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MAGAZINE

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Fair Credit Reporting: It's Not
Just for Credit Bureaus

Identity Theft:
A Friend's First-Hand Account

Consumer Access to Justice
Through the Banning
Self-Help Center



The official publication of the Riverside County Bar Association

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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 its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

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, Annual Joint Barristers and Riverside Legal Secretaries 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.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

CALENDAR

MARCH

7 Joint RCBA/SBCBA Environmental Law Section

"Access to Regulated Facilities"

Speaker: Garry Brown, Esq.

San Bernardino – Noon

MCLE

8 Mock Trial Steering Committee

RCBA – Noon

10 RCBA General Membership Meeting

"From Mini-Skirts to Briefs"

Speaker: Virginia Blumenthal, Esq.

RCBA Bldg., 3rd Floor – Noon

MCLE

16 Joint Barristers/ABOTA Meeting

"Civility & Ethical Considerations of Trial Advocacy"

Speakers: John Evans, Esq.,

Terry Bridges, Esq.

Cask 'n Cleaver – 6:00 p.m.

MCLE (Ethics)

21 Family Law Section

"Qualified Domestic Relations Orders – Hear from the Expert"

Speaker: Richard Muir, Esq.

RCBA Bldg., 3rd Floor – Noon

MCLE

RCBA Board of Directors

RCBA – 5:00 p.m.

22 Estate Planning, Probate & Trust Law Section

RCBA Bldg., 3rd Floor – Noon

MCLE

23 Civil Litigation Section

RCBA Bldg., 3rd Floor – Noon

MCLE

31 Holiday – Cesar Chavez Day

APRIL

4 Environmental Law Section

RCBA Bldg., 3rd Floor – Noon

MCLE

5 Bar Publications Committee

RCBA – Noon





by Theresa Han Savage

I recently had lunch with new admittees and law students. During lunch, I was taken back to my own days as a law student and brand-new attorney. Like many of you, looking back at those years is not something I do often. They were difficult years. In law school, I would venture to say, most of us spent our time attending classes and study groups, outlining, reading, studying, etc. After graduating from law school, we had to study, again, for the bar exam. After that, our enthusiasm for starting our careers turned into sheer fear when we realized that we had never learned how to “practice” law in law school.

Let’s turn the clock back and try to remember being new to the profession. Remember being given work and having absolutely no idea how to accomplish the task? I still remember the blood rushing through my body, as I feared that I would never accomplish the task given to me. Fortunately for me, I worked for a firm that believed in training its associates (thank you, Ken and Ted Stream, for being so patient with me during my journey through the legal “learning curve”). Without the patient mentoring I received from Ken and Ted, I might have left the law, returned to graduate school and become a professor (something I pondered quite a bit during my first years of practice).

Aside from learning the ropes of practicing law, other challenges to a new lawyer involve adjusting to being “alone” for a great portion of the day and learning how to deal with opposing counsel.

Unless you practice at a large firm, new associates tend to be isolated. There is usually only one new associate at the firm; and this associate may be the only single attorney at the firm, or the only attorney without children. I was the latter. Hence, for the first time my life, I was

not surrounded by “friends,” or even among people with a common interest. Although you may think of this as being trivial, I remember feeling very alone and isolated. During my recent lunch with new attorneys, they also admitted to feeling this sense of isolation. As “older” attorneys, we should offer to assist new attorneys in their transition into our profession by asking new associates to have lunch and by encouraging them to join associations, such as Barristers, to meet other young attorneys.

I also remember feeling discouraged when I had to deal with opposing counsel who were . . . well, how should I phrase it, not so nice? Mean? Rude? Although law school taught me how to research and write, I was completely unprepared to deal with belligerent opposing counsel. Fortunately, both of my mentors at the firm always believed in me and taught me how to respond to the attacks opposing counsel made.

In sum, I would encourage all of you to take some time to interact with the new attorneys. Take them to lunch, ask them if they need help, mentor them – a little goes a long way.

An update: The RCBA has partnered with Pachappa Elementary School for a day of “reading and giving.” I am very excited about even the small difference we will be able to make in the lives of the students at the school. I am looking forward to your participation so we can make this day a success. We will let you know as soon as we know the date of this event.

Theresa Han Savage, president of the Riverside County Bar Association, is a research attorney at the Court of Appeal, Fourth Appellate District, Division Two.



BARRISTERS

By Robyn Beilin-Lewis, Barristers President

It is amazing that we are already coming upon the end of the first quarter of the year!

In February, we were joined by the formidable team of Chris Harmon of Harmon & Harmon and Chad Firetag of Grech & Firetag. Chris and Chad commented on what every civil litigator needs to know about criminal law. This also gave Barristers a chance to be joined by Barrister members of the criminal bar. We thank Chris and Chad for their thoughtful comments and hope to see them at upcoming Barristers meetings.

We are very excited to announce that Barristers will be joining members of the American Board of Trial Advocates (ABOTA) for a joint session with that organization on Thursday, March 16, 2006, at 6 p.m. at the Cask 'n Cleaver. Members of ABOTA will be presenting a panel discussion on "Civility and Ethical Considerations of Trial Advocacy." Please note that attendees will receive one hour of ethics credit for MCLE.

For those of you who are unfamiliar with ABOTA, its primary purpose is to ensure the preservation of the civil jury trial or "Justice by the People." Its goal is to display skill, civility, and integrity, to help younger attorneys achieve a higher level of trial advocacy and to educate the public about the vital importance of the Seventh Amendment. ABOTA is a very prestigious organization with stringent requirements for membership. Only lawyers with a minimum of at least 20 civil jury trials or 10 civil jury trials and 20 major felony criminal jury trials under their belt are even eligible for admission to this very prestigious organization. Thus, it is our honor to accept this exciting invitation for Barristers to hold a joint meeting with its prestigious members.

