

by Andrew Gilliland

In his youth, Pete Townshend of *The Who* encapsulated the fear of growing old in one simple line of the song, *My Generation*. Other initial experiences of my life led me to think that he may be right. When I was an undergraduate, I took a foods and nutrition course as part of my general education requirements. One day during class, the professor shared his recent conversation with his physician about the effects of aging on his body. The physician said that there was really only one thing that could stop all the effects of aging the professor was feeling. Intrigued and a bit excited, the professor asked how this could be done? The physician replied that the only thing guaranteed to stop the aging effects the professor felt was -- death. Not the answer the professor wanted to hear.

Years later, I joined a group which met on a weekly basis and included several elderly individuals who constantly discussed the travails of getting old and the age-related issues they were facing. After several weeks of listening to this discussion, I asked them if they could possibly discuss any hopeful and joyful aspects of getting old as they were making me depressed about the future. I was thinking of things such as family and not having to work. One of them paused, looked me in the eyes and stated, “getting old ain’t for the weak.” I never bothered them again.

What I took from these two separate incidents is that while I thought Pete Townshend may be right, the odds are that I will get old and it will likely be difficult and require strength to deal with the changes. However, not everyone has the strength to deal with the challenges usually due to mental and physical conditions beyond their control.

California law recognizes the need to provide special protections for those who cannot protect themselves as they age. Section 368 of the California Penal Code states, “elders . . . deserve special consideration and protection.” There are four basic categories of protection that the California legislature focused on:

- (1) Financial Abuse
- (2) Physical Abuse
- (3) Mental Abuse
- (4) Neglect

Elder Financial Abuse is defined in Section 15610.30 of the Welfare and Institutions Code as the taking or hiding of property (real and personal) for the purpose of “a wrongful use or with intent to defraud, or both.” Section 368 of the Penal Code defines physical and mental abuse as occurring when a person “willfully causes or permits” an elder to suffer “unjustifiable pain or mental suffering,” and defines neglect as “willfully” causing or permitting the elder “to be placed in a situation in which his or her person or health is endangered.” If you know of an individual that could be the victim of these four categories of abuse, please call Adult Protective Services in the county where the elder resides. In Riverside County call **1-800-491-7123** and in San Bernardino County call **1-877-565-2020**. The hotlines to report elder abuse are open 24 hours.

As the California legislature has recognized, the elderly are in need of “special consideration and protection” and as members of a noble profession, we should take upon ourselves a duty to provide this consideration and protection whenever possible for those who cannot provide it for themselves.

California law sets the parameters for how to punish (either criminally or civilly) those who abuse and neglect the elderly, but the law is unable to provide guidelines for how to help those suffering from what I call “non-actionable neglect.” I define non-actionable neglect as ranging from someone who may be lonely, to someone who needs assistance to make their life more meaningful. Being pro-active is the key, rather than being reactive as set forth under California law to protect the elderly. As we all are too aware, the COVID-19 pandemic has isolated everyone from normal channels of socialization and just general contact with others. This has been especially true for the elderly. Recently, I watched a stream from a police chief talking about ways to reconnect and help others in the community. What was interesting is that without seemingly trying to, the police chief mainly spoke about his elderly neighbors. The police chief noted several efforts that were made to reach out in a safe way to elderly neighbors. As I listened, I realized that everything being said applies to a non-COVID-19 dominated community as well.

Here are some suggestions for alleviating the non-actionable neglect of the elderly:

- **Be a friend.** This can be done through more formal groups such as community or church, or less formal contact in your neighborhood. A hello and a wave (a smile in a post-mask mandate world) can open the doors to wonderful conversations.
- **Exchange phone numbers.** Make regular phone calls to check in. This will provide them with an opportunity to communicate any wants or needs and ideally help them from feeling isolated. Depending on your situation, this call does not necessarily need to be all about the elderly individual, it can be about something in your life as well. The key is to open the lines of communication.
- **Text.** When you are thinking about them, send them a text if they have the capability and are comfortable with texting. This form of communication can be simple and non-intrusive, but it does let them know you are thinking of them.
- **Write a letter.** If they are not technologically savvy or comfortable with technology, this may be the most effective way to communicate. You can either put it in the mail or leave it on a door.
- **Conduct research.** This will allow you to find activities or groups (virtual and/or in person) that involve the elderly, so that you can provide helpful suggestions and opportunities when you are speaking with them. It helps to know what you are talking about.

- **Value.** Reminding the elderly that they have value can be critical to their desire to participate in society.

Years ago when we lived in Florida, I was the chaperone for my son's fifth-grade class as they went to Washington D.C. Since I was the only male chaperone from his school, I ended up rooming with an elderly African American educator from another school who was a life-long resident of Gainesville, Florida. Having grown up in a lower middle-class neighborhood in California and several decades after this individual, I viewed the world from a very multi-cultural perspective and not a biracial matrix. That night, I listened for hours as he told me stories about growing up in Gainesville and the dangers brought on by racism in that community as it was divided along a biracial matrix. Listening to his experiences in another part of the country decades before I was born was a life changing experience. I gained a lot of valuable perspective talking to this elderly individual. We became friends and we were both enriched by the experience.

Conclusion

Pete Townshend was wrong when he wrote his foreboding lyric. Of course, he was really young when he wrote the lyric, and I am sure he changed his mind later in life. While growing old "ain't for the weak" we can make the journey better for the elderly. The law can be highly effective at protecting the elderly from financial abuse, physical abuse, mental abuse, and neglect, but it cannot add value to the lives of the elderly around us and prevent or lessen the effect of non-actionable neglect. This would require a personal commitment and individual actions taken by each of us. Are we willing to make such commitment

and take such actions? I hope so and so do our elderly neighbors and friends.

Andrew Gilliland is a solo practitioner and the owner of Andrew W. Gilliland Attorney-at-Law with offices in Riverside and Salt Lake. Andrew is the co-chair of the RCBA's Solo and Small Firm Section and a member of the RCBA's Publications Committee.

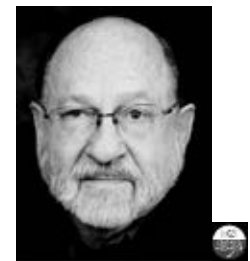


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FOR EVERY WRONG THERE'S A REMEDY?

by George F. Dickerman

You can't always un-ring the bell when bad things happen. But knowing what legal remedies exist can help to right the wrong. Consider the following scenario:

Betsy screamed at her husband for the umpteenth time that night.

"We're broke! You haven't worked in three months. Our house is about to be foreclosed on and the new truck is going to be repossessed any day now. I can't take it anymore!"

John took another long swig of beer and crushed out his cigarette. But his glazed eyes suddenly cleared a bit as he focused on the plan he'd considered months' ago.

"Mom's house," he thought.

"She's 86 and livin' there all alone. It's all paid for and she's got dementia. If it weren't for Betsy and me, she'd have no groceries, no transportation. It's time she moved into a nursing home and that house given to me. There's no reason to wait for an inheritance!"

A quick Google search and he found what he needed.

"Advance Health Care Directive,"¹ he smirked.

"This form seems simple enough. Hmm ... this one's even better," he grinned as he read over another document titled Durable Power of Attorney.²

"It says I'd have the authority to handle all real estate transactions," he muttered out loud.

