

RIVERSIDE LAWYER

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MAGAZINE



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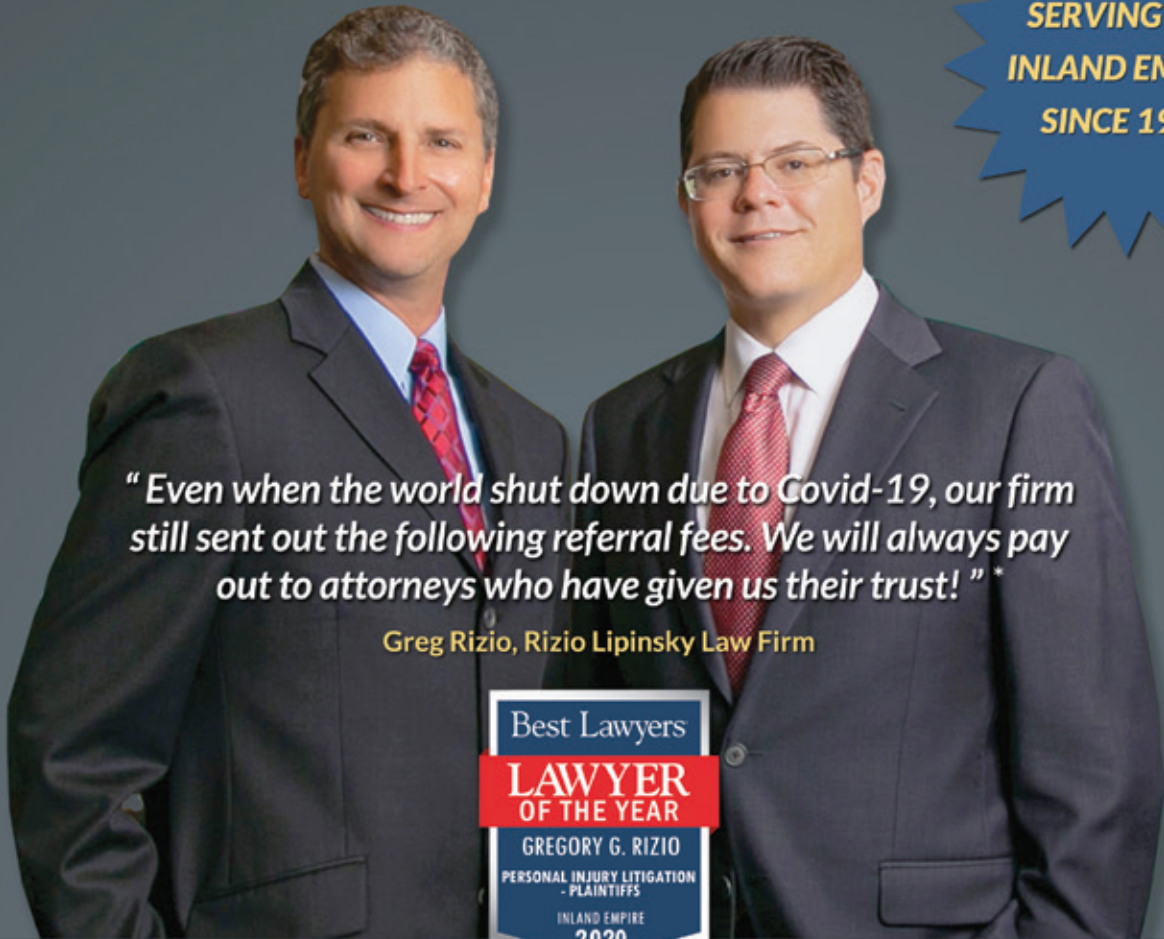


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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

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

Membership Benefits

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

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

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

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

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

June

7 Civil Litigation Roundtable with Hon. Craig Riemer

Zoom

Noon

MCLE

18 General Membership Meeting

Zoom

In-Person – RCBA Gabbert Gallery

(for first 19 people to RSVP) and Zoom

Noon – 1:15 p.m.

Speakers: Virginia Blumenthal &
Steve Harmon

Topic: “Tips for How to Make Your Career
Long and Successful”

MCLE

22 Juvenile Law Section

Zoom

Noon

Speaker: Dr. Thomas Aucoin

Topic: “Juvenile Dependency: Busting the
Myths of Hair and Follicle Drug Testing”

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

Summer is already upon us! I cannot believe that we are halfway through 2021! I am very optimistic that I might be able to see everyone in person at an RCBA event at least once before this board term is over. I have my fingers crossed! Despite having had no in-person gatherings, the RCBA board has accomplished many things and perhaps with greater reach thanks to technology. This month, I would like to highlight the mentorship RCBA members provide to the community, from elementary school students to practicing attorneys.

In May, we continued our newly formed partnership with UCR School of Public Policy's Presley Center of Crime & Justice Studies through our first (and possibly annual) one-on-one mentorship "office hours." We had over 140 students sign up for office hours with attorneys in our Riverside legal community, and we received very positive feedback from the students. Thank you to everyone that participated in giving back to the UCR students, and I hope that because of your words and guidance, many of these students will pursue a career in law. Special thanks to the RCBA board's subcommittee that helped me plan these mentorship opportunities with UCR, including RCBA board members Lori Myers, Elisabeth Lord, Aaron Chandler, and Goushia Farook, and RCBA's Law and Media Committee Chair Erica Alfaro. It has also been an absolute pleasure working with Justine Ross, Ph.D., Associate Director of the Presley Center, and with Sharon Oselin, Ph.D., Director of the Presley Center, in putting together the Spring Webinar series and the one-on-one mentorship program.

In continuing with the goal to give back to the community at large and particularly to provide mentorship at all levels, the RCBA did not cancel its annual Reading Day even if we could not personally visit the school this year. On May 26, we hosted Reading Day, and RCBA members participated in reading to students at an elementary school. On Reading Day, RCBA members are assigned to classrooms to read their favorite

children's book or a book chosen by the students. After the books are read, RCBA members take questions from students about the legal profession. Although in prior years RCBA chose a school located near Downtown Riverside, this year, we chose Anna Hause Elementary School in Beaumont and read to 31 different classrooms virtually. The RCB Foundation gave one thousand dollars to the school library in the hopes that it will be of assistance to students. To all RCBA members who participated as a reader, thank you. The students really enjoyed it. Also, special thanks to Chair of Reading Day, Jacqueline Carey-Wilson, and to Elisabeth Lord for putting the RCBA in touch with Anna Hause Elementary School.

The RCBA also works with high school students through the Mock Trial Program, which so many of our members are actively involved in as coaches, scoring attorneys, and judges. This is a very important program that may really serve as the beginning of the high school students' desires to become attorneys. The RCBA also has a mentorship committee that helps mentees find mentors, whether they may be law students or practicing attorneys. When talking about mentorship, I cannot help but mention all the work Robyn Lewis and Greg Rizio put into the RCBA's New Attorney Academy as Co-Chairs of the New Attorney Academy Committee. The Academy is a training program for new attorneys that have less than five years of practice and provides practical instruction on various topics and gives these new attorneys in the Academy an opportunity to directly see how the courts operate. It allows new attorneys to make a smooth transition into the Riverside legal community and provides a much-needed road map. It also allows them to immediately meet well-respected Inland Empire attorneys, judges, and court staff as instructors of the Academy. If you are a new attorney, you will definitely want to be a part of this Academy!

It is really great to know that the RCBA is an organization that can give back and mentor at all levels. I love all the ways that the RCBA is able to give back to the community, especially in mentorship of the next generation, from elementary school students to practicing attorneys. I hope that we have left something meaningful in their lives that positively shape their future. We may not realize it, but the few minutes in a day that we spend with a child might be what changes his or her future for the better. I remember one judge in our Riverside legal community who left a huge impact in my life and made me really want to be a part of this legal community. Honorable Judge Janice McIntyre became the first female judge in Riverside in 1981. She was a role model and trailblazer for other women in the legal community. I went to school with her son Colin and had the privilege of going on a field trip in sixth grade to the Mission Inn and then to visit Judge McIntyre's courtroom. The impression of the courtroom and Judge McIntyre's explanation of the roles of attorneys and judges really had an impact on me and my desire to one day to also be a part of the same legal community. And, here I am, so gratefully a part of this wonderful legal community. Mentorship is so important because, as Oprah Winfrey said, "A mentor is someone who allows you to see the hope inside yourself."

Be someone that allows the younger generation to see that hope. This month's *Riverside Lawyer* issue is themed Family Law. I think the issue of mentorship and family go hand-in-hand. It is very important to be a mentor to the community, but do not forget that you are also the role model and mentor to your children, your niece, your nephew, your friend's children, and any other youth directly involved in your life. Communication is so important in maintaining a good relationship, both talking *and* listening. I hope that we can all be a positive mentor both in the home and in the community as we help groom the next generation.

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.



BARRISTERS PRESIDENT'S MESSAGE

by Goushia Farook



New Beginnings Barristers Appreciation of the Honorable Jackson Lucky

On May 13, 2021, the Riverside County Bar Association hosted a virtual retirement reception for the Honorable Jackson Lucky. The Barristers wanted to take this opportunity to thank Judge Lucky

for his support of the Barristers organization throughout the years. Judge Lucky has presented several outstanding MCLE presentations hosted by the Barristers and consistently supported the organization. We thank you immensely for all your support and contributions. Thank you for your contributions to the bench, our legal community, and organization. As a family law practitioner, I also thank Judge Lucky for his contributions in improving the family law court procedures! The Barristers Board wishes Judge Lucky the best in his new ventures and we hope to see you at future Barristers events.

In-Person Happy Hour

Barristers hosted its first in-person happy hour on Wednesday May 19, 2021, at Retro Taco. I am happy to say we were able to have the in-person happy hour while maintaining compliance with regulations to ensure everyone's safety. Attendees were able to space out seating if they so desired. It was wonderful seeing people who we had not seen in-person for over a year. It was wonderful seeing friends and hearing the joy and laughter of being reunited in-person. We hope to see you at future events, whether in-person or virtual!



Left side (front to back): Jose Silva, Alex Barraza, Michael Ortiz, Kevin Collins. Right side (front to back): Ellen Peng, Kamola Gray, Goushia Farook and Paul Lin

Promising Return to Normalcy

The success of the in-person happy hour is promising of continued in-person Barristers events in the future. I have certainly felt disadvantaged due to COVID-19 during the pen-

dency of my term. Being unable to host a judicial reception and increase community service involvement of the Barristers were certainly unaccomplished goals. However, with more people getting vaccinated and re-opening of institutions, I am optimistic that President-Elect Michael Ortiz will have be able to revamp our events and contributions to our community!

Elections for 2021-2022 Barristers Board

It is that time of the year again! Elections will occur in June 2021 and voting will take place on a virtual platform. Candidate statements will be available online for review to facilitate voting selections.