In light of that meeting, please note that Barristers' regularly scheduled March meeting, which was set for March 8, 2006, has been cancelled. We will resume our regular schedule in April, when we will be joined by Steve Anderson, a partner with Best Best & Krieger, who be leading a discussion on "Environmental Law."

For those of you unfamiliar with Barristers, it is an organization designed for newer attorneys in our legal community to have the opportunity to meet other

new attorneys and to sit in on MCLE lectures from esteemed members of our local judiciary and bar association, who give practice tips and pointers that are of special interest to less seasoned associates. We encourage all new attorneys to join us, no matter where you may practice – not just civil litigators, but also new deputy district attorneys, deputy public defenders, other criminal defense attorneys, and deputies from the City Attorney's office.

We also welcome any member of the Riverside County Bar Association, regardless of how long you have been in practice. At our meeting in February, Jim Manning of Reid & Hellyer joined us, and we were so pleased to have him add to our discussion.

If you would like more information regarding Barristers, you can contact me at (951) 686-8848 or at beilinro@yahoo.com.

Robyn Beilin-Lewis, President of Barristers and a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler.



FAIR CREDIT REPORTING: IT'S NOT JUST FOR CREDIT BUREAUS

by Robert Stempler

FCRA Pop Quiz: Which of the following lawyers must be familiar with the Fair Credit Reporting Act (FCRA)?

- A. Bankruptcy attorneys
- B. Family lawyers
- C. Business lawyers
- D. Accident and malpractice attorneys
- E. All of the above
- F. None of the above

Take your time, but if your insights led you to "E," please give yourself a low-carb energy drink buzz. If you guessed "F," perhaps you had debt collection attorneys (not listed) in mind. They and their creditor and debt-collector clients routinely navigate the FCRA's complex reporting aspects, and sometimes address consumers who dispute their right to obtain credit reports from credit reporting agencies in their collection efforts. Similarly, employment lawyers sometimes deal with sticky situations in which a credit report or an "investigative" form of credit report is obtained on a prospective or current employee. Employers, generally, should not obtain a credit report about a former employee, unless the employee is reapplying for employment. *Mone v. Dranow*, 945 F.2d 306 (9th Cir. 1991).

Some attorneys also may believe that the answer is "F," because Congress did not name attorneys as being governed by the FCRA, which (they mistakenly believe) names only the major credit reporting agencies. The FCRA, at 15 U.S.C. § 1681b(f), prohibits any "person" from using or obtaining a credit report for any purpose not specified in subsection (a). Thus, recipients (not just users) of credit reports are liable under the FCRA. *Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002).

If you answered "A," perhaps you had in mind the 2005 Bankruptcy Reform Act, effective for petitions filed on or after October 17, 2005. The new law does not change the fact that the consumer's credit report may refer to the consumer's bankruptcy petition for up to 10 years from the date the order granting relief was entered. 15 U.S.C. § 1681c(a)(1). Now, however, consumer attorneys certify, under penalty of sanctions, that all debts are accurately listed. Thus, if debtors were not providing one or more credit reports to their bankruptcy counsel before

October 2005, they are now. Interestingly, some of the latest bankruptcy software allows the preparer to download a debtor's outstanding accounts electronically from certain Internet-based credit reports.

If you thought of your friendly family lawyers and business litigators, perhaps you had heard some of the cases interpreting the FCRA, particularly 15 U.S.C. § 1681b, subsections (a) and (f), which prohibit any person from obtaining or using a credit report for any purpose not specified. For family law attorneys, that means if you really want the other spouse's credit report, just ask for it in discovery or ask the court to order it produced by subpoena from one of the bureaus. It takes about two minutes to put this into a production demand along with other desired documents, to avoid several months or years of protracted litigation in a lawsuit for violating the FCRA.

Having read an FCRA summary that mentioned an exception for "legitimate business need," business litigators may be tempted to use credit reports to humiliate opponents and witnesses. See 15 U.S.C. § 1681b(a)(3)(F). But this exception is narrowly construed and contains a further limitation (that the business need must either involve a business transaction initiated by the consumer or require review of an "account" to determine whether the consumer is in compliance with its terms). Please consider the experience of New York attorney Edwin S. Shapiro, who did not obtain the opposing plaintiff's credit report, but merely "submitted the credit report [to the Surrogate Court] in an alleged attempt to impugn plaintiff's credibility." A Supreme Court judge found Mr. Shapiro liable under the FCRA as a credit report "user," lacking any permissible purpose to file the credit report with the Surrogate Court, and that the litigation privilege did not apply. *Klapper v. Shapiro*, 154 Misc.2d 459, 586 N.Y.S.2d 846 (1992).

Plaintiff's trial lawyers sometimes view credit reports as a tool to help the injured client decide whether to settle. The rationale is: Why waste time and money litigating, if liability seems clear, but there are no assets beyond the defendant's insurance policy? Malpractice trial lawyer Laura J. McKinnon believed the dentist defendant was transferring assets to his two adult daughters, so she argued that the credit reports of all three persons were obtained for commercial or professional purposes and, alternatively, that she had a legitimate business need. In awarding \$500 in actual damages and \$5,000 in punitive

damages to each of the three plaintiffs, plus attorney fees and costs, for FCRA violations, the court said that “[d]etermining whether an adverse party in litigation will be able to satisfy a judgment is plainly a purpose unrelated to ‘an individual’s eligibility for credit, insurance or employment.’” *Bakker v. McKinnon*, 152 F.3d 1007 (8th Cir. 1998).