"Seems to me ... with this document I can transfer title of her house over to me and Betsy! Could it really be that simple?"

And it was. Over the next week, John planted the seed of fear in his mother's ear, telling her that she was in danger of losing her house and maybe even her bank accounts because someone had stolen her social security number and was trying to steal everything she had.

He filled out both documents, called a notary public³ to meet him at the house (early in the morning before

1 Probate Code §4673, et seq. This document may be notarized or witnessed by two individuals, but certain requirements must be met. There are numerous code sections that follow, including a description of who may act as a witness (Prob C §4674) and a requirement that a qualified patient advocate or ombudsman must act as a witness when the principal is in a skilled nursing facility (Prob C §4675).

2 Probate Code §4500, et seq. As with most statutes, you must study the "et seq." laws. Of critical importance is whether the power of attorney becomes effective immediately upon the principal's notarized signature, or only when one or more qualified medical doctors certify in writing under penalty of perjury that the principal no longer possesses legal mental capacity and is therefore unable to make sound financial decisions. Remember: Placed into the wrong hands, a financial POA can be used as a license to steal.

3 A notary public only verifies the identity of the individual who

she had her coffee) and the dirty deed was completed in less than 15 minutes.

"There, Mom!" he boasted as the notary drove away. "Now you'll be safe. Nothing to worry about anymore. Now I can protect you."

Tears of gratitude ran down her cheeks as her son gave her a gentle hug.

"By tomorrow, she won't remember a thing," he chuckled as he got into his truck and headed home.

* * *

"I need to do what?" John barked at the County Recorder's clerk as she looked over the grant deed.

"You need to sign your name as your mother's agent under a durable power of attorney," the clerk replied.

"You can't transfer title to you and your wife unless you show that you have the authority."

"Can't I just handwrite 'power of attorney' and then you record it?"

The Clerk shook her head.

"You can't change the document after it's been notarized. You'll need to have it notarized again. Sorry."

"Damn!" John muttered as he snatched the deed from her hand. "I'll be back!"

* * *

"Where are we?" Mom asked as her son pushed her wheelchair up the ramp to the entrance of 'Blessed Meadows' Board and Care.

"Don't you remember? You're going to be staying here for a week or so until Betsy and I come back from vacation. I told you I'd always take care of you. We can't leave you alone at home with no one to buy you groceries or cook food for you, now can we? You're going to love it here. Trust me. And besides, it's only temporary."

A skinny middle aged woman greeted them at the door.

"Do you have the ...?" she asked in broken English.

John handed her the advance health care directive.

"You like it here Misses. Food good, and lots of it. I have special room just for you," as she wheeled Mom into the living room, occupied by four other elderly residents.

* * *

"Can you help her?" Mom's friend asked the attorney.

"Yes, but we've gotta' move quickly and it won't be easy," she replied.

"I don't like conservatorships," she explained.⁴ "But we won't get her out of that board and care and back

signed the document, and not its truthfulness, accuracy, or validity.

4 Probate Code §1820. This is the beginning but only the tip of the

home without one. I've dealt with these types of places before. They don't want a resident to leave. They'll lose money.

"And based upon what you've told me, there's grounds for an emergency conservatorship. A temporary conservatorship⁵ ... over the estate. I've confirmed that John recorded a grant deed of the house that transferred ownership to he and his wife.

"We'll also need to file a lawsuit to freeze the property. It's called a quiet title action⁶ and that'll allow us to record a Notice of Pending Real Property Claim⁷. That'll prevent him from selling the place or taking out a loan.

"We'll include a cause of action for elder financial abuse.⁸ There's a whole lot of remedies available to us.

iceberg. In the above-story, mom's friend might petition the court and request that she be appointed conservator over both mom's person and estate. If successful, the friend would have exclusive authority to manage mom's assets (estate) and make personal and health care decisions (person).

- 5 Probate Code §2250. Again, this is the starting point for a temporary conservatorship. Whether over the person and/or estate, the petitioner must prove, essentially, that an emergency exists that cannot wait until a 45-60 day hearing date is set (pre-COVID-19 court calendar).
- 6 California Code of Civil Procedure §760.010. This is where a quiet title action begins.
- 7 California Code of Civil Procedure § 761.010. Immediately upon the filing of a cause of action for quiet title, the plaintiff must record a notice of pending real property claim.
- 8 Welfare & Institution Code §15610.30. Again, just the starting

Double damages⁹, attorney fees¹⁰ maybe punitive damages.¹¹ We also might be able to have John disinherited as an heir to his mother's estate.¹²

"If we learn that John used the power of attorney to transfer money out of his mom's bank accounts into his own, then we can get a pre-judgment writ of attachment¹³ and freeze his account. Of course, we'll have to identify the accounts that are in his name."

"Wow. I've known John his whole life. I just can't believe that he'd be such a greedy son."

"It happens every day," the attorney sighed.

George F. Dickerman practices elder law. You can visit his website at: elder-law-advocate.com, or call 951-788-2156 with any questions or comments.



- point. When someone wrongfully takes property of a person 65 years or older, for a wrongful use or intent to defraud (i.e., undue influence), then s/he can be found liable for elder financial abuse.
- 9 Probate Code §859. When a 'bad faith' taking of property occurs, the perpetrator shall be liable for twice the value of the property recovered.
- 10 Welfare & Institutions Code §15657.5(a); *Wood v. Santa Monica Escrow Company* (2007) 176 Cal. App. 4th 802, 97 Cal. Rptr. 3d.
- 11 Welfare & Institutions Code §15657.5.
- 12 Probate Code §259.
- 13 California Welfare & Institutions Code § 15657.01

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WILL BRITNEY SPEARS EVER BE FREE? A GUIDE TO UNDERSTANDING CELEBRITY CONSERVATORSHIPS

by Jack Osborn

America loves celebrity gossip and who hasn't been following the conservatorship drama surrounding Britney Spears in Los Angeles probate court. Fans wonder why someone as successful as Britney Spears needs a conservatorship. The #FreeBritney movement has even led to an explosive *New York Times* documentary on FX and Hulu called "Framing Britney Spears." We are reminded of other celebrities that have either been the subject of a conservatorship or that have had family members who have contemplated seeking a conservatorship. For months there was speculation that Charlie Sheen's father, Martin, would seek a conservatorship because of his concerns over his son's excessive partying, and drug and alcohol use. When Lindsay Lohan had multiple DUI arrests, including jail time, there was talk of a conservatorship. Peter Falk was under a conservatorship due to Alzheimer's disease. Actress Amanda Bynes has been the subject of a conservatorship after several months of incoherent rants on social media culminating in allegedly setting her own dog on fire in the driveway of a stranger's home in Thousand Oaks. People wonder if conservatorships are simply a tool to control the bad or erratic behavior of others. Do conservatorships work? Does a conservatorship ever end? Britney Spears has been the subject of a conservatorship for more than 12 years. Will Britney ever be "free?"

