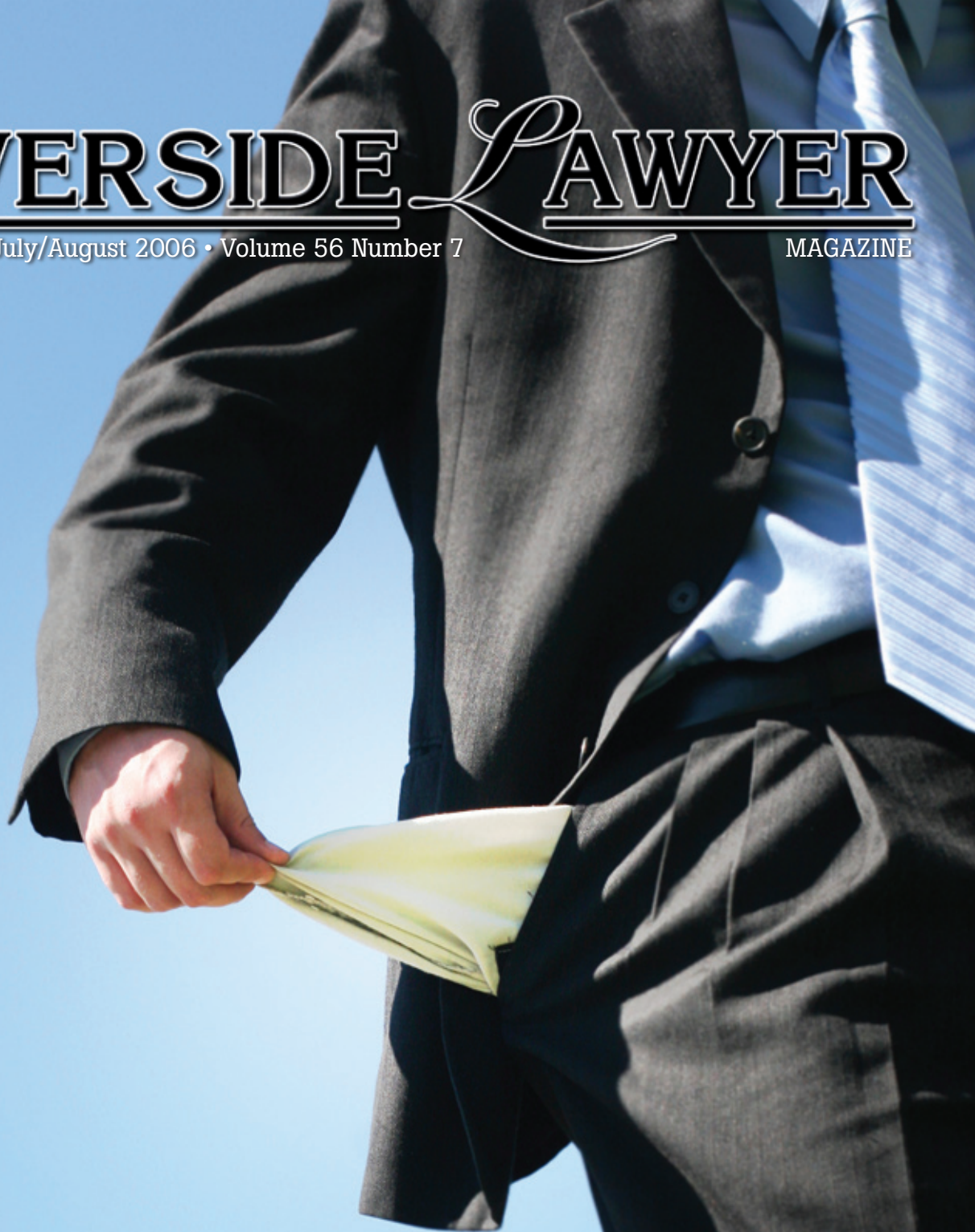


# RIVERSIDE LAWYER

July/August 2006 • Volume 56 Number 7

MAGAZINE



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C.A.R.E. Program

Are Your Clients Still Eligible to  
File Bankruptcy?

Should I File for Bankruptcy?