The 2021-2022 Barristers Board Candidates are:

President-Elect: Lauren Vogt
Treasurer: David P. Rivera
Secretary: Alejandro Barraza
Member-at-Large: Ankit Bhakta
Kevin E. Collins
Alfonso Smith
Brigitte M. Wilcox

In accordance with our bylaws, Michael Ortiz and Goushia Farook will automatically assume the office of president and immediate past president, respectively, for the 2021-2022 term. We plan on having an in-person event to meet the new board on June 17, 2021 with the location to be determined. Please follow us on our social media for updates and the voting link!

Upcoming Events

June 17, 2021: In-person "Meet the Board" Happy Hour at 5:30 p.m. Location TBD. Follow us for more details!

Barristers Elections: Follow us for nominee statements, date(s), and virtual voting link!

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@brfamilylaw.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@brfamilylaw.com.





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PRACTICING RESPONSIBLY AND ETHICALLY

BUYER'S REMORSE: TIPS TO AVOID CLAIMS THAT YOU FAILED TO GET YOUR CLIENT A GOOD DEAL

by David Cantrell

For many family law litigants, there is perhaps no more difficult decision than how and when to resolve their case. They have been through the emotional roller coaster of a failed relationship with a spouse and often have sustained long-lasting damage to the relationship with their children. When they reach the stage of a dissolution proceeding, the litigants are often faced with life-altering financial decisions: What happens to my home? What about my retirement savings? How can I afford to pay spousal support? As if these issues were not difficult enough, they are often complicated by the emotional volatility inherent in a divorce proceeding. Not surprisingly, the litigants sometimes have buyer's remorse after settling their matter. When the unhappy litigant runs out of options to set aside the agreement, they often turn on their lawyers and claim the settlement was inappropriate. The subsequent malpractice suit is generally referred to as a "settle and sue" case.

A settle and sue case is similar to other claims against lawyers, but has certain distinguishing factors. On the surface, the client must prove the typical elements of a malpractice claim (duty, breach, causation, and damage). It is almost always the case that the causation element is heavily disputed. The plaintiff must prove that she would have obtained a more favorable judgment (or settlement) but for the attorney's error.¹ This standard requires a "trial-within-a-trial" of the underlying case, where the jury must decide what a reasonable trier of fact would have done if the underlying case had not settled.² Courts have acknowledged this is a difficult burden, noting such claims often fail because they are speculative.³ Some cases suggest a plaintiff must prove damages "to a legal certainty",⁴ but more recently the court of appeal has explained this to mean the plaintiff must prove the claim by a preponderance of the evidence.⁵

So, how do we best protect against becoming the target of a settle and sue case? There is no bullet-proof formula, and even with the best advice claims may still arise. However, through the process of defending many of these cases, we have found that communication is the best way to mitigate the risk of becoming the target of these suits:

1 *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241.

2 *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 834.

3 *Barnard v. Langer* (2003) 109 Cal.App.4th 1453.

4 *Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 165-166.

5 *Masellis v. Law Office of Leslie F Jensen* (2020) 50 Cal.App.5th 1077,1083.

- Understand and document the client's goals and objectives.
- Explain to the client, in writing if practical, the likely outcomes of the case. If you have enough information, try providing the client an analysis of the best and worst-case outcomes.
- Address the time to bring litigation to a conclusion, as well as the likely cost. Use this discussion to ensure the client understands the very real possibility that a settlement today could be worth more than a larger decision after the time and expense of a trial.
- Are attorney's fees recoverable? If so, advise the client at the outset of the litigation. Remind them of this fact prior to the settlement discussion.
- Do not be a cheerleader. Particularly in volatile family relationships, the client needs your objective advice more than they need another person telling them how awful their ex can be.
- Consider the tax ramifications of the settlement. There is nothing wrong with suggesting the client seek input from her certified public accountant or from a tax lawyer.
- Give the client sufficient time to consider a settlement offer.

While there is no surefire way to avoid a settle and sue claim, the concepts above allow you to accomplish two things. First, you keep your client well informed. By the time of the settlement discussion, your hard work has (hopefully) resulted in the client understanding the risks, costs and likely outcomes associated with proceeding to trial. Second, in the (hopefully unlikely) event that your client later blames you for the settlement, you will have created a strong record showing that you gave good advice and recommended a settlement that was reasonable under the circumstances.

David Cantrell is a partner with the firm Lester, Cantrell & Kraus, LLP. His practice focuses on legal malpractice and professional responsibility issues. David is certified by the California State Bar's Board of Legal Specialization as a specialist in legal malpractice law.



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GUARDIANSHIPS

by Sheri Cruz

In preparing to write this article on the general topic of guardianships, I polled our examination staff and judges for input on what information they would like given to the bar – the things they find that practitioners do not know and they wish they did. This article is a compilation of that input and we hope that this makes guardianship petitions a little easier for some of you, as well as allowing you to avoid filing with the court if that is possible.

First, it is important to know the ramifications resulting from the court granting the probate guardianship. There is a myth that a guardianship is merely a temporary custody order made until the parents are able to care for their child. However, this is simply not true. Once a probate guardianship petition has been granted, it is often difficult for parents to recover custody of their children and they may, in fact, lose their parental rights altogether!

Probate Code section 1516.5 provides that once a guardianship has been in place for two years, the court can find that the child would “benefit from being adopted by his or her guardian,” and make such an order, thereby terminating the parental rights of the biological parents. Further, the court must use its own best judgment in determining whether a guardianship should be terminated, which may not coincide with the judgment of the parties. Even if both the court appointed guardian and the parent agree that the child should be returned to the parent, the court may not agree, and may not permit the termination. Therefore, if the intention of the parties is truly that the guardianship is a temporary fix for a situation that can be resolved, it is often in the best interest of the child and in preserving the family relationship, to pursue alternatives to a formal court ordered, probate guardianship.

These informal methods include having the parent execute a caregiver affidavit per Family Code section 6550, or a durable power of attorney that has custody instructions in it. Both of these can be revoked by agreement of the parties without having to involve the court.

Another avenue to consider, if available, is a juvenile dependency petition. Many people believe that a child should not “enter the system” and do everything possible to avoid a dependency matter, which usually includes having a family member file for a probate guardianship. However, in dependency court, the primary focus, at least initially, is reunifying children with their parents, and there is assistance available to the parents to provide them with skills and other help to allow them to properly

care for their children, so the dependency matter can be terminated. However, there is no such reunification or assistance available in the probate court. *Guardianship of Christian G. (2011)* 195 Cal.App.4th 581, 601, stated that “no provision of law allows the probate court to order reunification services for the parent and child in the contest of a probate guardianship (citations). Thus, not only are parental rights not expressly protected in probate guardianship proceedings, but there is no mechanism available to the probate court to nurture and support the parent-child relationship, even assuming such efforts might result in providing a suitable home for the child.” Sometimes a dependency case can actually provide the family with more help and therefore make it more likely that the parents will regain custody of their child. Dependency court is not the scary, rip the kids away from the parents forever court that many believe it is. Juvenile Court is definitely something that should be considered if it is an available option, and the parents are dedicated to doing what is necessary to have their children returned to them safely.

If you ultimately decide that a guardianship petition is the best way to protect the child, then there are several items you should consider. First, the court will not grant a temporary guardianship unless there are exigent circumstances and the court rarely finds such circumstances. Unlike family law cases, temporary orders are rare and should not be sought unless there is a specific and immediate need. If the children have been living with the proposed guardians for many years, and are in school and receiving medical attention prior to the guardianship, but the proposed guardians now decide that they would like a formal custody order to protect this relationship, it is unlikely that a temporary order will be made pending hearing on the permanent petition.

Be sure that you give proper notice. This is the reason that most petitions are not granted on the first (second, third, and fourth) hearings. Notice is absolutely required and must be personally served on the parents and the minors over whom guardianship is being sought who are 12 years or older. It does not matter that the parents have had little (or no) contact with the minor for years. They are entitled to notice. When Judge Steve Cunnison was hearing guardianship matters many years ago, he would tell the petitioners to look for the parents in the same way they would look if they knew that once they found the parent, the parent would give them \$25,000 (which would

provide a pretty thorough search!) All other relatives in the second degree (grandparents and siblings) can be served via mail. Without good notice, the court can't grant the petition. If, once a parent is served, they choose not to attend the hearing, the court may accept the Petitioner's statements for the need for a guardianship as true and the guardianship will likely be granted if the court finds the allegations are sufficient.

Once the petition has been filed, if the matter goes to trial, be aware of the court's focus on "continuity of care," and be well versed in Family Code section 3041, and cases that address these issues, including *Kassandra H.* (1998) 64 Cal.App.4th, 1228, *Guardianship of L.V.*, (2006) 136 Cal.App.4th 481, and others. Further, be aware that the court may begin the trial with a hearing under Evidence Code section 402, asking whether the burden of proof has shifted to the parent under Family

Code section 3041. Be prepared to address all of these issues during the trial.

After a guardianship has been granted, if the parent has a history of drug abuse, the Court can require a clean hair follicle test before allowing any unsupervised visitation between the parent and child. Finally, the guardian may not move out of state without express permission of the court and is required to obtain guardianship in the new state in a timely manner (typically four months after the order permitting the move is made).

There are many more things that the court staff wanted this article to cover, but 800-1000 words just won't allow it! We do hope that this little bit of information is helpful.

Sheri Cruz has been a probate attorney for the Riverside Superior Court since 2007.



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TALES OF A LEGAL AID ATTORNEY

by Edward J. Hernandez

For most family law attorneys, the courts make a lot of sense.

We may be frustrated or disappointed with a decision or order or somewhat surprised when the courts rule against us, but we usually can understand why after we've had a few moments to re-review and re-analyze the case and talk it over with our colleagues.

But for people who are representing themselves and who have little to no experience with the civil courts, going to court, especially the family law courts, can be like being caught in Alice in Wonderland scenario.

It looks like English, sounds like English, and is spelled like English, but the language of the court makes no sense to the litigant.

There is a "Mad Hatter" where you have to be crazy to be a family law attorney, a "White Rabbit" who is running around saying "I'm late, I'm late" — again the attorneys running from courtroom to courtroom, and there is an "Alice" — the litigant, the pro per who doesn't have the slightest idea of what they are doing, what will happen, and why doesn't anything make sense; and, while they seek out advice and answers, none of it makes any sense.

And that is where we, the legal aid attorneys of the legal aid programs throughout the state and in particular the legal aid attorneys of Inland Counties Legal Services, Inc., come into play.

We are the translators, the interpreters, the guides, the counselors, and advisers guiding our clients through the maze called "court" — better known as the judicial system.

Litigants are oftentimes unfamiliar with the family law court process. How it works (and doesn't work), and how to move their case forward and to a conclusion, i.e., a judgment.

I've often called it the "Disneyland Syndrome" — it's easy to get in, it's easy to start the proceeding, but it's difficult to figure out how to navigate and ultimately get out of the park and bring the case to a conclusion. Navigating child custody recommending counseling sessions, status conferences, and RFOs can seem near impossible to litigants that don't understand their significance. The process can seem daunting, like waiting in long lines at Disneyland, without the satisfaction of getting on the ride.