Most conservatorships in California are either a probate conservatorship of the person and/or estate, or a mental health LPS conservatorship. Probate conservatorships are designed to protect individuals who cannot make health care decisions on their own or are unable to manage their own money and/or are vulnerable to undue influence. Nearly all probate conservatees are either elderly or developmentally disabled. The court can only grant a probate conservator the power to place the conservatee in a secure perimeter facility ("lock up") or authorize psychotropic medications upon a showing by a physician that the conservatee suffers from a neurocognitive disorder such as dementia. Probate conservators generally cannot force a conservatee into drug or alcohol treatment. Probate conservators generally cannot choose the conservatee's friends or limit the conservatee from choosing his/her own girlfriend or boyfriend.

In contrast, LPS (Lanterman-Petris-Short Act) or mental health conservatorships, are designed to protect the mentally ill by providing an evaluation and, if necessary, individualized treatment, supervision, and placement. Individualized treatment can involve involuntary placement in a psychiatric

hospital and involuntary administration of psychotropic medication. With few exceptions, family members cannot seek an LPS conservatorship – only certain designated psychiatric facilities or certain state hospitals can initiate the process. To be considered for an LPS conservatorship, the proposed conservatee must be gravely disabled, which means not able to provide for his/her food, shelter, or clothing due to a mental disorder or be incompetent to stand trial for a violent crime and are currently dangerous (Murphy conservatorship). While one purpose of the LPS Act is to protect the public (including overwhelmed and distraught family members), the primary purpose of the Act is to ensure that the liberty interests of the proposed conservatee are protected. LPS evaluations or holds, and LPS conservatorships are extremely difficult to obtain, and the objective throughout the process is to stabilize the mentally ill patient. As soon as possible, the goal is to return the individual to the community for ongoing support of his/her family and outside mental health care providers. And, throughout the process, mental health care providers will almost always decline to force someone into treatment if there are adequate alternatives, such as support of family members or outside physicians to protect the individual with a mental illness. In the rare instance when an LPS conservatorship is granted, it will terminate at the end of a year by operation of law, unless there is a showing that another twelve-month renewal is necessary to protect the conservatee.

Consequently, involuntary treatment and forced medication through an LPS conservatorship is not readily available to family members and/or business managers concerned about celebrities behaving badly or making poor business decisions. Involuntary treatment on an LPS conservatorship is only for those individuals when all other treatment and support options are not available or have been exhausted.

Britney Spears is the subject of a probate conservatorship for reasons that prominently played out in the media. In 2007, she began acting erratically after her divorce from Kevin Federline and the court awarded custody of their two children to Mr. Federline. Britney Spears began partying in public; she shaved her head while the paparazzi snapped photos; she smashed a photographer's car with an umbrella; and was in and out of rehab. Finally, in February 2008, it was reported that Britney Spears was placed under a psychiatric hold after a widely filmed stand-off with the police when she refused to surrender her sons to Mr. Federline.

Shortly after the psychiatric hold, Britney Spears was deemed stable enough for release and to manage her own health care, but her father, Jamie Spears, was granted a probate conservatorship over her estate and business holdings. That conservatorship of the estate remains in effect. Britney has never been the subject of a probate conservatorship of the person, which means there has never been sufficient evidence to take away her power to make medical decisions or limit her ability to determine where she lives.

Because the court was convinced that Britney Spears could not manage her money and business affairs and that she was vulnerable to undue influence, broad powers were granted over her estate. According to court documents, Britney Spears has a net worth over \$59 million, and maintains an empire of recording and performance contracts and celebrity endorsement deals. Britney Spears does not control any of her own financial or career decisions. Since November 2020, her father is no longer the sole conservator, but instead all decisions are now made jointly by her father and the Bessemer Trust as co-conservators. Britney Spears has consistently opposed her father's role as conservator and has expressed a preference that a private professional fiduciary be appointed sole conservator. She has stated that she will not perform in public until her father is removed as conservator. Nevertheless, she has never sought a termination of the conservatorship in court.

Unless Britney Spears wants her conservatorship ended it will continue. If she filed a petition for termination in court, the court would ask the court investigator to weigh in on whether Britney Spears could manage her estate without the assistance and protection of the court. Britney Spears would need to demonstrate that she could truly manage on her own. Given the size of the estate and the conflict between Britney Spears and her father, it may be a long while before Britney is truly free.

Finally, conservatorships cannot solve every problem for a loved one. A conservatorship is not appropriate over a twenty-year-old son who continually picks the wrong girlfriend and foolishly spends money. A conservatorship is not generally appropriate for misbehaving celebrities. Instead, LPS conservatorships are designed for the mentally ill who have truly run out of options and resources and whose life may be at risk absent involuntary treatment. Probate conservatorships are most appropriate for the elderly and the developmentally disabled who cannot fend for themselves without the protection of the court through a conscientious conservator.

Jack Osborn is a partner with the Law Firm of Brown White & Osborn LLP with offices in Riverside, Redlands and Los Angeles. He is a Certified Specialist in Estate Planning, Trust and Probate Law by the State Bar of California.



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THINGS TO KNOW ABOUT CRIMINAL ELDER ABUSE

by Maureen DuMouchel

When I was 16, my great uncle (78) and my great-aunt (90) were murdered by their realtor/property manager. Shortly before their untimely death, my great uncle discovered the manager had embezzled hundreds of thousands of dollars and transferred numerous properties to her family members through forged grant deeds. Most of their estate, the culmination of a lifetime of hard work and dreams, was gone. This experience is why I feel so passionate about elder abuse cases. The victims are so vulnerable, the dynamics involved are challenging, and there are just too many people intent on taking advantage of elders.

The Problem of Elder Abuse

Elders who have experienced abuse have a 300% higher risk of death when compared to those who have not been abused.¹ Annual loss of over \$2.6 billion dollars from financial abuse has been reported.² The United States Census Bureau shows that 13.9% of the population within Riverside County is over 65 years of age and that number is projected to increase significantly over the next few years. At least 10% of adults over 65 will experience some type of abuse in any given year, yet studies estimate the vast majority of elder abuse is never reported. One such study found only 1 in 14 cases of elder abuse was ever reported to authorities. With the number of individuals over 65 increasing significantly every year, elder abuse is a serious problem throughout the country.

Elder abuse takes many different forms, ranging from caregiver neglect, physical abuse, financial abuse, isolation, and even sexual abuse. Penal Code section 368 governs the criminal, physical and financial abuse of elders and dependent adults. The legislature recognized that elders deserved special protection given their vulnerability. Under Penal Code section 368(g), an elder is an individual over 65 years old.

Identifying Elder Abuse

How does one identify an elder abuse victim? Uncovering elder abuse is difficult in the best of times

1 Dong, X, Simon, M., Mendes de Leon, C., Fulmer, T., Beck, T., Hebert, L. (2009). Elder self-neglect and abuse and mortality risk in a community-dwelling population. *Journal of the American Medical Association*, 302(5), 517-526. doi: 10.1001/jama.2009.1109

2 MetLife Mature Market Institute, The National Committee for the Prevention of Elder Abuse, The Center for Gerontology at Virginia Polytechnic Institute and State University. *Broken Trust: Elders, Family & Finances* (PDF).

and has become more complicated as a result of COVID-19 and increased isolation.