Interview with Chapter 13  
Trustee Rod Danielson



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 6<sup>th</sup> 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

## AUGUST

- 8 **Inland Empire Bankruptcy Forum**  
"Bankruptcy Crimes"  
Riverside Golf Club – 5:45 p.m.
- 9 Bar Publications Committee  
RCBA – Noon
- 16 **LRS Committee**  
RCBA – Noon
- 17 **Southwest Riv. Co. Bar Association**  
**Special Luncheon**  
Guest Speaker: Kenneth W. Starr  
12:00 – 1:30 p.m.  
At Bear Creek Golf Club, Murrieta  
(MCLE)
- 23 **DRS Board of Directors**  
RCBA – Noon

## SEPTEMBER

- 4 **Court Holiday (Labor Day)**
- 6 **Bar Publications Committee**  
RCBA – Noon
- 11 **CLE Committee**  
RCBA – Noon
- 12 **Joint RCBA/SBCBA Landlord/  
Tenant Law Section**  
RCBA 3rd Floor – Noon  
(MCLE)
- 13 **Mock Trial Steering Committee**  
RCBA – Noon
- 19 **Family Law Section**  
RCBA 3rd Floor – Noon  
(MCLE)
- 21 **Business Law Section**  
RCBA 3rd Floor – Noon  
(MCLE)
- 28 **Annual Installation Dinner**  
Mission Inn – 5:30 p.m.





by Theresa Han Savage

I am *relieved* and sad that this will be the last column I will be writing as president of the RCBA. I feel relieved, because I no longer have to meet the monthly deadline for submitting my article. I also feel a bit melancholy, because my term is coming to an end. I cannot believe how fast the past year has gone for me.

Since I was sworn in as president, the RCBA has had some exciting events. We saw our past-president, Jim Heiting, get sworn in as president of the State Bar of California, and sponsored a reception in his honor at the Mission Inn. Thereafter, we wished Justice James Ward well when he retired from the Court of Appeal. In December, our “Elves” program proved to be a success, again, which allowed many families to enjoy the holiday season. Earlier this year, the Mock Trial Program went into full gear, with the help of our local judicial officers and volunteer attorneys. More recently, we saw Judge Larson get sworn in as a federal district court judge, and we co-hosted a reception in his honor. A week after Judge Larson’s induction ceremony, we read to students at Pachappa Elementary School (more on this event later in the article). Lastly, we look forward to celebrating Justice Gabbert’s 97th birthday on July 28. In addition to these events, our monthly meetings have been interesting and well-attended, thanks to all of our speakers – Judge Sharon Waters, Jim Heiting, Charles Doskow, Professor John Cioffi, Judge Virginia Phillips, Virginia Blumenthal, Justice James Ward, and Professor Erwin Chemerinsky. I want to thank you, our members, for support-

ing the Bar Association. None of our special events or our meetings would have been a success without your support.

When I took office last September, one of my goals was to implement a public service project that would benefit our community and, at the same time, improve the image of attorneys. One way to achieve this goal was to adopt a school for a day of reading and giving. We adopted Pachappa Elementary School, and read to the students there on June 9. The students and teachers truly appreciated the attorneys who came to read. We were also able to present the school with donated books, plus a \$1,175 Borders gift card (Borders agreed to give the school a 25% discount), purchased with monetary donations made by our members, to obtain books for the school’s library. I want to thank those who came to read and/or who donated books and money for this program: Vicki Broach, Jackie Carey-Wilson, Patricia Cisneros, Daniel Greenberg, Gresham Savage Nolan & Tilden, Dan Hantman, Jo Larick, Richard Pershing, Judith Runyon, Phil Savage, Thompson & Colegate, Lisa Todd, Brian C. Unitt, and Jennifer Urquizu. Although there were no judges or “bigwigs” to impress by volunteering for this day, the volunteer attorneys gave up a morning to make a difference in our community. Thank you! I hope to see more of you at next year’s day of reading; you will be rewarded with the students’ smiles!

During this past year, we have also lost members of our community. May Judge John Barnard, Ann Davis Peters, Don Powell, Louise Biddle and Judge Bill Sullivan rest in peace. They will be missed.

*(continued on next page)*

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**President's Message** *(continued from previous page)*

As my term comes to an end, I want to thank my board – Michelle Ouellette, David Bristow, Dan Hantman, Aurora Hughes, Janet Nakada, Harry Histen, John Brown, Dan Katz, Harlan Kistler and Robyn Lewis – for their hard work and support. And I want to congratulate our new board for the year 2006-2007 – David Bristow, Dan Hantman, Aurora Hughes, Harry Histen, Harlan Kistler, Dan Katz, Robyn Lewis, and Richard Kennedy. I am sure that, under David's leadership, the Bar Association will continue to prosper financially, offer assistance to our members, and "do good" in our community.