This article assumes that we can agree on the definition of a credit report (the FCRA actually refers to it as a “consumer report”). The FCRA defines credit report broadly. See *Bakker v. McKinnon*, *supra*, 152 F.3d at 1012. The definition covers “written, oral, or other communications of any information by a consumer reporting agency” about a consumer. It is worth restating that a credit report is not limited to a written document, as it may include credit information provided over the telephone, for example. A consumer report differs from the file that the consumer reporting agency has about a consumer. A consumer file is “all of the information recorded and retained by a consumer reporting agency regardless of how the information is stored.” 15 U.S.C. § 1681a(g).

It is also worthwhile, to review the information a credit report typically contains (much of which is inaccurate or has nothing to do with the particular consumer) and what is not included. It does not contain bank or investment account information, nor does it list other

assets. However, since it contains a list of installment loans, if car payments or home mortgage loans appear on a credit report, one can then search for the assets associated with such payments. Besides the consumer’s name, date of birth, and Social Security number, credit reports contain past and current address information, telephone numbers, and sometimes employer names and addresses. Credit reports also contain public record information, such as judgments and, sometimes, criminal convictions. After listing information about accounts reported by the creditor or debt collector, a credit report shows any inquiries by others for a transaction initiated by the consumer or by debt collection agencies. The consumer’s copy of the consumer report may also show other inquiries, such as those sent privately to the consumer, at their request.

Robert Stempler is the principal of Consumer and Tax Law Office of Robert Stempler, APLC. The Ontario-based practice emphasizes litigation in district court on behalf of consumers against debt collectors and credit reporting agencies. Mr. Stempler is honored to consult with members of the bar who represent consumers and may be reached at (909) 972-6841.



IDENTITY THEFT: A FRIEND'S FIRST-HAND ACCOUNT

by Bruce E. Todd

As my friend unfortunately discovered, identity theft has now surpassed both burglary and robbery combined as a crime on the national level. At least that's what he and his wife were told by a detective from a local law enforcement agency when they reported that they had been the victims of identity theft.

My friend (whose name I will not reveal for privacy reasons) first learned that he had been the victim of identity theft when he and his wife tried to refinance their home. The loan company told them that their credit report revealed numerous delinquent credit payments (particularly to companies with which they had not even done business). The report revealed as many as 20 bounced checks. There was even a small claims judgment that had been obtained against the wife several years earlier. The report revealed improper credit activity dating back for more than seven years.

By examining his credit report, he noticed that many of the entries included his wife's social security number but for a person who had a different middle initial than his wife (otherwise the name was the same as his wife's). There was even an address for this person that was just several blocks from his own home (which makes him wonder if the identity thief may have obtained his wife's social security number by going through their trash can).

My friend then reported the situation to his local police agency. He was told that the department had only two people who work on identity theft cases (even though this person also acknowledged that identity theft occurs more often nationally than burglary and robbery combined). He was told that he would

need to fill out separate incident reports for each instance of theft and then the local police agency would send the reports to the respective police agencies where the bad credit issue was being handled. For example, if a business that had received a bounced check was now using a collection agency that was based in Podunk, Montana, the incident report would be sent to the police department in Podunk for further investigation. The person at the local police agency acknowledged to my friend that it could be months before the matter actually got investigated (if at all) by the agency in Podunk (i.e., there might be more pressing matters in Podunk than my friend's out-of-state credit problem).

The local agency acknowledged to my friend that he might have better (and quicker) success by trying to handle the situation himself. Therefore, he took the lead by making numerous long-distance telephone calls and writing a voluminous amount of letters to try to straighten out his credit situation. He estimates that he spent more than 50 hours and several hundred dollars (on long-distance phone charges, etc.) in trying to clear his credit report. When dealing with the collection agencies, he felt that their attitude was that he "was guilty until proven innocent."

Besides the time and money he spent, my friend stated that "there is a great emotional cost." "How do you put a price on it?" He said that his wife felt "angry and violated."

To this day, he still has to explain his credit situation periodically if he is trying to take out a loan or apply for credit.

As aforementioned, my friend discovered that the identity theft had taken place at least seven years before he discovered it. In hindsight, he now wishes that he had checked on his credit at least once a year, because, once he became the victim of theft, he would not have

had to go back through so many years of bounced checks and bad credit issues to try to correct the situation. He now recommends that everyone check their credit report at least once a year. He also feels that local law enforcement agencies and society in general need to understand just how expansive identity theft has become. He says, "I believe that there has to be a cultural shift" for people to appreciate that identity theft has become a more common crime than burglary and robbery.

Here are some recommendations from the Federal Trade Commission:

- If your social security number has been stolen or your information has been misused, contact the three major credit card reporting agencies and ask them to watch your account for fraud. By filing this initial fraud alert, you may stop someone from opening up new accounts in your name. The numbers are:

Equifax: (800) 525-6285

Experian: (888) 397-3742

TransUnion: (800) 680-7289

You'll then get information about receiving a free copy of your credit report, which you should thoroughly review. You might also be able to obtain a free copy from www.annualcreditreport.com.

- If your ATM or debit card has been lost or stolen or if you notice unauthorized transactions, notify your bank at once. Discuss changing passwords or closing accounts. Have them monitor for possible fraud.

- If your credit card has been lost or stolen, notify the card issuer and, if necessary, close the account. You cannot be held responsible if the card is used after you have reported the loss. If it is used before you report the loss, the most you can be charged is \$50.

- If your driver's license or other government-issued identification has been lost or stolen, notify the appropriate government agency. Ask the agency to red-flag your file for people trying to get identification by using your name.

As my friend told me following his experience, "The thing that I learned through this is – if you think that this can't happen to you, then you are wrong."

Bruce E. Todd is with the firm of Ponsor & Associates in Redlands.



CONSUMER ACCESS TO JUSTICE THROUGH THE BANNING SELF-HELP CENTER

by Kathleen C. McCarthy and Peggy Irene Bray

In January 2006, the court rejected J.M.'s divorce judgment for the third time, leaving her in great frustration. After receiving the rejection notice, J.M. went to the local courthouse. She requested assistance from the court clerk, who directed her to the lower level of the courthouse.