For neglect and cruelty, there are many different signs of abuse including: lack of basic services, absence of assistive devices (walker, cane, hearing aid, phone, wheelchair, glasses, and medicine), abandonment, inappropriate clothing, lack of heating or cooling, bed sores, locks or chains on interior doors, and an unsafe or unsanitary living environment. Neglect can also include self-neglect, where an individual is no longer able to care for themselves.

Physical elder abuse can be filed as either a felony or misdemeanor. Some of the most common physical abuse cases are punches, strangulation, threats to kill, grabbing or shoving that causes injury, poisoning through over-medication, or neglecting to provide care that causes the victim risk of great bodily harm or death. Signs of physical abuse may be unexplained bruises, broken bones, black eyes, lacerations, decubitus ulcers, restraint marks, burns, over/under-medicated, and an uncooperative or aggressive caregiver. Signs of sexual abuse can include bruises to the breasts or genital areas, torn or bloody undergarments, difficulty with sitting or walking, and signs of Sexually Transmitted Diseases (STD).

Isolation is a sign of emotional abuse and can accompany physical or financial abuse. Is a victim nervous around their caregiver or withdrawn and non-responsive? Does the caregiver restrict the victim's communication with family and friends? Is a victim completely dependent upon their caregiver? Victims of abuse may believe lies told to them by their abuser. Examples include statements like, "you're only after my money," "you want to lock me in a home," or "the (suspected abuser) is the only person who cares about me or takes care of me."

Financial abuse cases are extremely common. Most cases involve a trusted individual embezzling money from the victim's accounts or convincing the victim to do something based on a false pretense. Examples are cases where seniors are approached by trusted financial advisers encouraging wonderful "investment opportunities" where no such investment exists and the elder loses hundreds of thousands of dollars. Or a family member, who holds power of attorney over the victim, feels they are entitled to an early inheritance and begins to spend the elder's money on themselves, often leaving the elder destitute and unable to pay for their expenses. Typically, the victims

in financial abuse cases are no longer familiar with their account status or log-in information. Whenever possible, seniors should be encouraged to continue reviewing their bank statements and account information, even if they have entrusted someone to manage their finances.

Additional indicators of potential financial abuse are: unemployed adult child or grandchild residing in the home with the elder, new name on bank account signature cards, unauthorized withdrawals or transfers of money, purchases that do not benefit the victim, inappropriate financial reimbursement to caregiver, disappearance of funds or possessions, unpaid bills or changes in spending habits, and forged signatures on checks, loan documents, or grant deeds.

Difficulties in Elder Abuse Cases

Many misconceptions exist which make investigating and prosecuting elder abuse cases challenging. For financial cases, the difficulty may arise in the initial contact with a law enforcement agency where the matter is dismissed as “it’s civil.” Often, there is overlap between civil and criminal law offenses. Financial elder abuse is no different. We must work with our law enforcement partners to encourage them to not dismiss a report as just a civil matter simply because it involves money, lots of paperwork, or a suspected abuser who holds power of attorney over the victim.

There is a misconception that elderly victims make terrible witnesses because of memory issues, age, or cognitive impairment due to dementia. When trying to question an elderly victim or witness, an attorney should ask informational questions beforehand to create an environment where they get the most accurate information. Is there a time of day that is best for the elder? Some people with cognitive impairment issues like dementia may have a specific time of day when they are most alert and oriented. Is the witness taking medications that affect their memory or ability to stay focused? Does the witness need glasses to see exhibits or documents properly or a hearing aid to help hear the questions? Make sure to communicate the need for the witness to bring those items. It’s also helpful to have a magnifying glass present in case the witness has difficulty seeing fine print even with their glasses. Be prepared to take many breaks during the witness testimony to ensure the comfort of the witness. Sometimes the facts of the case or age of the victim necessitates doing a conditional examination pursuant to Penal Code section 1335(a). The lawyer requesting the conditional examination should request the examination be videotaped and make sure to present all necessary evidence to the witness to lay proper foundation for a subsequent trial.

Similarly, it is a misconception that if the victim is deceased or has cognitive impairment, their case cannot be prosecuted. This is simply not true. While these facts can make a case more challenging, filing and prosecuting a criminal case is still possible. Additional forms of corroboration about what happened are necessary. A victim’s bank records provide a glimpse of the victim’s spending habit and history. Sometimes family members, neighbors, doctors, bank employees, current and former caregivers, notary publics, and prior police reports provide a great deal of background information into the victim’s circumstances.

Another challenge in elder abuse cases is the dynamic between victim and suspect. Most elder abuse victims are extremely dependent on their abusers. When the abuser is related to the elder, it is important to realize how the victim sees their abuser. Victims may not want prosecution or any punishment of their loved one. They don’t see the suspect as an abuser; but rather someone that they have a sentimental relationship with, which causes them to minimize, enable or excuse the abusive behavior they have endured. It is so important to be aware of this reality because it will help you to form a connection with the victim. Recognize their struggle, acknowledge the difficulty of their situation, and be there to listen! It is also important to assure the victim that this is not their fault, that they deserve to be safe and protected, and they are not responsible for their abuser’s actions and choices.

In cases where neglect or financial abuse occurs, it is often critical to determine if the suspect is a caregiver as it creates a legal duty of care. A caregiver is defined as a person who has the care, custody, or control of, or a person who stands in a position of trust with an elder. When determining who is deemed a “caregiver” in a case, we assess the role and actions of said “caregiver.” For example, is the caregiver responsible for administering medications, bringing food, taking a victim to doctors’ appointments, and assisting a victim with their daily activities and needs? Similarly, a person who calls themselves a caregiver, but takes no responsibility and is not in a position of trust towards a victim may not qualify as a caregiver. This issue typically arises in the cases where an adult child lives in the victim’s home, yet does nothing to provide any care for the victim. A moral obligation to provide care for an aging parent does not equate to a legal obligation.

Current Trends

There are many scams designed to target the elderly. The most recent scams are related to COVID-19 where victims are asked for personal identifying information to obtain vaccines, contact tracing, or government assis-

tance. It is important to remind seniors that they should never give out personal identifying information over the phone or email. The government will not require payment up front in order to provide a service. Many elders also fall for online sweetheart scams, where an individual will befriend them, begin a romantic online relationship, and then claim to need money for a specific, untrue reason. Computer phishing and email hacking are very common scams, as are lottery scams, where seniors wire money or give account information to collect their winnings. The Grandparents scam is another one that costs seniors thousands of dollars. The scammer will call up the senior and pretend to be a grandchild and say they need money to get out of jail. Seniors should also be cautious of individuals coming door to door to sell product or letting strangers into their homes to do work.

Resources Available

When it comes to elder abuse, there are many organizations in Riverside County that work together collaboratively to try and stop the victimization.

The Curtailing Abuse Related to the Elder (CARE) team provides consumer fraud advocacy to seniors and dependent adults and can assist clients in reviewing documents, writing letters, completing forms, and identifying resources. The CARE team also provides anti-fraud presentations on how to recognize, prevent and report fraud and abuse. The CARE team is made up of approximately 50 different agencies including Adult Protective

Services (APS), law enforcement, Mental Health, Federal Bureau of Investigation, Public Health, Public Guardian, Social Security, Office on Aging, Community Care Licensing, Ombudsman, Inland Regional Center, Probate Investigations, Veteran Affairs Services, and the Riverside County District Attorney's Office.