I also want to thank the Bar Association staff – especially Charlotte Butt, Lisa Yang and Sue Burns – for their tremendous work during my year; the members of the Publications Committee – especially the editors, Jackie Carey-Wilson and Mike Bazzo – for doing a fabulous job for publishing our monthly magazines; and the chairs of our committees and sections for putting on quality programming for our members. Thank you for all the work you do on behalf of the Bar Association!

Furthermore, I want to take this opportunity for some personal thank-yous: to my friends – especially Patricia Cisneros, Jackie Carey-Wilson, Irena Leigh Norton and Lisa Visingardi – for their friendship and support; to my parents and my sister, for helping out when I had to be at evening and weekend functions; to Justice Ward, for encouraging and supporting my involvement in the Bar Association, since I started working for him in 1999 until his recent retirement; to the justices and attorneys at the Court of Appeal, for their support; to my children – Andrew, Katie & James – for giving up "mommy" time so I could

serve the Bar Association; and mostly, to my husband, Phil, for his constant support, understanding, and love. I have had a wonderful year. Thank you all for allowing me the privilege of serving as your president.

Have a wonderful summer! I hope to see you at our installation dinner on Thursday, September 28 at the Mission Inn.

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



*by Robyn A. Lewis, Barristers President*

**T**he time has finally come for me to say goodbye to this column, as I have now completed my term as Barristers president.

I must first thank John Higginbotham, Chad Boylston, and Chris Peterson, the other members of the Barristers Executive Board, for a wonderful year. They were a pleasure to work with, and I am sure that they will have a fantastic year next year.

I am pleased to announce the Barristers Executive Board for 2006-2007:

John Higginbotham, President  
Chad Boylston, Vice-President  
Chris Peterson, Treasurer  
Matthew Benov, Secretary  
Jerry Yang, Member at Large

Since this is the last time that I get to do this, I can't resist picking up the Barristers pompoms one more time. I would urge all attorneys new to the practice of law and to our Riverside legal community to join Barristers and to attend Barristers' monthly meetings.

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.

In June, we had the honor of hosting Bill Shapiro, a well-known and respected

trial attorney from San Bernardino, who shared his thoughts about trial techniques and advocacy. Mr. Shapiro, who is a member of the American Board of Trial Advocates, held us captive with stories of his trial experiences and the lessons that he had learned. Thank you to him for taking time from his busy schedule and joining us. We'd also like to thank Mark Easter of Best Best & Krieger and Andrew Roth of Roth & Roth for joining us as well.

Please note that there will be no meetings during the months of July, August and September; the next Barristers meeting will be in October. Barristers meetings are always held on the second Wednesday of the month at the Cask 'n Cleaver on University Avenue in downtown Riverside.

If you have any questions regarding Barristers, please contact Charlotte Butt of the Riverside County Bar Association at (951) 682-1015 or John Higginbotham of Best, Best & Krieger at (951) 686-1450.

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

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# LITIGATION UPDATE

by Mark A. Mellor

## ***Class action settlement may provide for donations to charities.***

After the trial court approved a billion-dollar settlement in consolidated class actions, including a provision that a portion of the settlement funds would be devoted to charitable purposes, a member of the class objected, contending that Code of Civil Procedure section 384, which refers only to amounts “payable to all class members,” precluded the payment to charities. The Court of Appeal affirmed the trial court’s overruling of the objection. The court held that under the doctrine of *cy pres*, such a distribution was authorized even if some members of the class could not participate in the distribution of the settlement funds. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706 [37 Cal.Rptr.3d 660, 2006 DJDAR 331] [First Dist., Div. One].)

***Where nonmembers of the tribe file claims in a tribal court, it gains jurisdiction over them.*** Tribal courts lack jurisdiction over persons who are not members of the tribe. (See *Montana v. United States* (1981) 450 U.S. 544 [101 S.Ct. 1245, 67 L.Ed.2d 493].) But where a nonmember defended an action in a tribal court, without objection to the court’s jurisdiction, and filed a cross-claim in that court, he waived the jurisdictional objection. (*Smith v. Salish Kootenai College* (9th Cir. 2006) 434 F.3d 1127 [2006 DJDAR 342].)