Litigants often perceive these lines as hurdles to the finish line. So we listen to our clients, find out what shapes their perspective about the court system, and meet clients where they are at.

- We show the clients how the justice system is not an obstacle course, but a navigable process.
- When the clients feel like there are economic barriers, we let them know there are fee waivers.
- When the clients believe there are language barriers, we let them know there are interpreters.
- When clients feel like they just don't have an opportunity to be heard, we remind them they can be heard through their pleadings, mediations, and ultimately at the hearings.
- And when clients are worried about whether they are going to get a fair shake, we remind them that the family law court is one of fairness and equity.

There are times when I have been called upon to be a counselor, therapist, advisor, and an attorney all rolled up in one individual, but I am licensed only to practice as an attorney. Though I can make a referral to a community partner if need be.

And there are moments when I feel great; not because I won the case or got a fantastic outcome for the client, but because I managed to change their lives and how they approached their lives.

I have seen clients pursue higher education to become counselors and advisors to help others in the same situation they were once in, and they have come back to thank me for inspiring them to change their lives and that has made a difference in their lives.

For me, as a legal aid attorney, it is not about winning cases because it is true, in family law, there are no winners just people who will always be "stuck with each other" even after the children have become adults and have children of their own. But, if I can get them to see and perceive the world differently, then I have won.

I didn't plan to become a legal aid attorney; it just happened. I only intended to stay a year or two and move on and back to Northern California, but twenty-five years later, I am still here.

I grew up in the area and played against teams in San Bernardino, Riverside, Palmdale, Antelope Valley, and Lancaster and shopped at the malls in Montclair, Riverside, and San Bernardino.

The mountains were my wilderness and the deserts were my play yard.

The Inland Empire is home and I am pleased to say that I was and am a legal aid attorney.

I say it proudly and with confidence.

I am not a white knight, I am not a savior; I am just an idealist, a romantic who believed that the system would work and does work and that is the belief and truism that every legal aid attorney holds in their heart.

We did not become attorneys to become rich; we became attorneys to make a difference in people's lives, to be a "voice" for those who cannot speak or who cannot be heard, to level out the playing field, and to give hope to those who have lost hope in our judicial process.

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Edward J. Hernandez is a staff attorney II with Inland Counties Legal Services, Inc.



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IMPACT OF TELEPHONIC HEARINGS ON FAMILY LAW PROCEEDINGS: ADVANTAGES, DISADVANTAGES, AND A BENCH PERSPECTIVE

by Goushia Farook

Since the onset of the COVID-19 pandemic in 2020, the Riverside Family Law Court has diligently strived to ensure access to justice and prevent the delay of proceedings. Family law proceedings include time sensitive matters such as domestic violence restraining orders, child custody disputes, child and spousal support orders, and the finalization of dissolutions. The brief period of court closures created great distress with clients awaiting to be divorced and with pending trials on issues which would be prolonged.

The Family Law Court ensured in-person hearings to address domestic violence restraining orders as they have the utmost priority under the law due to the gravity of the issues involved. All other matters have been addressed by the court via telephonic WebEx hearings. In 2021, the Family Court commenced in-person trials, which has been greatly appreciated by counsel and clients alike. As of the writing of this article, the Family Law Court proceedings continue to be held via telephonic WebEx for request for orders, trial readiness conferences, mandatory settlement conferences, and status conferences. Mediation for child custody and visitation continue to be conducted via WebEx video platform. In interviewing the current Riverside Family Law Supervising Judge, Honorable Jennifer Gerard, for this article, she indicated a plan for mandatory settlement conferences to be held in-person soon.

Requests for orders are utilized to seek court orders for any issue a family law client requires resolution on. Common issues on a request for order include child custody/visitation orders, child support, spousal support, determination of arrears, and attorney's fees.

Family law practitioners representing clients on these issues (and others) on a telephonic platform have expressed an array of opinions on their ability and inability to properly advocate for their clients on a telephonic platform.¹

Family law practitioners have certainly formed strong opinions about the impact of telephonic hearings on family law proceedings. Some practitioners have expressed great satisfaction with telephonic proceedings. The convenience of calling in from any location counsel may be at and easily handling multiple hearings in one day has been considered an advantage by many. The ability for clients to call into

proceedings without having to take time off work and lose income for an entire day is an advantage. Simultaneously, protecting the clients and counsel from exposure to one another and the court considering COVID-19 concerns is an advantage.

There was an initial technological curve to overcome due to an echo during calls, call drops, and low volume on either the caller or court side. The court diligently addressed these technology issues and continues to do so if it persists in any department. There continues to be a slight delay in proceedings due to callers either not being on mute causing a disruption or being muted and not recognizing their matter is being called and unmuting themselves. However, in the grand scheme of the technological issues that did exist at the onset of WebEx telephonic calls, the present issues are random and not as hindering as they once were.

Other practitioners have expressed an opposite opinion citing concerns about the disadvantages of telephonic proceedings and their impact on counsel's ability to advocate for their clients. The primary concern conveyed by practitioners with whom I spoke has been the inability of the bench officer to personally observe the body language, facial features, and demeanor of both the litigants and counsel. Practitioners expressed that in their opinion, family law, more than any other area of law, requires consideration of the credibility of the parties. For them, in-person observations of the litigants are a paramount consideration they would like the bench officer to make when making a ruling.

Practitioners have also expressed a concern that they as counsel are limited in how they can advocate for their clients when limited to telephonic appearances. Whether it is time constraints, inability to show the bench officer photos, texts, or other documents or not being able to read the bench officer and opposing side, all have been cited as hindering counsel's ability to represent their client.

There was a consensus in speaking with practitioners about the benefit of having incredibly detailed pleadings filed with the court in advance of the hearing. It was acknowledged that our bench officers have diligently read the pleadings, have a strong grasp on the issues in a case and this has facilitated the outcome of a hearing. While very few practitioners expressed disliking having to give additional information in pleadings they would otherwise want to use in oral argument, this opinion was extremely

¹ The perspectives reflected in this article are not intended to be expressed as the perspectives of all family law practitioners nor the perspective of the entire family law bench.

limited to just a small sample of the practitioners I spoke to about this issue.

As family law practitioners, we should certainly strive to always be able to advocate for our clients to the best of our abilities. If our abilities are hindered or restrained, determining solutions is paramount. In determining solutions, guidance from our bench officers is always appreciated and enlightening.

Pros and Cons of Telephonic Hearings: A Perspective from the Bench

In anticipation of this article, I had the privilege of speaking with the Honorable Judge Jennifer Gerard and the Honorable Commissioner Belinda Handy. Both provided great insight into the pros and cons of telephonic hearings from their individual perspectives and advice they would give counsel to ensure more meaningful telephonic hearings. I thank them both again for their time as their insights will allow family law practitioners to better advocate for their clients.

Commissioner Handy provided insight into the benefits of telephonic hearings as allowing more participation in proceedings from both litigants and counsel. She referenced the presence of both sides and less situations where only one side appears or no parties appearing for a matter. This permits proceedings to go forward rather than being delayed due to the non-appearance of one side. She indicated that each bench officer has the right to do telephonic proceeding.

Commissioner Handy indicated telephonic hearings can take longer due to the technology issues and at times the sound quality is not the best. It is advised that we ensure parties are in a quiet place when calling in. If we are driving, pull over to avoid background noise during the call. Nevertheless, litigants still get to have their day in court. She expressed that while telephonic hearings do not take the place of in-person hearings as you cannot look at facial expressions or body language, there are in-person trials. Certainly, on balance, this is a great assurance we as counsel rely on to resolve this concern.

Commissioner Handy shared her experience in conducting a video trial. She shared in cases where both sides agree and the issue is uncomplicated, the video trial can be conducted. The video trial allowed her to look at facial expressions, and ensure the litigant was not influenced by someone else.

Commissioner Handy shared incredibly useful advice to assist counsel in having more meaningful telephonic hearings. She suggests providing the court with detailed pleadings and telling the bench officer only the points that need to be highlighted. It was suggested we as counsel inform the bench officer that we have filed detailed pleadings and will be highlighting certain points and can provide the bench officer with any additional information they require. It was also recommended that we file in advance of our hearings,

any last-minute paycheck stubs, proposed Xspouse calculations, or any other documents we desire the bench officer to consider. A final word of advice given by Commissioner Handy was the importance of meeting and conferring in advance of the hearing even if the other side is a self-represented litigant.

In speaking with colleagues, there does appear to be a decline in meet and confers and if this is being noticed by our bench, we must strive to improve. While it requires extra effort on our end as counsel in scheduling a meet and confer in advance of the hearing as opposed to the morning of as we were accustomed to, the benefits of such are known to us and we must create new habits in ensuring we meet and confer.

The Honorable Jennifer Gerard is currently the supervising judge for the Riverside Family Court. Her perspective is immensely appreciated as she has the unique ability to provide details on how Riverside has accomplished access to justice in comparison to other jurisdictions. Judge Gerard spoke highly of telephonic hearings allowing for an increase to access to the courts for all economic levels. Judge Gerard discussed the litigants in Riverside having more economic need than other areas. She relayed there was a 98% increase in the show rate to hearings due to telephonic hearings and this is an increase in access to justice by our litigants. Certainly, a fact our legal community should be incredibly proud of!

In discussing the possibility of video hearings, Judge Gerard indicated there is a bandwidth issue in the Riverside, Indio, and Hemet courts. However, telephonic hearings have allowed cases to move forward and hearings to be conducted which is a positive for counsel.

Judge Gerard noted that telephonic hearings do effect how we as counsel argue our cases, there are issues with getting cut off, disconnected, or an echo effect as negative aspects of telephonic hearings. She conveyed there is something to be said about looking at a judge, social cues, the attorney social cues, and perception. Conduct such as rolling of the eyes, shaking of the head, loudly sighing, talking over someone speaks to the bench officer. Another con cited was not being able to see if someone is who they say they are. In-person trials allow for these observations and assurances.

When asked what the one piece of advice Judge Gerard suggests to practitioners to have the most meaning telephonic hearing, she expressed the importance of ensuring our pleadings say everything we want the court to know. Our written pleadings will have more weight since our time may be limited for oral arguments. Inform the bench officer that your pleadings are detailed and contain your client's position. Give the bench officer the relevant information you want to highlight from your pleadings rather than repeating everything as the bench officer has read your pleadings in advance of the hearing.

Judge Gerard also recommended filing any additional documents with the court in advance of the hearing. While two days is suggested she indicated that is the time it takes for documents to be imaged. As such, she suggests filing at least 96 hours in advance of our hearings to give time for imaging and for the bench officer to review when they prepare.

If there are multiple hearings in one day, Judge Gerard suggests calling in advance or the day of the hearing and informing the court. She emphasized the importance of calling opposing party or counsel and informing them as well.