Imagine you have never been to law school. Perhaps you never even finished high school. Imagine that you have never been inside a courtroom, but have only seen them on television shows. Now imagine that you need to go before the court and you cannot afford an attorney. The courts can be a confusing and scary place for self-represented litigants. Until recently, people who could not afford an attorney and who did not have access to legal aid had to navigate the court system by themselves. These self-represented litigants were more likely to fail in their pursuit of justice and therefore were effectively denied access to justice.

Since the overwhelming majority of people come into court without an attorney, there is a growing realization in the country's judicial system that there must be access provided to all court consumers, not solely those who can afford representation.

Legal Services organizations have been assisting self-represented litigants for many years through clinics in their offices; nevertheless, many people fell through the cracks and did not have access to the justice system. Reaching out to those self-represented litigants, the legal aid community, in partnership with the court system, has stepped forward by offering court-based self-help centers to prevent so many of them from slipping through the cracks. California is on the cutting edge of this movement.

California Chief Justice Ronald M. George leads the California legal community in its endeavor to provide equal access to justice. This mission began soon after he took office in 1996. He helped establish the equal access fund that grants seed money to new self-help programs throughout the state of California.



In May 2005, the Riverside County Superior Court in Banning, California joined the equal access to justice movement by establishing a court-based project for self-represented litigants in partnership with Inland Counties Legal Services.

"Pursuing justice and equality for low-income people through advocacy and community education, treating all with dignity and respect." This is the mission statement of Inland Counties Legal Services (ICLS). One of the various ways that ICLS seeks to fulfill this mission is through the relatively new pro se assistance center at the Banning court. On Wednesdays and Thursdays, from 9 a.m. to 4 p.m., an attorney from ICLS is available to court consumers to provide pro se civil legal assistance.

While following the court clerk's directions, J.M. saw the helpful sign in the staircase telling her how to get to the civil legal assistance center. On the lower level, a friendly attorney greeted J.M. and welcomed her to the self-help center. J.M. did not even have to wait for service.

The Banning Civil Project provides something to everyone who seeks our assistance. Some people need only a referral to either the Riverside County Lawyer Referral Service or another appropriate organization. The Project's assistance ranges from simple information

such as directions to the courtroom to more complex matters such as giving legal information and document preparation. For those who are from low-income families and are therefore qualified to receive our highest level of service, we will prepare legal documents.

J.M. qualified for this highest service since she is a low-income single mother raising a baby and a toddler.

The Banning Civil Project provides assistance in civil legal issues, including not only family law matters but also unlawful detainers, name changes, small claims, and any other civil legal issue that a self-represented litigant requests. As part of the Banning Civil Project, on Thursdays at 3 p.m., an ICLS attorney conducts a free workshop entitled "Going to Court Without a Lawyer." Topics discussed during the workshop include how trials work, dos and don'ts, and what to bring to court.

We do not provide assistance in criminal matters except by giving a referral to the appropriate resource. We do not provide legal advice. No attorney-client relationship is formed through our contact with consumers.

We specifically advise consumers that our service is available to the other party involved in their matter. We

give legal information while avoiding giving advice by explaining court processes and procedures and explaining how to bring a matter before the court. We give options but do not decide for people which action to bring or what relief to request from the court.

This service saved J.M. from yet another rejection of her divorce judgment by the court. She profusely thanked the attorney who properly prepared her judgment and marital settlement agreement/addendum to judgment on the computer and printed them out for her. Then J.M. went to file the freshly prepared documents, which the court accepted. J.M. walked out of the courthouse with her two young daughters by her side, a smile on her face and a thankful heart.

One more satisfied person who finally got access to the judicial system through a viable self-help center.

Kathleen C. McCarthy and Peggy Irene Bray are staff attorneys with Inland Counties Legal Services and are involved in self-help projects in partnership with the California Superior Courts.



JUDICIAL PROFILE: HON. DOUGLAS E. WEATHERS

by Robyn Beilin-Lewis

Photos courtesy of Robyn Beilin-Lewis

I wasn't sure what to expect when I walked through the doors of Department 62, the Honorable Douglas E. Weathers presiding.

When I first met Doug Weathers, I was a new associate with the Law Offices of Harlan B. Kistler. Maybe I had been in practice two years or so. I don't remember. I do remember that I had brought my law clerk to an arbitration before Doug while he was still a partner at Fisher, Weathers & Geeting in the building on Main Street. The arbitration turned into a mediation, and I thought that I knew what I was doing. I started negotiating and quickly realized that I had made a fatal error in the amount that I was demanding. I knew I had made a mistake and was mortified. Not just because my law clerk was with me, or because I didn't want to seem like I was a novice. But because I was in front of Doug Weathers, an attorney I had been hearing so much about.

During that mediation, I expected to be lambasted for my mistake or to lose all credibility with the mediator. Instead, I was greeted with empathy by Doug, who graciously spent some time with me discussing where I had made my mistake and gave me some suggestions on how to be more effective in the future.

From that day on, I was a big fan of Doug Weathers. I was fortunate enough to become friends with Doug, who often acted as a mentor to me. He was always there to answer a question, always willing to help me if I had a problem. And when the law clerk I took to that arbitration became my husband several years later, I was so honored that Doug and his wife Theresa could be there to help us celebrate at our wedding.

But as I walked through the doors of Department 62, I realized that I wasn't going in to interview my friend, Doug Weathers. I was going to interview Judge Douglas Weathers. And I have to say that I was a little nervous. Maybe it is just me, but there is something intimidating about talking to a person who wears a black robe and sits up on the bench. But I soon realized that Doug Weathers has maintained the same gentility, grace and wisdom as a judicial officer that I have grown to admire over the years that I have been privileged to know him.