The Elder Abuse Forensic Center (EAFC) is an evidence-based program that strives to improve the County's ability to combat, investigate, and prosecute elder and dependent adult abuse, neglect, and exploitation. EAFC doctors perform capacity assessments, geriatric evaluations, medical records reviews, and forensic evaluations on individual cases presented for consultation. Partner agencies of EAFC include the Riverside County District Attorney's Office, Riverside University Health System, UC Riverside, Riverside Legal Aid, Department of Behavioral Health, Riverside County Sheriff's Department, Ombudsman, Public Guardian, and Department of Public Social Services

Elder Abuse can best be prevented through education, awareness, and proper reporting. When it comes to elder abuse, if you see something, say something! Report concerns of any abuse to law enforcement and Riverside County Adult Protective Services 24-hour hotline at 1-800-491-7123.

Maureen DuMouchel is a deputy district attorney with Riverside County. She is assigned to the Financial Crimes Unit and prosecutes elder and dependent adult abuse cases.



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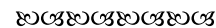
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CAPACITY ISSUES AND RISK FOR FINANCIAL EXPLOITATION IN SENIORS

by Dr. Stacey Wood, PhD ABPP

Charles is an 80-year-old man who has been the caregiver for his wife, Helen, who has suffered from Alzheimer's disease for about 2 years. Charles had a traditional "breadwinner" role and Helen managed the day-to-day household expenses. Charles reported that they always discussed major financial decisions in their marriage and that they had used the same broker for years for investments. After years of financial stability, Charles has grown anxious regarding the potential cost of in-home caregivers to assist with Helen. Charles and Helen have two adult sons who live about an hour away, David and Thomas. They are concerned about their parents' well-being, and call to check in about once per week. They are concerned that Charles is also "slipping" due to the stress of caregiving and aging in general. Helen had served as the social bridge for the couple and was an enormous source of emotional support for the whole family. When his sons call, Charles has a tendency to minimize their challenges, indicating, "we'll manage," and trying to deflect the conversation to other topics. He brought Helen to a free lunch seminar recently that discussed estate planning and government entitlement programs that could potentially help with the cost of care.

As individuals age, there can be questions regarding retention of financial capacity. Financial capacity can be defined broadly as the ability to manage one's personal finances in a manner consistent with personal self-interest. Overall, the literature is mixed regarding exactly when financial declines occur, but the overall picture is sobering. Work in healthy aging suggests that functional changes in decision-making and financial skills do not usually emerge until approximately the sixth decade. This is partly due to other aspects of lifespan development such as increased experience and the use of compensatory strategies (on-line banking). The literature regarding financial capacity in persons with dementia is more straightforward. Financial capacity may be comprised very early in the dementia process as it is a complex instrumental activity of daily living that relies on multiple brain systems (memory, executive functioning). This picture becomes increasingly complicated in caregiver dyads, with one partner aging and a second being a person with dementia. Aging, dementia, and psychological vulner-

ability all individually serve as risk factors for financial exploitation.

Plassman *et al.* (2008) used a subsample of the nationally representative Health and Retirement Study to estimate the prevalence of cognitive impairment among older people, both with and without dementia, in the U.S.. The baseline data included more than 1,700 older adults and the longitudinal study 856 individuals age 71 and older. The baseline data indicated that in 2008, an estimated 5.4 million people age 71 and older had cognitive impairment without dementia and an additional 3.4 million met criteria for dementia (clear cognitive and functional declines). The findings are striking, in that they show a much higher rate of cognitive impairment than found in any other sample. The dramatically increasing numbers of older adults in America underscores the fact that the number of people with cognitive impairment will close to triple in the next 35 years.¹

The impact of age-related dementia (e.g., Alzheimer's disease) on financial capacity is clearer. It is now understood that dementia syndromes may have an onset that lasts decades with relatively "mild" symptoms emerging years prior to a full-blown dementia syndrome. In other cases, the "mild" symptoms do not progress, but persist resulting in subtle declines. Mild cognitive impairment refers to the stage of the illness where cognitive deficits are present, but day-to-day functioning is relatively intact. The pattern of deficits varies by etiology, but many individuals' manifest deficits in memory, executive functioning and calculation during this stage of the disease. Dr. Duke Han and colleagues at USC reported that in a sample of older individuals without dementia, decreased gray matter volume in frontal and temporal regions was significantly related to susceptibility to telemarketing scams. In many ways, those individuals with pre-dementia and mild cognitive impairment are the perfect victim. They retain control of their assets and are out in the community increasing their exposure like the case vignette at the start of this article. These individuals also often have little insight into their vulnerabilities and retain formal barriers in discussions with caring family members.

1 Hebert, Scherr, Bienias, Bennett, & Evans, 2003.

INLAND COUNTIES LEGAL SERVICES NEEDS YOUR INPUT

by Darrell Moore

Early dementia and associated declines in financial decision making are linked to financial exploitation in many cases involving older adults. In a recent case, for example, a man with early dementia and memory impairment was taken to the bank by his brother, and before he left the bank, he paid the remainder of his brother's home mortgage of more than \$100,000. In another case, a successful retired businessman with executive dysfunction difficulties, alone and lonely, lost nearly \$1 million in a scam in which he was convinced that a woman he had never met loved him, and needed to marry him and take him to Italy in order to receive a \$20 million inheritance. These two cases illustrate how even mild declines in cognitive functioning in tandem with psychological vulnerabilities can lead to financial exploitation.

Taken together, older adults as a group are at risk for age associated cognitive impairment. These mild changes erode financial skills and place some seniors at risk for financial exploitation. At the same time, many of these individuals will continue to demonstrate intact testamentary capacity, for example. However, the presence of even mild declines in financial skills can set the stage for financial exploitation and/or undue influence.

In the vignette at the start of the article, Helen has clear capacity issues and relies on her husband, Charles. His mild cognitive deficits in tandem with psychological stress increases his risk for financial exploitation. Increased supports and protections, like recommending adding adult trusted sons to bank accounts, can assist couples like Charles and Helen while they navigate this difficult stage of their relationship.