One of the concerns clients had expressed to some practitioners I spoke with was the impact telephonic hearings have on the actual outcome of a case. I discussed this with Judge Gerard, and she conveyed that a case is not won or lost on a telephonic hearing. It is determined on a factual basis. This insight is highly beneficial for easing clients concerns about telephonic hearings.

Judge Gerard indicated there is ongoing consideration of continuing with telephonic hearings and reopening for in-person hearings. It is anticipated a family law town hall meeting will be conducted in the upcoming weeks to discuss the perspective of counsel. I highly suggest family law practitioners in Riverside participate in this town hall meeting to convey their perspective and stay abreast of upcoming changes impacting how we practice.

Contrary to Popular Belief, Telephonic Hearings Are Judicial Proceedings

A common topic of conversation of late between practitioners has been how litigants and even counsel perceive telephonic hearings to be more causal rather than formal proceedings. As we all know, these proceedings occur with the bench officer inside a courtroom and we as counsel should not forget these proceedings are formal. We must explain this to our clients to ensure the same level of respect, courtroom decorum, and professionalism is maintained. This was discussed with both Judge Gerard and Commissioner Handy and this lax perspective by counsel and litigants is recognized by the court. It was recommended that we not forget these are formal proceedings. We are still in a court of law and we should be cordial, professional and take the matter as seriously as being at court in-person. While it is unfortunate that we must be reminded of such, we should always strive to maintain our professionalism and uphold our oath no matter what area of law we practice.

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@brfamilylaw.com.



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by Gabriel White

In the family law context, litigants generally do not have a constitutional or statutory right to counsel.¹ Attorney mistake or neglect, therefore, may be addressed, for example, through a motion for relief under Code of Civil Procedure section 473 or a separate lawsuit for legal malpractice. As in civil cases generally, however, a claim of ineffective assistance of counsel is not an appropriate ground for overturning a family court order.²

In *dependency* matters, however, where parents' fundamental rights as to their children are at issue, the right to counsel is guaranteed both by constitutional due process and California statutory law.³ The right to counsel includes the right to *competent* counsel and a concomitant right to seek relief if counsel fails to provide competent representation.⁴ Our Supreme Court's recent decision in *In re A.R.* addresses one particular brand of attorney incompetence in the dependency context, namely, failure to file a timely notice of appeal.

The relevant facts of *In re A.R.* are straightforward. In dependency proceedings, the juvenile court ordered that a mother's parental rights to her child be terminated.⁵ The mother instructed her court-appointed attorney to appeal the ruling.⁶ The attorney, however, forgot to do so, failing to file a notice of appeal until four days after the 60-day filing deadline.⁷ This is a cardinal sin of appellate practice because the deadline is jurisdictional; ordinarily, the courts lack the power to extend the deadline for filing the notice of appeal and must dismiss a late-filed appeal.⁸ Thus, even though the attorney timely filed an opening brief on the merits, along with an application for relief from default, the Court of Appeal denied the application and dismissed the appeal for lack of jurisdiction.⁹

1 *In re Campi* (2013) 212 Cal.App.4th 1565, 1575.

2 *Ibid.*

3 *In re A.R.* (2021) 11 Cal.5th 234, 245-246.

4 *Id.* at p. 246; Welf. & Inst. Code, § 317.5; see also *In re A.R.*, at p. 248 [approving previous Court of Appeal opinions holding that parents may seek relief for incompetent representation in juvenile proceedings].

5 *In re A.R.*, *supra*, 11 Cal.5th at p. 244.

6 *Id.*

7 *Id.*; see Cal. Rules of Court, rule 8.406(a)(1) [setting time limit for dependency matters].

8 See *In re A.O.* (2015) 242 Cal.App.4th 145, 148 ["One of the most fundamental rules of appellate review is that the time for filing a notice of appeal is jurisdictional."]; Cal. Rules of Court, rules 8.406(c) [setting time limit in dependency matters]; see also 8.60(d), 8.104(b).

9 *In re A.R.*, *supra*, 11 Cal. 5th at p. 244.

Fortunately for the mother, the Supreme Court found that her attorney's failure to timely file a notice of appeal was not an ordinary situation. It reversed the Court of Appeal, holding that "parents may raise an incompetent representation claim based on the untimely filing of a notice of appeal," and that if the parent makes the required showing, reinstating the otherwise-defaulted appeal is the appropriate remedy.¹⁰

The first step in establishing an ineffective assistance claim is showing that counsel's actions fell below professional norms; for the mother in *In re A.R.*, that means demonstrating "that counsel failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law."¹¹ Showing an attorney's actions fall outside the "wide range of reasonable professional assistance" is often difficult.¹² In the context of a late appeal, however, it is straightforward; a parent "generally will satisfy this requirement by showing that counsel was directed to file an appeal on behalf of a parent but failed to do so in a timely manner."¹³

A party claiming ineffective assistance of counsel must also demonstrate prejudice from the attorney's unprofessional performance.¹⁴ Again, in the context of a late-filed appeal in a dependency matter, the showing is relatively straightforward: the Supreme Court directed that the "focus" is "on whether the parent would have taken a timely appeal" if attorney incompetence had not deprived him or her of the opportunity, "without requiring the parent to shoulder the further burden of demonstrating the appeal was likely to be successful."¹⁵

Finally, the Supreme Court recognized that in dependency matters the analysis must take into account not only the parents' right to counsel and right to appeal, but also the child's interests. "Nowhere is timeliness more important than in a dependency proceeding where a delay of months may seem like 'forever' to a young child."¹⁶ At the same time, "[c]hildren and parents alike also have an interest in ensuring that the parent-child relationship is not erroneously abridged."¹⁷ To balance these countervailing interests, a parent seek-

10 *Id.* at pp. 243, 254.

11 *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668; see *In re A.R.*, *supra*, 11 Cal.5th at p. 251.

12 *Strickland v. Washington* (1984) 466 U.S. 668, 689.

13 *In re A.R.*, *supra*, 11 Cal.5th at p. 252.

14 *In re Kristin H.* (1996) 46 Cal.App.4th at p. 1668.

15 *In re A.R.*, *supra*, 11 Cal.5th at pp. 252-253.

16 *In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1668.

17 *In re A.R.*, *supra*, 11 Cal.5th at p. 249.

ing relief from an attorney's failure to file an appeal in a timely manner must show that he or she "diligently sought relief from default within a reasonable time-frame, considering the child's "unusually strong" interest in finality."¹⁸

In *In re A.R.*, the Supreme Court remanded for the Court of Appeal to decide in the first instance whether the mother had made the required showings.¹⁹ Nevertheless, the Supreme Court also commented in the course of its analysis that mother's notice of appeal "was filed just four days late," and that mother had "promptly attempted to remedy the error, and filed her appellate brief on time."²⁰ This would seem to suggest that the outcome of this inquiry is likely to be favorable to the mother, absent some additional facts we do not know from the Supreme Court's opinion.

The Supreme Court left for the courts of appeal, the Judicial Council, and/or the Legislature to develop procedures for applications for relief from default based on an attorney's late filing of the notice of appeal.²¹ The Supreme Court specified that strict adherence to

18 *Id.* at p. 258.

19 *Ibid.*

20 *Id.* at p. 251.

21 *Id.* at p. 257.

full habeas corpus procedures is "neither necessary nor practical," and that courts "can and should handle claims seeking to revive appeals from the termination of parental rights in a manner that is sensitive to both the importance of speed and finality in this context and the precise nature of the claim at hand."²² It also clarified that the Court of Appeal, rather than the Superior Court, is the appropriate venue for such an application for relief.²³

It is, of course, helpful for people in the same unfortunate circumstance as the mother in *In re A.R.* that the Supreme Court has clarified that they may be able to obtain relief, and described the showing that they will have to make to do so. But *In re A.R.* is also a useful reminder for attorneys and parties in every area of the law: just file your notice of appeal on time.

Gabriel White is a senior appellate court attorney at the California Court of Appeal, 4th District, Division 2, assigned to the chambers of Justice Michael J. Raphael. The views expressed in this article are his own.



22 *Id.* at p. 256.

23 *Id.* at p. 257.

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DOUBLING DOWN ON DIVORCE AND DEATH DECISIONS

by Andrew Gilliland

Loss! Pain! Revenge! Remorse! Fear! Relief! For anyone who has been through a divorce (or knows someone who has) or had a loved one (or even a friend or acquaintance) die, they know that the emotional roller coaster associated with divorce and death can be a difficult ride. There really is no amusement in going through either of these processes. The good news (bad news for family law attorneys) is that based on the 2020 United States Census divorce rates are decreasing, reducing the occurrence of individuals having to go through the emotional pain of a divorce. Unfortunately, death still occurs for everyone! Both death and divorce share three similar phases that involve the legal system consisting of before, during, and after. Each phase bleeds into the other phases as proper planning in the before phase can save pain in the during phase, and actions taken in the during phase can avoid loss in the after phase. In this light, this article will focus on pain avoidance during the three phases of divorce that affect your death (and incapacity) decisions.

Before Divorce Papers Are Filed

The starting point should always be to determine if there is an existing estate plan, what assets are involved, and what family dynamic exists such as whether the pre-divorced individual has children. If there is an estate plan does the plan include a properly funded trust with assets (residence, stocks, vehicles, etc.) titled in the name of the trustees of the trust. Who are the trustees of the trust? Typically, a married couple's trust is drafted as having both spouses as joint trustees with each having the individual authority to act on behalf of the trust. During marriage this is convenient but can be problematic pre-divorce. Are there medical directives and power of attorney documents? A medical directive and a power of attorney also usually name the other spouse as the agent, which again is not so convenient during the divorce process. Retirement accounts likewise generally name the other spouse as the primary beneficiary. Reviewing title to the assets will determine if they are held in the name of trustees, jointly held, or separately titled. Sourcing the payment for the asset can help distinguish between community and separate property. With this knowledge, there are some basic pre-divorce steps that should be implemented including any or all of the following:

- Creating a new unfunded revocable living trust. You do not want to fund this trust with any assets that could be considered community property. In other words, there should be no schedule of assets attached to the trust as is typical with the creation of a trust. An unfunded trust also allows for flexibility for funding once the divorce is finalized and a determination of assets is made.

- Creating a new will and revoking any prior will.
- Severing property held in joint tenancy with proper notice to the other spouse.
- Changing any beneficiary designations. Keep in mind, however, that California Probate Code section 5020 acts to nullify any changes that would deprive a non-consenting spouse of their respective community interest in the underlying asset. ERISA also provides nonconsenting spouse protections.
- Revoking any power of attorney and creating a new one. The steps involved in revoking a power of attorney can be found in California Probate Code section 4151, but the basic concept is that notice of revocation is provided to the agent named in the revoked power of attorney, which is likely the other spouse.

In executing the changes as discussed, any fiduciary duties involved need to be considered that may arise in connection with the various roles created under estate planning documents.