Doug Weathers moved to Riverside in 1960 at the age of five after his father took a job as a Deputy Sheriff for the Riverside Sheriff's Office. During the 60s, Doug's father served as a bailiff in the Historic Courthouse. Although Doug didn't have any aspirations toward being an attorney at that young age, some of his fondest memories are of



Judge Douglas Weathers

him playing on the steps of the Historic Courthouse with his older brother, Bill. "My dad would go into the sheriff's office to do things and I remember that we would be romping around the front lawn of the courthouse." Doug fondly recalls that it was from the steps of that same courthouse that he saw President Lyndon B. Johnson during his visit to Riverside on October 28, 1964.

After graduating from La Sierra Academy, Doug entered UCR, then continued his undergraduate studies at Loma Linda University, La Sierra Campus in the mid-70s. In the meantime, his older brother had graduated from Western State University College of Law and sat for the California bar exam in 1977. "I followed my brother to law school," Doug explained. "I was very proud of his accomplishments." Doug enrolled in the accelerated J.D. program at that same institution and was admitted to the bar on December 16, 1980.

Doug's first job as an attorney came at the law firm of Rose, Klein & Marias, where he had been clerking during law school. After he was hired as an associate attorney in that firm's San Bernardino office, he focused on all aspects of personal injury and third-party cases. At that firm, he says, "I had the opportunity to get in and start trying cases, whereas it was unusual for civil lawyers to get that. I tried my first case



Judge Weathers and his wife Theresa; Terry and Bill Weathers

eight or nine months after passing the bar exam and had tried three cases in the first couple of years.”

“The first jury trial I ever saw, I was the lawyer,” Doug explained. That first trial involved a slip and fall case against the City of San Bernardino. “I went to the library and found a book published in 1965 called *The Anatomy of a Personal Injury Trial*. It was published by the American Bar Association.” Doug explained that he used that book to help him get through voir dire, opening statements, and examinations. The jury awarded Doug’s client over \$18,000. After that case, Doug admitted, “I read that book before the first five or six cases I tried. I thought it was a good omen to go back and re-read it.” Doug still has that book in his credenza at home today.

During a deposition at Thompson & Colegate, Doug’s life was changed forever. The court reporter at that deposition agreed to go out for lunch with him that day. From that day on, the two were inseparable, and the court reporter, Theresa, soon became Doug’s bride in 1983. “With her support, I was able to do something that I love, which was practice law, study hard, work hard and do the best I could to represent my clients.”

By 1984, Doug was ready to venture out on his own. Teaming with law school friend Mac Fisher, he founded the firm of Fisher & Weathers on February 1st of that year. By the end of 1984, Steve Geeting joined the partnership, which became Fisher, Weathers & Geeting. There, Doug focused on a general personal injury practice that included construction accidents, product and premises liability, medical malpractice, legal malpractice, governmental liability and motor vehicle accidents. The partnership later purchased a building on Main Street, just down the street from the Judicial Center. The irony is not lost on Doug that the view from his chambers at the Hall of Justice, where he now sits as a judge of the



Doug being sworn in by Judge E. Michael Kaiser

Riverside Superior Court, is of that very building, where he once spent so much time building his career.

Doug soon became known as a formidable force in the courtroom, renowned not only for his trial savvy but his professionalism as well. He became active in many organizations, such as Barristers, the Consumer Attorneys of California, the Los Angeles Trial Lawyers Association and the Riverside and San Bernardino County Bar Associations. He joined the American Inns of Court in 1995 as a member of the Leo A. Deegan Inn in Riverside. Doug served on the executive board of the Inn for several years before becoming its President in 2002. He also became involved in the American Board of Trial Advocates (ABOTA), an organization that has only 6,000 members nationwide and 1,600 members in California. Doug served as President of the San Bernardino/Riverside ABOTA chapter in 2005.

Along the way, Doug made treasured friendships, not only with his colleagues but with his opponents in the courtroom and the judges before whom he appeared. Noted criminal defense attorney and Doug’s longtime friend, Paul Grech, noted that he is “a lawyer’s lawyer” and that he is “the rare person that gets the joke of life.”

While Doug's career was soaring, his personal life provided him with his greatest accomplishments – the births of his son, Clayton, and his daughter, Emily. While we visited in his chambers for this interview, it was apparent to me that Judge Weathers had not yet had the opportunity to decorate his new office. The only personal items that I could see were pictures of his two children and his wife, which were proudly displayed by this obviously dotting dad and husband.

In 2003, the partnership of Fisher, Weathers & Geeting was dissolved and Doug joined the firm of Peach & Weathers. Tim Peach, who has been a friend of Doug's since childhood, had partnered with Doug's brother Bill, to take over the partnership of Hayton & Peach. Previously, that firm was a partnership between Tim Peach's father and the father of Terry Hayton, an attorney, who later became Bill's wife and Doug's sister-in-law. Peach & Weathers (or Peach & Weatherses, as Doug liked to call it), was a general personal injury practice with an emphasis on the representation of the severely injured. Doug noted that his time at Peach & Weathers was "a highlight of [his] legal career."

By 2005, it seemed like Doug Weathers had reached the pinnacle of success. He had a beautiful family, a thriving partnership, an esteemed reputation, and more friends than a man could ever hope for. Little did he realize that he would soon join the distinguished ranks of the bench later that year.

Doug admitted that he had "fleeting thoughts" about submitting an application for a judicial appointment in the past. However, it wasn't until he had a conversation with a friend who is a judge in San Bernardino that those thoughts became serious. Doug explained that he had picked the judge up for lunch on that day. After getting into Doug's car, the judge spent several minutes complaining about events that had transpired during his morning calendar. The judge suddenly stopped himself and apologized for his comments, as he quickly admitted that he had "the greatest job in the entire world" and "had no right to complain." His interest piqued, Doug was then encouraged by Jeff Raynes and another judge to seriously consider throwing his hat in the ring for a judicial appointment.