Dr. Stacey Wood, PhD ABPP is the Molly Mason Jones Professor of Psychology at Scripps College in Claremont, CA. She conducts capacity evaluations for the courts in Southern CA and is a consulting neuropsychologist at the Riverside County Elder Abuse Forensic Center. She can be reached at swood@scrippscollege.edu



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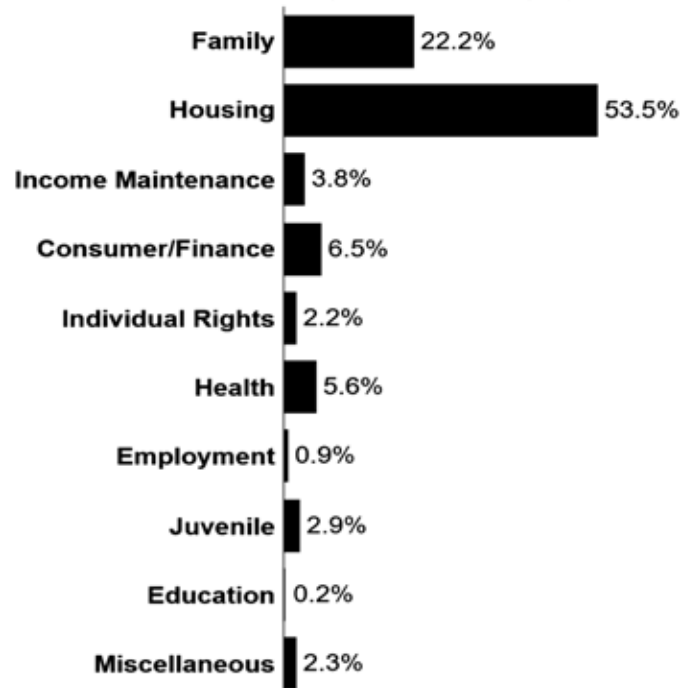
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Inland Counties Legal Services (ICLS) is a publicly funded nonprofit corporation that provides free civil legal services to people who cannot afford to pay an attorney, as well as to seniors in both San Bernardino and Riverside counties. The work that is undertaken by ICLS staff is broadly determined by the ICLS Board of Directors as expressed in the Board's annual adoption of "program priorities." The program's priorities are based upon our best understanding of the community's needs. As a publicly funded entity, it is our responsibility to ensure that the services we provide are consistent with the expectations and needs of the community. As a result, ICLS is undertaking a robust "needs assessment." As a member of the RCBA living or working in our service area, your opinion matters to us. Below is an outline of the types of cases we worked on in 2019.

This is what we did in 2019!

Total Cases Closed by Problem Category, 2019



Did we get it right?

Within the next 30 to 45 days you will be receiving an email with a short survey asking for your input – please take the time to respond. We are grateful for and value your input.

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



ELDER ABUSE RESTRAINING ORDERS: A VITAL LEGAL TOOL FOR PROTECTING AND EMPOWERING CLIENTS

by Edith Angeliyan-Seitz

We are quickly approaching the one-year mark since the initiation of stay at home orders and social distancing measures. While it is easy to be consumed by how this past year has changed our daily routines and lifestyles, it may be difficult to appreciate how this has impacted the already vulnerable senior population within our communities. And while we are acutely aware of the effects of isolation on our physical and mental health, the unfortunate reality is that for some elder adults this shift in lifestyle has affected their physical and mental safety.

Elder adults now face additional risks as a result of increased isolation, including physical abuse, neglect, undue influence, and financial abuse which may easily go undetected; the inability to meet with advocates in person further aggravates these risks. As a result, legal service providers have had to reevaluate how to spot signs of abuse. Since we no longer have the luxury of regularly meeting with clients in person, we cannot perceive physical signs of abuse, including but not limited to inexplicable bruises, cuts, weight loss, poor hygiene, broken eyeglasses or other broken medical aids, or not being dressed appropriately for the weather outside. It is also much more difficult, if not impossible, to perceive nonverbal cues while providing remote legal services, such as the client's discomfort with making eye contact, nervous ticks, acting fearful or anxious, or tearing up at the mention of certain events or individuals. Instead, we must be cognizant of other indicators of abuse, such as third parties answering the elder client's phone and stating the client is unavailable despite a scheduled telephonic appointment, calls suddenly going unanswered when the client initially appeared desperate for legal assistance, third parties in the background whispering answers to the client during the telephonic appointment, or third parties insisting the client needs assistance answering questions even though the client is answering the questions adequately.

As an advocate for seniors 60 years of age and older, efforts in community outreach, community legal education, and extensive information about elder abuse would ideally serve as sufficient preventative measures. However, due to personal factors such as the basic human desire for companionship, vulnerability as a result of isolation, or unfamiliarity with technology, in most cases by the time clients schedule their initial appointment, the main priority is no longer prevention. At that point, an Elder Abuse

Restraining Order ("EARO") is a powerful tool for putting an end to the abuse, empowering your client, and beginning the healing and restoration process.

California defines Elder Abuse statutorily in both a criminal context, per Penal Code section 368, and a civil context, under the Welfare and Institutions Code, the latter of which contains the authority for an EARO. Elder Abuse, in the civil context, is physical abuse,¹ neglect,² abandonment,³ isolation,⁴ abduction,⁵ or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering;⁶ or financial abuse.^{7,8} Mental suffering includes fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.⁹

An individual 65 years of age or older, or a dependent adult¹⁰ between 18 to 64 years of age, who resides within the state, and who has suffered abuse may seek protection by filing for an EARO. The petition may be filed by the abused individual himself or herself, or alternatively, on behalf of the abused individual by his or her conservator, trustee, attorney-in-fact, guardian ad litem, or in some circumstances by a county adult protective services agency.¹¹

Upon filing the petition for an EARO, the petitioner may also request a temporary restraining order, which will be reviewed and either granted or denied by the next court date at the very latest. If granted, the temporary restraining order will remain in effect until the hearing date, which is generally no later than 21 days from the date the temporary restraining order was granted or denied.

- 1 Welfare and Institutions Code Section 15610.63
- 2 Welfare and Institutions Code Section 15610.57
- 3 Welfare and Institutions Code Section 15610.05
- 4 Welfare and Institutions Code Section 15610.43
- 5 Welfare and Institutions Code Section 15610.06
- 6 Welfare and Institutions Code Section 15610.35
- 7 Welfare and Institutions Code Section 15610.30
- 8 See Welfare and Institutions Code Section 15610.07
- 9 Welfare and Institutions Code Section 15610.53
- 10 Welfare and Institutions Code Section 15610.23
- 11 Welfare and Institutions Code Section 15657.03

The probate court has the authority to issue a protective order, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.¹² This lower burden of proof for EAROs is something to be mindful of when weighing which type of restraining order would serve your client's best interest.

Through the EARO, the petitioner may seek orders, including but not limited to, enjoining the abuser from abusing, intimidating, molesting, stalking, striking, threatening, harassing, destroying the personal property of, contacting either directly or indirectly, or disturbing the peace of the elder or dependent adult.¹³ On a showing of good cause, the court may also extend such orders to apply to named family or household members of the elder or dependent adult, or to the conservator of the elder or dependent adult. Applying the same standard, the court may also order the abuser to stay away from any animal(s) owned or possessed by, or residing with, the elder or dependent adult, or may grant the elder or dependent adult exclusive care, possession or control of the animal. This is noteworthy as it is very common for seniors to be living with a beloved pet. It

¹² Id.

¹³ Ibid.

is also common for abusers to threaten harm to the pet, or taking the pet away altogether, as a means of maintaining control and power during the cycle of abuse. By informing clients that through the EARO, protection for their pet(s) may also be requested, this may provide additional reassurance to the client that filing the EARO is in the best interest of the client and those within his or her household. An additional source of reassurance to discuss with clients is that an EARO may be granted for a maximum period of five years, and may be renewed for an additional five years or permanently, however, the request must be made within three months prior to the order expiring. Most significantly, the EARO may be renewed without having to show any further abuse since the issuance of the original EARO.¹⁴

Ultimately, while an EARO is a powerful tool in empowering and restoring your client, it is important to remember that the role of an attorney or advocate is not just about remedying the immediate issue through the restraining order, but also counseling and educating each client along the way in hopes of preventing a similar situation in the future.