During the Divorce Process

When the court takes jurisdiction over the divorce proceedings, a new set of rules comes into play. These rules are the Automatic Temporary Restraining Orders (ATROs) delineated in California Family Code section 2040 that remain in place until the judgment is entered. Essentially, the ATROs provide a matrix for handling assets during the divorce consisting of actions that are (1) prohibited without a court order, (2) prohibited without consent of the other spouse, (3) prohibited without notice to the court and the other spouse, and (4) permissible without a court order or notice to the other spouse. Like the "before divorce papers are filed" phase, the divorcing individual can create a new will, power of attorney, medical directive, and an unfunded trust. Joint tenancies can be severed with proper notice to the spouse and the Court, and a disclaimer can be executed. Certain actions can be taken with only proper notice to the other spouse such as revoking a revocable trust, changing a beneficiary designation, and the above discussed severing of a joint tenancy. Finally, court action is required when funding, creating, or modifying a nonprobate transfer without the other spouse's consent. Section 2040 of the Family Code provides a definition of nonprobate transfers to include a revocable trust, a financial institution payable on death designation, transfer on death deed, transfer on death of personal property, and a Totten trust.

continued on page 20

UPDATE ON THE FAMILY LAW DIVISION FOR THE RIVERSIDE COUNTY SUPERIOR COURT

by Supervising Judge Jennifer Gerard

What a year! COVID 19 has impacted everyone worldwide. It has changed our society and will impact us for years beyond the immediate crisis. As our state begins to relax the restrictions, I think it's fair to say our legal community is anxious to get back to our "normal" lives. In the family law courts in Riverside County, we feel the same way.

It became clear in April 2020, the court was going to need to formulate a plan for the litigants and the citizens we serve. Family law focused on domestic violence restraining orders (DVROs) and emergency requests for orders as the priority and deemed them essential functions for filing purposes countywide. The court continued to rule on these case types to ensure protection for victims of domestic violence as well as put into place protective measures for children. As the orders from Governor Newsom, the Chief Justice and Judicial Council Emergency rules guided the courts, we slowly began restoring other case types and services. We held five townhall meetings with the bar associations to disseminate information regarding our restoration of services plan in order to assist them in their practice of law.

Since March 2020, there has been an increase in DVRO filings countywide. Riverside County family law currently has three courtrooms dedicated to DVRO. The desert region has three family law courts that each handle their respective DVROs. A change that arose during the pandemic is that DVRO hearings for Hemet were assigned to be held at Southwest Justice Center. All DVRO hearings are being conducted in person.

Currently, in addition to DVRO hearings, petitions to terminate parental rights, and contempt hearings and trials, are being conducted in person. All family law general matters, including mandatory settlement conferences, trial readiness conferences, and contested hearings for the Department of Child Support Services (DCSS) are being heard via telephonic appearance in each region. All child custody recommending counseling (CCRC) appointments and adoptions hearings are being conducted via video conference.

Although initially there were some technological and logistic issues with telephonic hearings, we have transitioned very well to telephonic appearances. This remote platform has assisted us to be able to continue to provide services to our families. Riverside family law courts have been able to provide very needed services for our litigants and there has been a decrease of no-show rates for the hear-

ings set. We are currently out 45-60 days for scheduling a Request for Order hearing countywide.

The family law bar has worked diligently with the Family Court Services. DCSS and probation have also kept in constant communication to ensure that we are providing the appropriate services to the litigants. The court established a general email for inquires to our family law director and myself to make sure things would run smoothly. This email is still active for use.

Even with the limited staff, we have still been able to overcome the hurdles that the pandemic has caused in limiting access to justice for our litigants. The staff has been working industriously, sharing resources and continuing to communicate in order to maintain adequate service levels and minimize backlog.

We have been able to leverage video technology to expand child custody recommending counseling (CCRC) resources countywide. This has greatly assisted with managing the CCRC workload and helped to manage amidst limited staffing levels. With CCRC appointments being conducted via video, we are able to spread our resources and schedule dates sooner using our mediators countywide. This has enabled us to keep our next available dates more consistent amongst the regions (specifically Riverside and Hemet). I am thankful for the diligent efforts of all of our staffing teams.

Some notable information is that the Hemet Courthouse remains closed to the public, but Hemet trials and contempt hearings are being conducted in person at the Hemet Courthouse. Family law courts countywide will be conducting our mandatory settlement conferences and fee waiver hearings in-person beginning the month of June. All other hearings that are currently being conducted via remote appearance, will continue until further notice. Currently, other than DVROS and emergency request for orders, all other matters are being submitted for filing via electronic submission using our eSubmit portal, U.S. Postal Service, or the Drop Box. Lastly, as of July 6, 2021, Commissioner Handy will be leaving family law and Commissioner Burgess will be returning to Department F502. Commissioner Furbush will be returning to her prior calendar and courtroom in Department F201.

One thing we have all experienced in the last year, is change. In the beginning of the pandemic it was often from minute to minute. Although it is inevitable, change isn't always bad either. Reflecting on this last year, I have

witnessed positive change throughout the courts. Our courts created mechanisms in order to continue with as many critical services as we could to serve the Riverside County community. Our justice partners worked together to ensure people were afforded access to justice. In addition, our legal community overcame significant obstacles to assist their clients getting orders that were needed.

As we begin to slowly get back to normalcy, the future of family law in Riverside County looks auspicious. The positive changes made in the last year will continue and I am looking forward to being a part of it.

Judge Jennifer Gerard is the Supervising Judge of the Family Law Division for the Riverside County Superior Court.



DOUBLING DOWN from page 18

After the Judgment is Final

When the Court enters its final judgment, the ATROs are no longer in effect and the judgment governs the allocation of the assets. If assets need to be transferred, the assets can be transferred into the new trust created in the before or during phase or a new trust should be created if it has not already been. Any required Qualified Domestic Relations Order should be prepared to divide any retirement account assets if relevant under the judgment with beneficiary designations being changed as well. When children are involved, the use of life insurance for the children should be considered as well as whether a trust should be designated as the primary beneficiary to prevent the ex-spouse from gaining control over any life insurance proceeds. If not done already, new estate planning documents should be drafted with new beneficiaries and agents based on the removal of the ex-spouse.

While there are similar phases to divorce and death, there is one significant element that can create obstacles to proper planning. For nearly all humans avoiding physical pain is a natural survival instinct. We remove our hand from the hot stove. When it comes to emotional pain, however, we sometimes keep our hand on the stove and engage in deeper musings such as: Why the stove is there? What does the stove represent? Can I fix the stove? We may even ignore the stove entirely and mentally engage in other activities to help take our mind off the pain. Divorce and death are similar to emotional pain and you may find yourself engaged in a frustrating endeavor to get your client to create or modify their estate plan either before, during, or after the divorce process.

Andrew Gilliland is a solo practitioner and the owner of Gilliland Law, a Professional Corporation with its office in Riverside. Andrew is the co-chair of the RCBA's Solo & Small Firm Section and a member of the RCBA's Publications Committee.



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RIVERSIDE COUNTY ADOPTIONS: PROVIDING A FOREVER HOME

by Kimberly Lowman

The Riverside County Department of Public Social Services (DPSS), Children's Services Division, protects children and youth from abuse and neglect, and partners with families, young adults, and communities to build safety, permanency, and well-being.

When most people think about Children's Services, they might think about child abuse, children being removed from their birth families, and the foster care system. Although Children's Services can be consumed with abuse and trauma, there is another facet that can restore hope and family, and that is through adoption. The Children's Services Division not only works to protect children from abuse and neglect, but also serves to help provide permanency for children. Riverside County Adoptions typically finalizes between 400 to 500 adoptions each year. Many families come to Riverside County Adoptions with hopes of becoming a parent after struggling with years of infertility or wanting to provide a home for a child in need. Through the Resource Family Approval process, a family is assessed and can become fully approved to adopt and be matched with a child who is a dependent of the Juvenile Court and in need of a permanent home.

Riverside County Adoptions also completes adoptions of children who are placed with relatives or who are being adopted by their current resource parents. These types of circumstances make up the majority of adoptions with Riverside County. However, there are also situations when children are matched to an adoptive home because their birth parents have decided to place their child for adoption; this is called a voluntary relinquishment.

Finding out you are expecting a child could be an extremely exciting time for parents. However, for some parents, it can be a time filled with anxiety, worry, and doubt. There are various factors behind a parent's decision to voluntarily relinquish their parental rights and place their child for adoption. Mental health issues, drug or alcohol addiction, homelessness, or just not being ready to be a parent, are just a few contributing factors that may bring a parent to this very difficult choice. This decision is usually made before giving birth or shortly after delivery. In some cases, the child might be older or a dependent of the juvenile court. As long as there are identified prospective adoptive parents, a birth parent can voluntarily place their child for adoption.

When a birth parent has decided to voluntarily relinquish their parental rights, they could pursue an Independent Adoption or an adoption through an Adoption Agency, such as Riverside County Adoptions. An

Independent Adoption is when a parent chooses people they know to be the adoptive parents. In these adoptions, the birth parents work directly with the selected prospective adoptive parents, an Adoption Service Provider (ASP) and the California Department of Social Services (CDSS). Birth parents usually choose this option when they already have a family selected to adopt their child. When going through this process, the prospective adoptive parents must hire various providers to help them navigate the process including often times an adoption attorney. The family selected is then approved to adopt after the child is placed in the home.

In an Agency Adoption, the birth parents relinquish their parental rights to the adoption agency. They can choose an adoptive family approved through the adoption agency or allow the agency to choose for them. The birth parent then works directly with the adoption agency rather than the identified prospective parents. In agency adoptions, the adoptive family is already approved to adopt prior to the child coming into their home. Agency adoptions are usually "closed" adoptions, giving the birth parents and the prospective adoptive parents the option to remain confidential. Normally, non-identifying information about each other is the only information that is disclosed to the birth parents and the identified prospective adoptive parents. The birth parents could also choose to have their information shared with the identified prospective adoptive family and could even meet them in person if both parties are receptive. Ongoing contact after the adoption is also an option provided to the birth parents. Some adoptive families keep in contact with birth parents through email, pictures and letters, or in person visits.

How does a birth parent get started with Riverside County Adoptions and voluntarily relinquish? The birth parent can contact the department and ask to meet with an adoption social worker. This can be done prior to giving birth or after the birth parents have decided they are no longer able to parent their child. Outside providers such as, a hospital social worker, or a county social services practitioner, may also contact Riverside County Adoptions on behalf of a birth parent. When working with an agency, such as Riverside County Adoptions, the adoption social worker is required to meet with the birth parents at least two times. The first meeting is an informational meeting where the overall process and legal ramifications are explained to the birth parents. The adoption social worker also uses this time to assess the birth parents reasons for placing their child for adoption and to make sure they are capable and ready to make this decision. The adop-

tion social worker serves as a neutral person who is not there to judge, but rather help the birth parent navigate through their decision. The second meeting is held at least 24 hours after the first meeting and is typically when the birth parents sign the actual relinquishment documents. The birth parents have three filing options; they can ask that their relinquishment be effective immediately, request additional time to think through their decision, or have their relinquishment documents held until their child is freed for adoption from any other birth parent. Once the relinquishment documents are ready to be filed, they are sent to the CDSS where they are “acknowledged” by the state and the child is then freed for adoption. The agency adoption social worker then monitors the prospective adoptive family and child for at least six months before the adoption can finalize. The birth parents are offered counseling services, which are paid for by the department, to help them decide if they want to place their child for adoption or to help them process their grief and loss after the relinquishment has been signed.