After an Inns of Court meeting one evening, Doug was further encouraged by David Bristow, Paul Grech, and Mike Donner to apply for a judicial appointment. After discussing it with his wife Theresa, who was very encouraging, Doug decided to submit an application, then waited to hear from the Governor's office.

In October 2005, Doug's appointment was confirmed. He was quickly assigned to the criminal division by Presiding Judge Sharon Waters, who, like Doug, had previously made the transition from civil attorney to the criminal trial bench.

The Honorable Douglas E. Weathers was enrobed in a ceremony at the Historic Courthouse in Department 1 on January 27, 2006. Attended by family, friends, and colleagues from both the bench and the bar, it was a very sentimental ceremony for everyone present.

During his enrobement ceremony, Doug commented, "I don't know if I will be a great judge. I don't know if I will even be a good judge. All I can promise is that I will be the best judge that I can be." Doug also explained that becoming a judge was "an honor that I greatly cherish and a responsibility that I do not take lightly."

There is no doubt that Doug is already proving that promise to be true. He has committed himself to learning everything that he can about being a criminal judge. In addition to the help of his judicial mentor, Judge Bernie Schwartz, he has availed himself of the help of all of the judges on the bench, as well as criminal law attorneys. Impressively, Doug has already presided over eight jury trials since he took the bench.

During his comments at Doug's enrobement ceremony, attorney Jeff Raynes noted that "years from now, when we look back on this day and the appointment of the Governor, Judge Weathers will be a leader of this community. A judicial leader among his peers, much like he has been a leader of our bar." Paul Grech added that Doug not only has "a great heart but [he] combines that with a great mind, and those are the makings of a great judge."

He has also taken quick control over his courtroom and provided some operating rules for his staff. "We are here to serve the public and the lawyers," he explained. "We are likely to be the first contact many of our citizens have with the court, and we want it to be favorable. The lawyers have a difficult job to perform and we will try to accommodate their needs to the extent we are able."

Doug's enthusiasm and obvious devotion to his new position leave little doubt that he will be just as well-respected and commanding while sitting on the bench as he was sitting behind the counsel table. As Jeff Raynes remarked, Doug "is a man of passion, a man of exuberance, and a man of love." Judge Weathers will certainly earn his place in the ranks of the distinguished judges that have come before him. And I am sure that you will agree that we are all the better for it.



OPPOSING COUNSEL: CHRISTOPHER B. HARMON

by Robyn Beilin-Lewis

Most practitioners in Riverside have heard of Steve Harmon. Even among those who do not practice criminal law, Steve's reputation as being a well-respected and dedicated criminal defense attorney precedes him.

But Steve is not the only Harmon in town. His son, Chris Harmon, who joined his father's practice in 1999, is sure to gain the same respect and recognition from his peers that his dad has enjoyed for over 30 years. But make no mistake about it. While he is Steve Harmon's son, Chris Harmon is his own man. And if you have ever been fortunate enough to spend some time with him, I am sure that you will agree with me that Chris is truly an impressive young attorney.

As Steve Harmon's son, though, Chris seemed destined to join his father and become a criminal defense attorney. "I always had it in the back of my head that [being a criminal defense attorney] was what I wanted to do." As a young boy, Chris would often go to work with his father and watch him in the courtroom. "When I was a kid growing up and would come down on the weekends to visit my dad, he would take me to court with him. It just seemed very exciting to me, watching your dad walking across the bar and addressing the court and addressing the jury because I would watch him in his trials." Chris also explained that it "seemed like [criminal defense attorneys] really did something meaningful."

And so the seeds were planted and Chris began to work towards his goal of becoming a criminal defense attorney. "As I got older, I think that it was a combination of wanting to do something important with your life and really wanting to work with my dad. To practice law with my father was something that I always wanted to do."

After graduating from high school, Chris enrolled as an undergraduate at the University of Southern California, where he focused on a major in American Studies. Upon his graduation from that institution in 1997, Chris went on to study law at the University of San



Christopher Harmon

Diego School of Law in San Diego, California, from which he graduated in 2000.

While a law student, Chris was awarded the prestigious Joseph P. Busch, Jr. Criminal Justice Award in 2000, which is bestowed upon a student who demonstrates excellence in the field of criminal justice. He also clerked for Federal Defenders, Inc., which is a private nonprofit corporation based in San Diego that represents indigent persons accused of federal criminal offenses. "Most of my time not in class, I was there."

During the summer before he graduated from law school, Chris served as a law clerk in his father's firm. Realizing his lifelong dream to one day practice law with his dad, Chris joined the firm, which became Harmon & Harmon. He was admitted to the California Bar in 2000 after having been sworn in in Department One of the Historic Courthouse by the Honorable Victor Miceli (now retired).

Since his admission to the State Bar, Chris has also been admitted to the bars of the U.S. District Court for the Central District of California as well as the U.S. Court of Appeals for the Ninth Circuit. He is a member of California Attorneys for Criminal Justice and the National Association of Criminal Defense Attorneys as well as the Riverside County Bar Association. In addition to being a member of the Leo A. Deegan Inn of Court, Chris also serves as a Judge Pro Tempore for the Riverside Superior Court, Civil Division.

The year 2000 was a monumental year for Chris. It was in the same year that he passed the bar exam and was admitted as an attorney that Chris met his future wife, Kim, while visiting some friends up in San Francisco for the USC vs. Stanford football game. After getting married in 2003, the couple welcomed their first daughter, Korinne, in August of 2005.