Edith Angeliyan-Seitz is an attorney with Inland Counties Legal Services. She focuses her practice on advocating for seniors in the greatest social and economic need within San Bernardino and Riverside counties.



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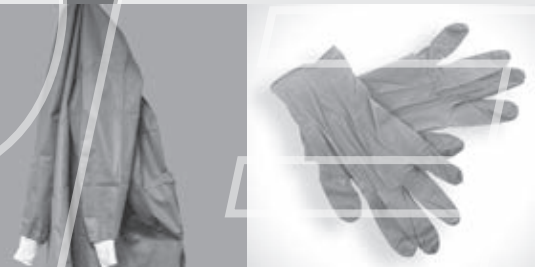
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THE ELDERLY CRIMINAL DEFENDANT*

by Monica Nguyen

It is often thought that crime is a young person's business and, for the most part, that is true. However, as our elderly population grows, so too does the population of elderly accused and incarcerated citizens. I specialize in representing mentally incompetent clients in criminal court and have witnessed a rise in the number of elderly incompetent clients.

One of my early experiences with an elderly incompetent client was in late 2014. My client was an 80-year-old man that had lived an extraordinary life before I met him. He served honorably in the Navy, had earned 2 master's degrees, and was a Riverside County Sheriff's Deputy for nearly 20 years. He had 3 children and was married to the love of his life for 54 years. His daughter described him as a wonderful man that everybody loved.

As he aged, he experienced brain fog. Over approximately ten years, that brain fog developed into dementia. Early in November 2014, his daughter noticed that he couldn't manage simple tasks and asked him about this. He repeatedly assured her that he was well. She took him at his word and felt that he was safe at home. After all, his wife was taking care of him.

My client's daughter asked neighbors to watch out for my client when she wasn't there. She called the neighbors regularly and they always assured that her parents were doing well. She now believes that her parents were disguising the severity of my client's dementia.

In the middle of the night in November 2014, my client stabbed his wife in their kitchen. No one knows what preceded this, but everyone knows that my client was not in his right mind when he did this. He went to a neighbor's house and asked for help, stating that his wife had fallen. He was visibly upset. The neighbor discovered his wife and called 911.

Some of the Sheriff's deputies who responded to the 911 call had fathers who had previously worked with my client at the Sheriff's Department. My client was arrested and interviewed. The deputy who interviewed him noted that he couldn't express his thoughts, couldn't give basic information about himself, couldn't name his children, couldn't recall where he was, despite being repeatedly told where he was, and couldn't remember what had happened to his wife. A deputy informed him that his wife had died, and he was inconsolably distraught.

I was assigned to the case when the court stopped the criminal proceedings to investigate my client's mental competency. When I met my client, he was frail and con-

fused. He was also very kind and polite. He didn't know why he was in jail. He would forget that he was in jail and think his wife was waiting for him in the car. He had no recollection of what happened to his wife. He was entirely incompetent to proceed with his case. Given that incurable dementia was the source of his incompetence, there was no hope that his competency would ever be restored.

Thankfully, the deputy district attorney assigned to prosecute the case could plainly see that my client did not intend to harm his wife. He and I, along with the court, worked together to establish a conservatorship for the welfare of my client and the safety of the community. My client was moved from the jail to a locked mental health facility. He was given treatment and made as comfortable as possible. His daughter often contacted him at the hospital. She said that everyone involved "had compassion for the situation." My client passed away in October 2018.

This client is only one of numerous clients of mine who had thriving lives, developed dementia and then committed a crime in the later years of their lives. A study published in 2015 by Madeleine Liljegren found a strong correlation between certain neurodegenerative diseases and criminal behavior. The study documented that about 8 percent of patients with Alzheimer's disease and about 38 percent of patients with behavioral variant frontotemporal dementia committed criminal offenses after the onset of the disease. The latter type of patients commonly committed thefts, traffic violations, sexual advances, trespassing, and public urination after the onset of dementia.

This phenomenon was certainly present with my client. He was a kind, responsible, intelligent, law-abiding citizen when dementia destroyed him. He never would have harmed his wife if his mind had not been diseased.

As our population ages, we will continue to see the rise of incarcerated elderly criminal defendants. It is our duty to examine the possible role of a neurodegenerative disease in the crimes committed by these defendants. When we find that a crime was committed because of such a disease, we must show compassion for the circumstances and focus on mental health treatment for all parties involved.

**This article was written with the permission of client's family.*

Monica Nguyen is a deputy public defender with the Riverside County Public Defender's Office. She specializes in mental health criminal law and has worked in the Mental Health Unit since 2010.



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Ms. Wood joined the firm in 2016 and practices business and real estate law, immigration law, including family, business and employment, and estate planning. She immigrated to this country at an early age and is fluent in Spanish. She is a member of the California Lawyers Association, Real Property Law Section Executive Committee, a founding board member of the Hispanic Bar Association of the Inland Empire, a member of the Southwest Inn of Court, and a member of the Riverside, North County, and Southwest Riverside County Bar Associations.

Mr. Hitzeman joined the firm in 2019 and brings over 37 years of experience to the firm in the areas of business litigation, transactional law, employment law and estate planning. He is the immediate past president of the Economic Development Coalition of Southwest Riverside County, a member of the Murrieta-Temecula Group, and a member of the Governing Board of Temecula Valley Hospital.

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PRACTICING RESPONSIBLY & ETHICALLY: REPRESENTING CLIENTS WITH DIMINISHED CAPACITY

by David Cantrell & Brad Zurcher

In 2017, the California State Bar Board of Trustees (“Board”) unanimously recommended the adoption of Rule of Professional Conduct 1.14 as part of its sweeping revisions to California’s Professional Rules (“Rules”). Proposed Rule 1.14 would have provided an express standard for lawyers representing a client with diminished capacity, thereby aligning California with the overwhelming majority of its sister states that have adopted such a standard. Surprisingly, the Supreme Court summarily rejected Proposed Rule 1.14 without explanation. What then are an attorney’s professional duties with respect to a client whom the attorney suspects is suffering from diminished mental capacity?

In the absence of a specific rule on the topic, the nature of an attorney’s duties must be derived from the general standards governing an attorney’s obligations to her client. In other words, in California, a client with diminished capacity is a client, first and foremost, subject to the same rights and obligations of any other client. This distinguishes California from those jurisdictions that have adopted a version of ABA Model Rule 1.14, which permits an attorney to take actions to protect a client with diminished capacity that would otherwise be prohibited. See, e.g., ABA Model Rule 1.14(c) (“When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized...to reveal information about the client...”).