There are times when a birth mother is placing her child for adoption without the birth father. He may be unknown to the birth mother or his whereabouts are unknown to her at the time of the relinquishment. It is the adoption social worker’s responsibility to gather as much information as possible about the alleged father or

possible fathers. If the mother provides a name and other identifying information, the adoption social worker will search various social media outlets, submit a parent locator, and have the alleged father personally noticed at any known addresses about the mother’s choice to relinquish. The birth mother is informed during the relinquishment process that the alleged father has rights to the child, if in fact he is found to be the father. If he is determined to be the father, he can file a petition in court to establish paternity or choose to also relinquish his parental rights. If the alleged father is never found, or refuses to make contact with the adoption social worker, the alleged father and any unknown fathers’ parental rights will be terminated by the Superior Court to free the child for adoption. In those cases, Riverside County Adoptions contacts their attorneys, Riverside County Office of County Counsel, to prepare and file the appropriate paperwork with the family law court. Depending on the court’s calendar, this process can take up to sixty days to be completed. Once the alleged and paternal fathers’ parental rights are terminated, the adoption can proceed and the child will be in a forever home.

Kimberly Lowman, M.S., is a Social Services Practitioner in the Child Adoptions & Placement Services Unit of the Department of Public Social Services, Children’s Services Division.



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THE FIRST FIVE CASES IN RIVERSIDE COUNTY SUPERIOR COURT - 1893

by Chris Jensen

While undertaking an unrelated research project, I asked the clerk of the Riverside Superior Court to provide me a copy of the first five cases ever filed in the Superior Court for the county. I was provided seven. Seven, you ask? Since the second file was not necessarily a real file (clarified below) I was provided the first six cases. And since the clerk started copying the seventh in error, and it appeared to be a scandalous divorce, I obtained that one also. And that's how five became seven.

Riverside County was formed May 9, 1893, so named because of its proximity to the Santa Ana River and because the citizens of the city of Riverside were the primary advocates for an independent county. The County was formed out of a portion of San Bernardino County as well as a portion of San Diego County. Prior to the creation of Riverside County, the city of Riverside was within the County of San Bernardino. It should then be of no surprise that tax issues were the primary topic of motivation for independence; the desire that the tax money from Riverside should stay in Riverside and not be sent to San Bernardino. As to San Diego County, they didn't seem to fight the issue much since, to them, everything north of Mount Palomar, including the Temecula and Coachella Valleys, were best accessed by train via Los Angeles and that northern part of the county was considered still burdened by indigenous Americans.

Prior to incorporation, court cases arising in what is now Riverside County were either filed in downtown San Diego or downtown San Bernardino, the San Bernardino/San Diego counties being somewhat east-west in the San Jacinto region.

So what were these first five...er, seven, cases?

Civil No. 1: That's how the file is labeled. More likely than not, the earliest Riverside County criminal cases were dealt with in the Justice Courts. Our Public Land Survey System is based on a grid system commencing with Townships of six square miles. The townships were then divided into 36 sections, generally, of 640 acres (1 square mile) and then within smaller parcels. If a Township had enough citizens, a town or city may have created a Justice Court, with its Justice of the Peace (Judge) and Constable (Peace officer). Prior to the first felony filing in Riverside County (a short period), crimes were probably handled in the Justice Court.

Back to Civil No. 1, the action was a complaint to foreclose a mortgage filed by J. Ludewig Koethen versus J. W. Livingston, et al. Back in the day, before deeds of trust were created, loans secured with real property as

the collateral were memorialized by mortgages. In this case, in April 1889, plaintiff loaned the defendants \$500, "United States gold coin," payable by October 1892, with 10% interest thereon. The defendants secured the loan with lots 13 and 14 in block six in what was called "Cox's Addition," as well as lots 86 and 87 in a part of "Hall's Addition," in the city of Riverside.

The complaint was filed on June 6, 1893. The service was made before September and with the defendants not responding, a default judgment was entered by September 30. The judgment was a decree of foreclosure and order for sale of the collateral. Fred W. Swope, the new Sheriff of the new county carried out the foreclosure by November 1893.

Civil No. 2: This file was almost non-existent. It was simply a "register of action" indicating an application by William Kirkpatrick was filed to allow him to file a statement of election expenses. There was not even an indication of the office for which the election was held.

Civil No. 3: This case was just like the first. Our very first bar president A.A. Adair and his partner filed on behalf of Elizabeth Bayley as against Alexis Caillaud a complaint to foreclose two mortgages. One of the debts was for \$2,500, all due and payable in two years with interest at 1% and the second for \$1,550, due in five years from 1886. This matter was also a default judgment.

Civil No. 4: The initial read of this file started with promise, it being a construction dispute between Alfred Wood and his partner George Cunningham, operating as Wood & Cunningham, against Mr. and Mrs. W. J. McIntyre and D.C. Twogood. The plaintiffs furnished the labor and plumbing and supplied all necessary hardware and building materials for the construction of a two-story wooden dwelling in the city. But alas, apparently the dispute was negotiated and resolved with a resulting dismissal being filed. The attorneys for the parties were Purington & Adair for plaintiffs and W. J. McIntyre, for himself and the other defendants. Perhaps our then bar president's stature swayed the parties to negotiate a quick resolution?

Civil No. 5: This case was a complaint for what we would now call one to quiet title, for declaratory relief and accounting. It was a dispute over real estate interests between a mining claim in a homestead claim. Sadly, for me, the file was closed without further information; nor was there even a mention in a newspaper.

Civil No. 6: John Hanlon filed a civil suit against Catherine Bettner, better known as Mrs. James Bettner. The subject of the dispute was the construction of a house

on 8193 Magnolia Ave., now commonly referred to as the “Heritage House.”

The Bettners relocated from New York to Riverside in the late 1870s. Mr. Bettner was a civil engineer and purportedly a lawyer. He had been diagnosed with a kidney ailment and was told the healthful climate of Southern California may prolong his life. So, west they moved.

The Bettners purchased 38 acres of land off Indiana Avenue and Jefferson Street and planted a citrus grove along with constructing their first home in the grove. The Bettner family rose to prominence in Riverside and within a few years, James was president of the Riverside Fruit Company, the first company to have a packinghouse in the city. James Bettner organized the Casablanca Tennis Club and became quite active in local and state politics. James actively participated in the San Bernardino Democratic Party Central committee, became part of the myriad of citrus boards and organizations and was eventually appointed to the State of California Forestry Board along with another gentleman by the name of John Muir.

The Bettners invested in land in Santa Monica, owning not only a beach house, but other land which they developed. Mr. and Mrs. Bettner were actively involved in the tennis clubs of Santa Monica, among other organizations.

But James wasn’t always on what we would now consider the right side. James was reported to be a leading speaker at an anti-Chinese community meeting and was eventually appointed to a committee to attend the state anti-Chinese convention in support of anti-Chinese immigration laws.

Because of the Bettners’ political connections one of James and Catherine’s sons was designated to attend West Point military Academy; he returned home soon, purportedly ill (he died in 1891 of tuberculosis).

James died in 1888 of his pre-existing illness.

Catherine, wanting nothing to do with the house in the grove wherein her husband and son died, contracted with the Los Angeles architectural firm of Morgan & Wall to design and supervise the construction of an elegant home in Riverside. She wanted a “statement” house.

On May 16, 1889, contractor John Hanlon entered into an agreement with Catherine Bettner to construct her new home for the stately sum of \$10,750, in “gold coin.” Mr. Hanlon was to construct, under the supervision and satisfaction of Morgan & Walls, all excavating, brickwork, carpenter work, glazing, plaster, electrical work, and hardware required for the completion of a two-story framed residence, and framed barn on Mrs. Bettner’s lot. Mr. Hanlon was to complete the contract by October 1 of 1891. The contract provided for every day the house remained incomplete beyond the completion date, Mr. Hanlon would be charged five dollars. The contract further provided that Mr. Hanlon would make no claim for additional work unless such was done pursuant to an order from the architects, made in writing, within 10

days of the beginning of such work. And that’s where the dispute arose.

Near the end of construction Mrs. Bettner asked Mr. Hanlon to also construct two extra items, stairs at the rear of the house, plus a corral. It appeared Mr. Hanlon said he could complete the extra work for \$240. Mrs. Bettner directed Mr. Hanlon to commence the extras, but implied she would see the architect, apparently as to the value. When the work was done, Mrs. Bettner did not want to pay the \$240. In fact, since the house wasn’t completed until December of that year, because of a delay in bricks being manufactured in Los Angeles, Mrs. Bettner now wanted her five dollars per day for the roughly two-month delay for completion.

In June 1892, Mr. Hanlon filed an action to foreclose a mechanics lien in the San Bernardino County Superior Court. A mechanics lien is a security device which exists for the benefit of one providing construction work and services on real property. Effectively a mechanics lien provides collateral for the benefit of a contractor should payment not be made. Mrs. Bettner, represented by Purington & Adair, disputed the claim. Purington & Adair demurred to the complaint, seeking to strike it arguing it was legally deficient. The demurrer was overruled. Mrs. Bettner answered the complaint, her defense being no writing was had for the extra as required. Mrs. Bettner also filed a cross complaint for the delay claim. By then, the new County of Riverside was in existence and, according to *Los Angeles Herald* (2 Jun 1893, p. 3), Mr. Hanlon’s case was the first case transferred from San Bernardino Superior Court to the brand-new Riverside County Superior Court.

The case continued, depositions took place, then the trial was held.

The contract contained a specific provision for handling extra work: if such extra work was requested, the Architect was the one to determine what the effort would be worth. If the contractor disagreed, a three-arbitrator panel was to decide. It appeared Mrs. Bettner agreed to pay \$164 for the stairs and coral, but within an hour changed her mind. Although the Architect was to decide the price, it was found the Architect agreed with the contractor’s value, but never told Mrs. Bettner to pay it nor made the “award” for extra work as required by the contract. The Architect dropped the ball. The Architect also issued a final certification to pay the final contract amount due Mr. Hanlon, but omitted from the amount due the extra value for the stairs and corral. The evidence presented was that Mrs. Bettner took advantage of the Architect’s omission and refused to pay any more.

Mrs. Bettner’s attorney suggested Mr. Hanlon’s attorney was ignoring the contract provision which mandated claims for extras had to be in writing. Citing to law from across the country (Alabama, Illinois, Maryland to name a few) Mrs. Bettner’s attorney argued the strict terms of the contract must govern.