Since joining the firm of Harmon & Harmon, Chris has focused on the defense of criminal cases involving serious felonies and misdemeanors, including drunk driving, drug possession, white collar crimes, and sex crimes. His practice is comprised of both privately retained cases and court-appointed cases.

While Chris enjoys all of the trial work that he has had since joining Harmon & Harmon, he admits “it’s like you always have something hanging over your head. You can’t just go home and leave your stress at work. You are always thinking that there is more work to be done or that you can work harder. You feel guilty because you think, ‘I should be working harder because if I just did a little more investigation or research, I could find the defense or I could find the key to the case.’” He went on to explain that “somebody’s life is literally in your hands. There is a lot of stress to be meticulously prepared and organized. That’s the thrill of [of a criminal defense practice] but that is also the stress of it as well.”

Chris shared that one of the hardest things that he has learned about being an attorney is establishing credibility with the client. “We don’t make the decisions. As lawyers, we give options and we give advice. But we can’t make the decision because that is up to the client. That was one of the hardest things for me about learning to be a good lawyer.”

Of course, I had to ask Chris what it was like to be working with his father, who was such a legend in the legal community, and whether he was ever intimidated about living up to his dad’s reputation. While Chris acknowledges that many people may think that he has big shoes to fill, he does not see it that way. “I don’t want to live in his shadow but he is a tremendous lawyer and he is a tremendous person. There are a lot of great lawyers but he is a tremendous person and I think that is one of the things that have made him so successful. He truly is my role model, in life and in everything, how to be lawyer and how to be a person.”

He went on to explain that “as a son, it is a really exciting thing. You can hear that he is a good lawyer but it is a lot different when you can see that he is a good lawyer and you see how people respond to him. That’s a great thing to watch as a young lawyer . . . how he deals with judges, other lawyers, and how he deals with clients.”

What is most fascinating about Chris that may not be as well known as his legal prowess is his involvement in extreme sports. “In college, I got really into skydiving. I became a jump master, so I would teach people basic skydiving . . . and pack parachutes for money on the weekends.” In addition, Chris is a licensed pilot and loves to scuba dive.

In February of 2005, Chris and Chad Firetag of Grech & Firetag joined Barristers for our monthly meeting and led a discussion on “What Every Civil Lawyer Should Know About Criminal Law.” Their comments were very informative and once again reminded me of the reasons why Chris impressed me in the first place. His civility, professionalism, and criminal law savvy are sure to guide him into an impressive legal career and provide him with a reputation like his legendary father’s.

Please join Chris and the rest of Barristers for our next meeting. Please note that this meeting will not be on our regularly scheduled date, but instead will be on Thursday, March 16, 2006 at 6 p.m. We will be holding a joint session with members from the American Board of Trial Advocates, who will be giving a seminar on civility in our profession and trial advocacy, for which one hour of MCLE (Ethics) credit will be offered.



INDIGENT DEFENSE: RIVERSIDE STYLE

by Dorothy L. Honn

Approximately four years ago, the County of Riverside restructured the administration and delivery of indigent defense (hereafter ID) services for the county.

When you think of ID, you probably think of the Office of the Public Defender. The Riverside County Public Defender is the first and the largest provider of representation. What happens when the public defender declares a conflict?

There are a number of delivery systems utilized to provide ID, including representation when there is a conflict. Counties in California have used various models of delivery, including an alternative public defender's office, a second alternative public defender's office, a court-managed ID program, and delivery overseen by the bar association. Still others have contracts with individual attorneys and/or make direct appointments.

When does the public defender declare a conflict? The public defender will declare a conflict on cases where multiple codefendants, charged in the same case, are entitled to and eligible for court-appointed counsel; to deal with other situations, the public defender management reviews every incoming case to determine whether a conflict is mandated under state bar rules, statutory or case authority.

The County of Riverside utilizes four independent contractors at an annual cost of nearly eight million dollars, but also provides representation by court-appointed attorneys. The contracts cover all of the Riverside County courts: Riverside, Corona, Banning, the Southwest Justice Center, Hemet, Temecula, Indio and Blythe. How does the independent contractor system work? The county periodically puts out Requests For Proposals to contract. The reason the county puts out RFPs is that competitive bidding has a number of advantages, including providing a fresh look at what is going on and what we can do to improve it and making sure we are getting the best service available at a reasonable cost. It also insures that no one gets preferential treatment.

The county contracts with attorneys who provide representation through subcontracting attorneys. The contracting attorneys are independent contractors



Juvenile Defense Panel – Michael Burns and Robert Oblachinski

responsible for providing attorneys who are qualified for particular matters; they are also responsible for and oversee the use of public funds to pay experts, investigators and other necessary expenses. Contracting attorneys report to the county on a monthly basis, and the county requires an outside audit of their expenses every year. The county meets regularly with the contracting attorneys to discuss issues, problems, etc.

The public defender and the contracting attorneys strive to make the system run smoothly for the court. The fact that things have run as smoothly as they have in the face of our judicial crisis has been due in large part to the efforts of our courts, particularly the Presiding Judge, and the cooperation of the DA, PD, and ID Contractors.

Criminal Defense Lawyers (CDL) currently represents defendants in Riverside and in Mid-County. Barbara Brand has a contract for the Desert that includes representation of indigent clients in certain Probate and Welfare and Institution Code cases, criminal cases and juvenile 602s. Barbara Brand also represents minors/parents in Welfare and Institution Code section 300 cases for the Riverside County Superior Court. Sam Vanderbrug has a contract for Mid-County, and the Juvenile Defense Panel (JDP) has a contract for juvenile 602 cases in Riverside and Southwest, as well as a contract with the Riverside Superior Court to handle the Welfare and Institution Code section 300 cases. Presently, in Riverside, the Court appoints attorneys in certain Probate Code and Welfare and Institution Code



"We are proud to provide the highest quality representation for the citizens of Riverside County." – Barbara Brand

section 5000 cases, as well as misdemeanor appeals and certain writs.