Thus, in California, even where an attorney is concerned that her client is unable to manage his affairs, she may not institute an involuntary conservatorship proceeding against him. To do so would set the attorney directly adverse to her client in violation of the attorney’s duty of loyalty.¹

Nor, absent the client’s express consent, may an attorney contact the client’s family to inform them of her concerns about the client’s competency. Rule 1.6 and Business & Professions Code section 6068(e) have generally been interpreted to prohibit the disclosure of information obtained in the course of the attorney’s professional relationship with the client—even if that information is public—where the information might embarrass the client.² On this principle, the Standing Committee on Professional Responsibility and Conduct (“Standing

Committee”) recently opined that “[i]nformation about the client’s diminished capacity, whether or not subject to the attorney client privilege, is protected from disclosure under Business and Professions Code section 6068(e)(1) and rule 1.6...”³

The Professional Rules thus limit the actions an attorney may take to protect a client suspected to be of diminished capacity. Any proposed remedial action must first receive the informed, express consent of the client. If the client refuses and insists the attorney perform an action the attorney believes not in the client’s best interest, the attorney may be forced into a difficult decision: do as the client requests or terminate the representation.⁴

To avoid being put to this difficult choice, the Standing Committee has suggested two prospective solutions.⁵ First, a client might sign a springing power of attorney granting the attorney limited powers to perform actions deemed necessary to protect the client’s interests should the client lack sufficient mental capacity to protect himself. The power of attorney could identify a third party to determine whether the client suffers from diminished capacity, thus triggering the attorney’s authority. Second, the client might simply consent in advance to the disclosure of confidential information – perhaps to a trusted family member – in the event the attorney reasonably believes it necessary to do so to protect the client.

There is no bright-line professional rule to which an attorney may appeal when representing a client that potentially suffers from diminished mental capacity. The attorney must navigate these waters by considering the nature of the representation, her history with the client, and any other fact she deems relevant. One thing is clear, however, in resolving capacity issues, the prudent lawyer must keep foremost in her mind the fact that the client is a client, entitled to the same rights as any other client, notwithstanding any questions of competency.

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.



1 Rule 1.7(a); see also *Moore v. Anderson Zeigler Disharoon Gallagher & Gray* (2003) 109 Cal. App. 4th 1287, 1298-99 (“[I]t is a violation of [the duty of loyalty] to assume a position adverse or antagonistic to his client without the latter’s free and intelligent consent after full knowledge of all the facts and circumstances.”)
2 See, e.g., Cal. State Bar Formal Opn. No. 2016-195 at 1; Cal. State Bar Formal Opn. No. 1989-112 at 2.

3 State Bar Formal Opn. Interim No. 13-0002 at 10.
4 If terminating, the attorney must do so consistent with the professional rules, e.g. by insuring the client is not harmed in the process.
5 See State Bar Formal Opn. Interim No. 13-0002 at 12.



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OPPOSING COUNSEL - JACK OSBORN

by Betty Fracisco

A high percentage of attorneys follow the traditional path from high school to college, to law school, to the bar exam, and on to their legal career. Successful probate attorney and law firm partner, Jack Osborn, chose or rather followed a slightly different path that included living and working in 2 foreign countries on opposite sides of the world (and speaking their languages), earning a PhD in international relations, and teaching elementary school for several years. His is an interesting story.

Jack Osborn was born in Portland, Oregon, the son of a homemaker mom and a dad who worked in the grocery business. His mother was the youngest of 11 and her grandparents established the family homestead after traversing the Oregon Trail from Missouri. He was the youngest of three boys, the other two were 9 and 16 years older (they named him Jack), and eventually he became the family's first college graduate. He describes an idyllic childhood of riding bikes, fishing, hiking, playing soccer, and hanging out with his maternal cousins and second cousins. In high school, he continued to play soccer, was active in band and orchestra, and was involved in political campaigns for statewide offices (including the governor). At 18, he was a precinct committee person. He went on to Lewis & Clark, a small liberal arts college in Portland, where he majored in international affairs, minored in Japanese, and was involved in student government. He was able to study in Japan for a year.

Jack then started a PhD program in international relations and economics at Claremont. He earned his MA after 2 years and became involved with an international study abroad program, which was a great opportunity. He was hired to work in Japan, but then was asked if he would go to Denmark instead. He lived in Denmark for 4 years, working for the School For International Training, training everyone from U.S. college students studying abroad to Peace Corps members. He became national director of the Danish program and expanded training to Danish citizens in a number of occupations. After 4 years, he decided he didn't want to be an expatriot and wanted to return to Claremont to finish his doctorate.

Since it was mid year, Jack returned to Portland to work until school started in the fall. Initially he obtained a Christmas job at a retail department store, where he met his wife Kathleen, a Portland State grad who had lived in Israel and Turkey, but whose family lived near the homestead where his mom had grown up. They both worked to save money and were married in June before heading back to Claremont. He resumed his program and Kathleen obtained her masters in education and began her elementary teaching career that continues to this day. He continued with his study abroad work, but it often involved his being gone for up to 2 weeks at a time, which was not great for a marriage.

Jack decided to do something that had been in the back of his mind for years. He applied to Southwestern, and for the



Jack Osborn

next 4 years he attended law school at night and taught third grade on an emergency credential during the day (he has run into some of his third grade students who are now attorneys). He passed the bar exam in 2004 and thought he would work in educational law, but he was hired by a probate firm, Hartnell, Fisher & Moore. Not only did he know nothing about probate, he had never worked in a law office, because he had not had the time for clerking or internships during law school. Fortunately, Bryan Hartnell was an amazing teacher and mentor. Jack stayed with the firm until he was hired away by a larger firm in 2008, of which he was named a partner in 2014. The firm, now Brown, White & Osborn, does white collar defense, civil litigation, employ-

ment law, small business litigation, and probate. Jack heads the probate area, supervising 5 attorneys in estate and trust litigation, mental health law, guardianships and conservatorships. The firm has the contract with the County of Riverside for all conservatees who are indigent, have dementia, or have a conflict of interest, and for all minors in probate guardianship proceedings, all of which generate between 40 and 100 new cases each month, many of which have crossover issues. He himself represents clients in court 2 to 3 days a week and tends to get the child protective services guardianship and mental health cases and a lot of guardianship cases for older kids, ages 16-17.

Jack enjoys what he does, managing his attorneys and fostering a collegial approach: no one owns a case. Most of what they do during the day is not law related: it's like counseling with clients and those concerned about the clients. They focus on the crisis, the stress, by helping and hand-holding. He feels he's in a good firm with a good culture, one that's supportive and wants its members involved in outside activities. It's a good fit for Jack, who is a past president of the San Bernardino County Bar Association and the Joseph P. Campbell Inn of Court, past chair and board member of the Conference of California Bar Associations, board member and tournament director for Upland AYSO, and involved with the Bench Bar Coalition.

Jack and Kathleen raised their 3 grown sons in Upland: one is a postal carrier in Portland, one an attorney clerking for the 5th Circuit in Jackson, MS, and one a finish carpenter/furniture maker. In their free time, the couple has a mid century house in Borrego Springs, where they are active fundraisers for the Borrego Springs Foundation, to add land to California's largest state park. They are also supporters of the LA Philharmonic, the Mark Taper Forum, and LA's professional soccer. Kathleen plans to retire from teaching this year, but Jack Osborn sees many years ahead of him in Riverside County, applying the philosophy of bench officers, a collegial approach between the attorneys and judges, knowing they are all there for the same purpose.

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



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The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2021.

Michael R. Abacherli – Attorney at Law, Yucaipa

Dennis S. Belmudes – Varner & Brandt, Riverside

Lindsey M. Burcham – Law Offices of Lindsey M. Burcham, Beaumont

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