The Court undertook an analysis of California law reported over the prior 25 years of Statehood and concluded the contract did not address the formality of how the architect was to communicate the price determination and that perhaps the architect neglected his duty to communicate the final determination. That being said, the Court found the architect did agree with the contractor's valuation and adopted that as the necessary finding of entitlement and valuation. Mr. Hanlon was not to be punished for this dereliction of duty.

As to the counter claim for delay, the Court found because Mrs. Bettner immediately paid the contractor after the architect's issuance of a final certificate, such constituted a waiver of any delay claim and she was thus estopped from asserting the delay claim.

Accordingly, on July 11, 1893, Riverside's sole Superior Court Judge, Judge Noyes, rendered judgment for Mr. Hanlon for the sum of \$240, \$50 in attorney's fees, plus costs of suit. Mrs. Bettner's cross-complaint for delay damages was denied. Sixteen days later, July 27, 1893, the case was dismissed. We can only but conclude that Mrs. Bettner paid Mr. Hanlon and the case was closed.

So, the next time you visit the Heritage House, see if you can find the external stairs in question.

And the bonus case:

Civil No. 7: On May 19, 1883, Louise J. Johnson married Arthur J Selfridge. The marriage took place in San Diego. At the time, the city of San Diego had a population of approximately 2,700 people (and roughly 5,000 in the entire county). Both the Johnsons and Selfridges were blue blood New Englanders. Although the Selfridge family remained in New England the Johnsons had moved to Riverside prior to the creation of Riverside County.

Within a month of the marriage, the new Mr. and Mrs. Arthur Selfridge were in "Tia Juana, Mexico" where at Mr. Selfridge allegedly seized a pitcher of water and poured it over Louise's head, without cause or provocation. Louise was in "delicate health" and this caused her great distress. Later that same summer while in Oakland, California, Louise witnessed Arthur throw his mother upon a lounge, choking her, and inflicting grievous mental and physical injury. This too caused much grief to Louise who was still in delicate health.

In December of 1893, having returned to Maine to visit most of their respective families, Arthur quarreled with Louise's father, accusing Louise of being an "expensive luxury." Arthur told his father-in-law that for \$5,000 he would accept a divorce and go away. Apparently, Dad didn't take the offer. Remaining married, and in New England for the next six months, Arthur quarreled with every member of Louise's family all while being supported by Louise's father.

Sometime in the summer of 1884, Arthur demanded an allowance for three years while he would attend law school. Whether or not the allowance was provided is not known. What is known is that for the next decade Arthur

mostly left Louise, and their subsequent child, to fend for themselves living off the good graces of family and friends. Allegedly, when the couple's child was born in 1885, Arthur refused to provide the financial resources for Louise to have a nurse.

For all practical purposes, Arthur and Louise remained estranged, Arthur never paying for any of the necessities of life for Louise and their child, Mildred. Louise professed that if Arthur had any money he spent it on "harlots." During the decade Louise lived apart from Arthur, she resided with family and friends throughout the country in places such as New England and Utah, eventually returning to Riverside. In Riverside, Louise resided with her sister, Mrs. Wheelock (wife of Mr. Wheelock for whom Riverside community college Wheelock Field is named). After the required one-year jurisdictional waiting period in Riverside, Louise was ready to file for divorce.

Louise retained the local preeminent firm of Purington & Adair to file her case. By this time in 1893, the new County of Riverside was formally in existence and its Superior Court was up and running. The complaint for divorce contained the request "that the bands of matrimony between [the couple] be dissolved" and that custody of the minor child be awarded to Louise. Alimony was also requested.

After the service of the summons, and Arthur's failure to respond, a default judgment of divorce was granted with custody of Mildred being awarded to Louise. Alimony of \$75 a month was ordered. Whether Arthur ever paid a penny is not known.

Louise was not left for wanting. Louise was an accomplished pianist and taught music. Louise's father was listed, at one point, as a horticulturist in Riverside and later was the Mayor of Long Beach (from 1897 to 1900). Louise's father died in 1902 leaving a significant estate for Louise and her mother. In 1903, Louise married Frank Gray, who by all definitions would have been Louise's "step-grandfather" by way of her mother. At the time of the marriage to Frank, he was 69 (or 71, depending on which record one chooses to believe) and Louise was 47 (or 44, again depending on which record one reviews). Frank Gray died in 1911. He too left Louise a significant estate. Louise had more than enough assets to survive; she was able to afford to send Mildred abroad to Vienna, Austria, to learn voice for a desired musical career. (There is an interesting side story of Mildred having to escape war torn Austria at the outbreak of World War 1).

Louise and Mildred eventually moved to Santa Barbara becoming patrons of the arts. Louise passed this life quietly on January 31, 1944.

And that's our County's first five (seven) cases.

Chris Jensen, partner in the firm of Reynolds, Jensen, Swan & Pershing, is president of Dispute Resolution Service, Inc. Board of Directors and chair of the RCBA History Committee.



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A CELEBRATION OF THE LAW AND LAWYERS

by Presiding Justice Manuel A. Ramirez

As the Presiding Justice of the Fourth District Court of Appeal, Division 2, in Riverside, I come into contact with the men and women of our legal community – judges, prosecutors, public defenders, civil law and government lawyers and lawyers who work for public agencies – who work daily to enforce the laws and constitutions of our state and federal governments.

These dedicated and hard-working men and women work tirelessly to improve and promote our administration of justice system. I congratulate the men and women of our profession for their continued commitment and vigilance in protecting and promoting our system of laws throughout the United States.

We take for granted the principle that we should be governed by law rather than by rulers. Even the highest elected officials in our country are themselves limited by state and federal constitutions, which express our most precious and deeply held beliefs about representational democracy limited so as not to infringe on individual rights and liberty.

Implementation of government by law requires not only an informed and responsible citizenry, but also people who have the skills needed to create, administer and enforce the law. These individuals include many professions, ranging from law enforcement officers to legislators, but more prominently, lawyers. From elected and appointed executives to judges and governmental attorneys and private practitioners, it is the lawyers who carry the greatest responsibility for making the rule of law work. The blessings of liberty and order this nation enjoy are the result, in large part, to the administration of the rule of law by the great majority of this country's lawyers, who honestly, diligently, intelligently and compassionately practice their profession.

Here at the Court of Appeal, we have a number of very special lawyers who volunteer one hundred percent of their time and services as mediators in our Court's settlement conference program. More importantly, not only do they donate their time and services to our Court, but ultimately, to the taxpayers of this state as well.

When I was appointed by Gov. George Deukmejian in December 1990, as the Presiding Justice of this Court, I noted a record number of notices of appeal being filed in 1988, 1989, and 1990. In addition to this, there was a significant and increasing backlog of civil, criminal and

juvenile cases, some as old as five years, which were sitting on shelves waiting for an opinion to be written.

In February 1991, I approached Ken Glube and Kurt Seidler, who, at the time, were the presidents of the San Bernardino and Riverside County Bar Associations, respectively, and requested their input and assistance regarding the formulation and implementation of a volunteer attorney settlement conference program as a response to this Court's growing backlog problem. Thereafter, approximately 61 experienced and respected civil attorneys from San Bernardino and Riverside counties were selected to act as volunteer mediators.

The project commenced in June 1991, and settlement conferences were conducted in September, October, and November. During that time, each volunteer attorney mediator assigned to a case was matched according to his or her expertise with appeals that had settlement potential. Prior to the settlement conference, the volunteer mediators reviewed confidential Settlement Conference Information Forms and Settlement Conference Statements filed by the parties. In addition to preparation time, these individuals spent an average of four to eight hours attempting to reach a resolution in the matter.

Since its beginning, our all-volunteer attorney mediation program has grown considerably. Through the years, 155 attorneys have served our Court, along with a number of retired superior court judges and appellate court justices. Between 1991 and 2020, this Court has resolved and settled in excess of 1400 cases by way of volunteer attorney mediation, resulting in an astonishing settlement rate of close to 45 percent. When added to the hard work of the opinion writing Justices and Court attorneys, we join our state-wide colleagues as a most productive and efficient court of appeal in California.

When assessing the value and/or success of our Court's settlement conference program, one major element must be considered; that is, the savings it creates in both time and money. First, is the savings to the taxpayers of this state. When a case settles in our Court's settlement conference program, there is no need for an opinion to be written or the case to be heard at oral argument, thus saving the state money in the use of both court personnel and resources. Secondly, the program saves the litigants in settled cases the incalculable delay and additional costs of pursuing an appeal, which include the submission of briefs,

orally arguing the appeal; and in some cases, preparation of post-appeal petitions, which can result in further state/or federal review, and in further trial court proceedings when appeals result in reversals. Third, and equally important, is the savings when it comes to settlement amounts. As everyone is aware, reaching a settlement always results in the parties having to compromise; no one walks away with 100 percent of the desired amount. Amounts on both sides are often reduced in order to accomplish a complete and final resolution of the matter; again, thus resulting in a substantial monetary savings.

While it is difficult, if not impossible, to calculate a specific amount of savings that our settlement conference program has created over these many years, when the three elements stated above are combined, it would be reasonable to say that the savings is in the hundreds of millions of dollars. And to whom go the accolades for such an accomplishment – to our most dedicated and committed volunteer attorney mediators.

In continued recognition of our program, I want to acknowledge the encouragement and support of retired Associate Justice Thomas E. Hollenhorst and retired Managing Attorney Donald Davio for not only their assistance in implementing this program many years ago, but also for their continued help and involvement in sustaining it. Their impact on our settlement conference program continues to be realized even in their retirement. While their absence is keenly felt, our present Settlement Conference Administrator, Jacqueline Hoar, has continued to lead and administer the program with efficiency and professionalism, and I applaud her for her dedication and commitment to the program.

The volunteer attorney mediators, retired Superior Court judges and Appellate Court Justices, past and present, are to be acknowledged, saluted and congratulated for the vital role they have played in the success of this unique and innovative program. This program is the only appellate court mediation program in the State of California and perhaps, the entire country, that is not only one hundred percent volunteer attorney mediators, but which can celebrate a long-standing history of 30 years.

I am reminded of the words spoken during a July 1850 law lecture by then-lawyer Abraham Lincoln. In his lecture to a group of lawyers regarding their duties and responsibilities, as a profession, he said: “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

In the Inland Empire, we are fortunate to have volunteer attorney mediators dedicated to the ideal of the law and who duly work to “persuade neighbors to compromise,” so there will be no losers, only winners. For the past 30 years,

1991 to the present, our volunteer attorney mediators have served as “peacemakers” on behalf of the Court of Appeal and the citizens of this state. For that, I am sincerely grateful, and I applaud them for their efforts, participation and dedication.