In 2005, the Riverside County Public Defender was appointed to and maintained approximately 35,403 new case filings (felony, misdemeanor and juvenile). For that same period of time, the ID contractors were appointed on approximately 7,576 new case filings.

When the county restructured the ID system, priority consideration was given to performance management. This meant that we wanted a quality program in which each client's needs were being well met; we wanted contractors who worked well with the other county departments and the courts and who recognized that there are advantages for their clients by participating within the system. Performance management includes but is not limited to monitoring caseloads, providing effective assistance, participating in MCLE classes and other training programs focusing on criminal law, criminal procedure



Steve Harmon and Paul Grech



Sam Vanderbrug

and trial advocacy, observing attorney performance, etc. The public defender and criminal defense lawyers offer training programs and educational opportunities that are available to both deputy public defenders and to ID subcontractors. The public defender and the ID contractors encourage attorneys handling death penalty cases to attend the *California Death Penalty Conference* in Monterey or the week-long *Death Penalty College* at Santa Clara University. The attorneys who specialize in the juvenile 602 cases attend specialized training such as the *Juvenile Delinquency and Dependency Update* and *Beyond the Bench*.

Over the past several years, the court and the county have worked together closely to establish an efficient delivery system. While the public defender is the main provider, the county has gone to great lengths to insure that we also have quality conflict representation while always being aware that we are dealing with public funds. "The contracts offer a cost-effective alternative when the public defender has a conflict, as well as providing the kind of quality legal representation that is the linchpin of the justice system. Recent changes have helped us manage fluctuating caseloads better and have improved contract oversight, which gives us the best value for each taxpayer dollar we spend," commented the Chairman of the Riverside County Board of Supervisors, Bob Buster.

Presently, the county is seeking Requests For Proposals from attorneys who may be interested in contracting with the county for some portion of ID representation. The last day to submit such a bid is April 10, 2006. Information is available at the county's website, www.co.riverside.ca.us, under the Purchasing Department, or directly from



"The erosion of the rights of one is the erosion of the rights of all." Gary Windom, Riverside County Public Defender

(left to right) Jorge A. Alvarado, Assistant Public Defender; Gary Windom, Public Defender; Cozette Palmer, Executive Assistant; Helen Hyder, Administrative Manager; and Assistant Public Defenders, Bryant Villagran and Robert Willey

the Purchasing Department at 2980 Washington St., Riverside, CA, (951) 955-4937.

Dorothy Horn is a Deputy County Counsel with the Office of the Riverside County Counsel.



BAR BRIEFS

Supporting Pre-Law Students at UCR

Riverside lawyers and judges have organized themselves to provide support to pre-law students at the University of California, Riverside. Under the organizational title of the "UCR Pre-Law Advisory Committee," this ad hoc group seeks to engage the legal community in supporting the Political Science Department's pre-law education focus at UCR.

Lawyers and judges can support the UCR students who are interested in pursuing the law as a career in a number of ways, including the following:

- Teaching. There are opportunities to bring the experiences and knowledge of lawyers and judges into the classroom at UCR. Practitioners can enrich the educational experience significantly.

- Internships and Employment. Students contemplating a career in the law can benefit tremendously from a "real world" exposure to the actual practice of law. Bright and energetic pre-law students can also add value to a firm's practice.

- Career Advisors/Mentors. Many students do not have easy access to the kind of career advice that only experienced lawyers can provide. How difficult would it be to share a cup of coffee with a student who is thinking about law school and to offer advice on law school and law as a career?

If you would like to become involved in this program, then contact: Robyn Beilin-Lewis, Barristers President, at (951) 686-8848; Professor John Cioffi, UCR Political Science Department, at (951) 827-7269; or Judge Roger Luebs, at (951) 955-1485.



CLASSIFIED ADS

Attorney

Established Corona firm seeks Civil Litigation (Business) Attorney with minimum 5 years experience. Please fax resume/salary history to: 951-734-8832 or email sherri@coronalaw.com.

Paralegal – Part Time

Part time paralegal needed for growing business, real estate and civil litigation practice. Experience preferred. Strong organizational skills required. Flexible schedule. Please fax or email resume to: John Vineyard, (fax) 951-774-1970 (email) jvineyard@vineyardlaw.com

Immediate Opening – Pro Se Staff Attorney

United States District Court, Central District of California – The Pro Se Staff Attorney will work under the supervision of one or more U.S. Magistrate Judges on pro se habeas corpus, civil rights actions and Social Security cases. At the present, the Court anticipates that the applicant will work primarily in conjunction with cases assigned to the Eastern Division of the Court and would be assigned a duty station at the federal courthouse in Riverside. Qualifications: Strong academic credentials from an ABA-accredited law school, polished writing skills, and superior analytical ability. Bar membership and litigation experience preferred. Salary range: \$56,896 to \$124,572 plus benefits. Please submit resume, writing sample and, if out of law school for less than two years, a law school transcript.

For more information, visit the Court's Web site at www.cacd.uscourts.gov. Refer to Job Announcement No. 06-10.

Conference Rooms Available

Conference rooms, small offices and the third floor 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 Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2006.

Carol D. Codrington

Law Offices of Carol D. Codrington, Lake Elsinore

Cathleen Collinworth (A)

Forensic Accounting, Menifee

Ziad Elrawashdeh

Sole Practitioner, Diamond Bar

Michael D. Shafer

Shafer & Shafer Inc., Norco

Jerry D. Underwood

Law Offices of Jerry D. Underwood, Anaheim Hills

Renewal:

Dr. Donna L. Carson

Court of Appeal, Riverside

Linda Murphy

Sole Practitioner, Banning

(A) Designates Affiliate Member