In closing, with great respect and admiration, I acknowledge the following volunteer attorney mediators (both past and present). Sadly, many will be recognized posthumously. Ward Albert; Marlene Allen Murray; Robert Andersen; Richard Anderson; Donna Bader; Roland Bainer; Cari Baum; Steven Becker; Michael Bell; John Belton; Hon. Marvin Ross Bigelow; Hon. Andre Birotte; Caywood Borrer; David Bowker; John Boyd; Terry Bridges; Harry Brown; Don Brown; Raymond Brown; George Bruggeman, Jr.; William Brunick; Christian Buckley; Warren Camp; Leigh Chandler; Robert Chandler; Timothy Coates; Hon. Carol Codrington; Hon. Stephen Cunnison; Mary Ellen Daniels; Darryl Darden; Robert Deller; William DeWolfe; James Dilworth; Ben Eilenberg; Hon. Douglas Elwell; Lloyd Felter; Edward Fernandez; Hon. Richard T. Fields; Thomas Flaherty; Joyce Fleming; Michael Fortino; Victor Gables; Hon. Frank Gafkowsky, Jr.; Raymond Gail; Florentino Garza; Lawrence Gassner; Hon. Barton Gaut; Alfred Gerisch, Jr.; Debra Gervais; Kevin Gillespie; Elizabeth Shafrock Glasser; Howard Golds; Michael Goldware; Richard Granowitz; Donald Grant; Jordan Gray; Hollis Hartley; Donald Haslam; James O. Heiting; Ralph Hekman; Denah Hoard; Walter Hogan, Hon. Dallas Scott Holmes; J.E. Holmes III; Brian Holohan; Simon Housman; Hon. Thomas Hudspeth; Charles Hunt, Jr.; Thomas Jacobson; Muriel Johnson; Albert Johnson, Jr.; James Johnston; Carl Jordon; Barry Kaye; Hon. Jeffrey King; Hon. Kira Klatchko; Karl Knudson; Lara Krieger; Kary Kump; Rick Lantz; Cyrus Lemmon; Hon. Jean Leonard; Randolph Levin; Richard Lister; Christopher Lockwood; Elliott Luchs; Thomas Ludlow, Jr.; Hon. Cynthia Ludvigsen; Bruce MacLachlan; Donald Magdziasz; Larry Maloney; John Marshall; Ralph Martinez; Justin McCarthy; Robert McCarty, Sr.; Thomas McGrath; Dan McKinney; Thomas McPeters; Greg Middlebrook; Hon. Douglas Miller; Thomas Miller; Barbara Milliken; Christine Mirabel; Stephen Monson; David Moore; Bruce Morgan; Peter Mort; John Nolan; Vincent Nolan; Daniel Olson; Stanley Orrock; Andrew Patterson; Brian Percy; Ann Pelikan; Douglas Phillips; Donald Powell; Jude Powers; Padgett Price; Daniel Reed; D. Brian Reider; Hon. Duke Rouse; Hon. Stephan Saleson; Walter Scarborough; Charles Schoemaker, Jr.; Charles Schultz; Kurt Seidler; William Shapiro; Patricia Short; Hon. Elisabeth Sichel; Neal Singer; Ronald Skipper; Warren Small, Jr.; Ellen Stern; Robert Swortwood; Leighton Tegland; George Theios; James Tierney, III; Bruce Todd; William Ungerman; Brian Unitt; Lucien VanHulle; Scott Van Soye; C. L. Vineyard; Alexandra Ward; Hon. James Ward; Hon. Christopher Warner; Samuel Wasserson; Hon. Sharon Waters; Andrew Westover; Harvey Wimer; Lawrence Winking; Victor Wolf; and Ray Womack.

Presiding Justice Manuel A. Ramirez has served as the Presiding Justice of the Fourth District, Division Two, Court of Appeal, Riverside, since 1990.



OPPOSING COUNCIL: GABRIEL WHITE

by L. Alexandra Fong

A Career in the Courts

Although this profile appears under the heading “Opposing Counsel,” it is a bit of a misnomer this month. One of the great perks of Gabriel White’s position as a Senior Appellate Court Attorney at the Fourth District Court of Appeal, Division Two, in Riverside, is that he is somewhat removed from the adversarial process.

Gabe was born and raised in Los Angeles, specifically, Granada Hills, a suburb in the San Fernando Valley. After high school, inspired by a love of reading and writing, he headed east to Amherst College, a small liberal arts college in Massachusetts, with a vague intention of probably majoring in English. He was “distracted,” though, by a “fantastic” survey course on Russian literature, taught in English translation (Gabe had studied Spanish in high school and had no connection to Russian before then). He was inspired to take up the language, so that he could read those books in their original language, and he graduated in 1998 with a double major in Russian and Philosophy. Although he considered law school, he decided to pursue his interest in Russian literature further, in graduate school.

He returned to California for graduate school, attending the Slavic languages and literatures program at the University of California, Berkeley. The only other incoming graduate student in the program that year, Anne Dwyer, turned out to be his future wife. After he and Anne both received Master’s Degrees in 2000, they took a gap year and moved to Russia, where they lived and worked together in Tver, a provincial city located a couple of hours by train outside of Moscow on the way to St. Petersburg.

Gabe and Anne married in 2003. Anne ended up transferring to Berkeley’s comparative literature department, but she obtained her Ph.D. in 2007 and was hired at Pomona College, where she is now an associate professor in the German and Russian department and associate dean of the college. Gabe, however, decided life in academia was not for him, and in 2005 he left his Ph.D. program uncompleted, switching to law school at the University of California, Hastings College of the Law.

Gabe found his path within the law in the summer after his 1L year when, at the suggestion of a professor, he volunteered as an extern at the San Francisco Superior Court. Gabe worked for Judge Peter J. Busch, first on a civil calendar and then, after a change in Judge Busch’s assignment, in a law and motion department. Gabe loved externing; participating in the adversarial process as a neutral, helping the court come to the right decision, “just felt right.” A semester externing at the California Supreme Court for Justice Carlos R. Moreno and, after gradu-



Gabriel White

ating Hastings in 2008, a two-year clerkship for Judge Edward C. Reed, Jr., of the United States District Court for the District of Nevada (Reno), cemented for Gabe that working in a court was probably what he wanted to do.

After his clerkship, Gabe worked as a litigation associate for about three years, joining the San Francisco firm Howard Rice where he had been a summer associate after his 2L year, which in 2012 combined with the larger Arnold & Porter firm. Gabe’s practice included a variety of business litigation, but with a focus on attorney liability matters. Gabe describes his work for Howard Rice and Arnold & Porter as “an excellent job, with exciting work and brilliant

colleagues.” Ultimately, however, Gabe continued to feel that working for a court was a better long-term fit. Also, those reading closely may have noticed the geographical challenges presented by Gabe’s wife taking a professorship at Pomona College while Gabe finished law school in San Francisco, clerked in Reno, and worked as a litigation associate in San Francisco (and later, after the combination with Arnold & Porter, in downtown Los Angeles).

In 2013, Gabe had the opportunity to join the Court of Appeal in Riverside as an appellate court attorney, and he “jumped on it.” Although he was initially hired in a temporary position, within a short time he had moved into a permanent position in the chambers of Justice Thomas E. Hollenhorst. After Justice Hollenhorst retired, he wrote for Justice Carol D. Codrington until his current boss, Justice Michael J. Raphael, was appointed. As an appellate court attorney, Gabe assists the justice to whom he is assigned in resolving issues before the court and particularly in preparing tentative and final opinions. Though he enjoyed being a litigator, Gabe says that going to work for a court again “felt like coming home.” At about the same time, Gabe’s actual home life was also changing; shortly before he joined the court, his son was born. Gabe notes that “finally living in the same city as my wife again made that a bit easier.”

One of the very few downsides, in Gabe’s view, to his work at the Court of Appeal is that it does not naturally afford many opportunities to get to know others in the legal community that he has made his professional home. Gabe has tried to combat that isolation by being active in the Riverside County Bar Association; for the past several years he has served on the Bar Publications Committee. He also serves on the board of the Leo A. Deegan Inn of Court, this year as financial secretary.

In addition to his work behind the scenes at the Court of Appeal, Gabe has tried on a more public judicial-branch role. Prior to the pandemic, he spent most of his vacation

days volunteering as a temporary judge for the Riverside Superior Court, handling traffic and small claims matters, and he looks forward to getting back to that as the pro tem program starts up again. It is also no secret that he has applied for appointment as a Riverside Superior Court judge; some of our readers likely received the survey forms sent out by the JNE Commission when they vetted him. Gabe commented: "I am honored even just to be seriously considered, but the Governor has a lot of great lawyers to choose from. I would love the opportunity to serve the Riverside community in that role. But the worst thing that happens is I have to continue at the Court of Appeal, in a job that I love and working for a fantastic boss. There are worse fates."

Outside of work, Gabe describes himself as "an avid, though not particularly skilled, golfer who hasn't had a chance to golf much recently." He hopes to get back to that more as his son gets older and maybe shows an interest in joining him. He continues to read "constantly," though during the pandemic especially, he has focused on things a bit lighter than the Russian literature he used to study. He has found "big fat novels with dragons and/or spaceships are a better form of escapism for me than the average Netflix series." He spends a lot of time playing with his boy, now seven years old, and walking the family dog, a Giant Schnauzer he describes as "very sweet, but relentless unless exhausted."

L. Alexandra Fong is a deputy county counsel for the County of Riverside, practicing juvenile dependency in its Child Welfare Division. She is a member of the Bar Publications Committee and CLE Committee. She is co-chair of the Juvenile Law Section of RCBA. She is a past president of RCBA (president in 2017-2018) and the Leo A. Deegan Inn of Court (president in 2018-2019.)



MEMBERSHIP

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

Maryann Briseno – Raxter Law, Menifee

Donovan Fleming – Law Offices of Stacy Albelais, Riverside

Ashley Holm – Lawyer A-Go-Go APC, Palm Springs

Elle M. Reed – Bremer Whyte Brown & O'Meara, Newport Beach

Myles F. Ross – Law Student, Lake Elsinore

Mark E. Rubke – Law Offices of Mark E. Rubke, La Quinta

Robert M. Shaughnessy – Klinedinst PC, San Diego



CLASSIFIEDS

Searching for Donald O. Vogel's Attorney

Searching for Riverside County attorney who drafted estate planning documents for Donald O. Vogel, who resided in Pahrump, Nevada. Please contact Joshua M. Hood, Esq., of the law firm of Solomon Dwiggin & Freer, Ltd., at 702-853-5483 or jhood@sdfnlaw.com.

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.

For Sale

Professional office building, Magnolia Center in Riverside. Great location. 3,000 to 5,000 sq. ft. Contact Jeff Nauta, United Real Estate Group, (714) 612-0944 or unitedreg@hotmail.com.

Seeking Associate Attorney

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Criminal Attorney

AV rated Riverside criminal firm seeks attorney with criminal experience to handle felony, misdemeanor and traffic matters in Riverside and San Bernardino counties. Some jury trial experience is preferred. Spanish speaking is a plus. A competitive salary and benefits package are offered. Please email resume to socalawfirm@gmail.com.

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.





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