## ***The right to attorney fees belongs to the client, not the lawyer.***

The Ninth Circuit ruled that a lawyer does not have a right to seek attorney fees after the client has waived them. Only after a prevailing party exercises his or her right to receive attorney fees does the attorney’s right to collect them vest. (*Pony v. County of Los Angeles* (9th Cir. 2006) 433 F.3d 1138 [2006 DJDAR 400].)

## ***The stream of anti-SLAPP motion cases continues.***

Code of Civil Procedure section 425.16 continues to dominate reported appellate cases dealing with civil procedure. The statute creates a “special motion to strike” (also known as an anti-SLAPP motion) in cases where defendants are sued based on activities protected by the First Amendment. (This is very much a shorthand version of the statute and, if you are not familiar with the procedure, you should check out Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2006) ¶¶ 7:207 et seq.)

In *Premier Medical Management Systems, Inc. v. California Insurance Guarantee Assn.* (2006) 136 Cal.App.4th 464 [39 Cal.Rptr.3d 43, 2006 DJDAR 1531] [Second Dist., Div. Four], the appellate court reversed an order denying an anti-SLAPP motion. Defendants had filed certain petitions before the Workers’ Compensation Appeals Board involving disputed claims for medical services. Plaintiff sued, alleging abuse of process and anti-competitive activity. The court held that the petitions constituted activities protected under the statute and that plaintiff could not make out a prima facie case; hence, defendants’ activities were entitled to immunity and the trial court erred in denying the motion.

The court also noted that, unlike on a demurrer, on an anti-SLAPP motion, the standard is akin to that for summary judgment, and plaintiff is not permitted to amend the complaint in an attempt to plead around the statute.

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***A defendant who succeeded in an anti-SLAPP motion that disposed of only one out of many causes of action was not entitled to attorney fees.*** The anti-SLAPP statute (Code Civ. Proc., § 425.16) provides that a defendant who is successful in obtaining an order to strike under the statute is entitled to attorney fees. But where defendant was only successful in having a single cause of action out of many stricken, the Court of Appeal agreed with the trial court that an award of attorney fees was not required because defendant could not “in any realistic sense” be said to have prevailed. (*Endres v. Moran* (2006) 135 Cal.App.4th 952 [37 Cal.Rptr.3d 786, 2006 DJDAR 739] [Second Dist., Div. Five].)

***Whether new SLAPP-back statute applies to pending cases is before the Supreme Court.*** Code of Civil Procedure section 425.18 places limitations on so-called SLAPP-back motions (i.e., anti-SLAPP motions filed against a cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that was dismissed under the anti-SLAPP statute.) The issue of whether the provisions of the newly enacted statute apply to pending cases is presently before the California Supreme Court in *Soukup v. Stock* (Case No. S126864), which was argued on May 31.

***Where defendant fails to obtain a hearing within 30 days on an anti-SLAPP motion, it must show the court’s docket required a later hearing.*** The anti-SLAPP statute (Code Civ. Proc., § 425.16) requires that the motion be noticed for hearing within 30 days and that the clerk must schedule the hearing within the same time period, “unless the docket conditions of the court require a later hearing.” The burden is on the moving party to establish that the latter condition existed where the motion is heard beyond the 30-day period. (*Barak v. Quisenberry Law Firm* (2006) 135 Cal.App.4th 654 [37 Cal.Rptr.3d 688, 2006 DJDAR 392] [Second Dist., Div. Four].)

**Note:** When confronted with this situation, be sure to make a record of the reason for the delay in the trial court so that this becomes part of the record on appeal. We suggest that such a record may consist of a

statement made in open court (if reflected in the reporter’s transcript), an entry in a minute order, or a declaration, all showing that moving party made an effort to have the matter heard within 30 days and that the court’s docket did not permit this.

***Ugly wireless antennas coming to your neighborhood.*** In *Sprint PCS Assets, L.L.C. v. City of La Cañada Flintridge* (9th Cir. 2006) 435 F.3d 993 [2006 DJDAR 637], the Ninth Circuit held that the Telecommunications Act of 1996 (to be found, according to the court, “in scattered sections of 15, 18, & 47 U.S.C.”) limits the power of cities to withhold permits for the installation of wireless antennas. Specifically, a city may not deny such a permit based on aesthetic considerations. Thus, if you love artificial palm trees sprouting old-fashioned rooftop antennas, expect to see more of them. And those of you who lack the aesthetic appreciation for such modern totems, you too may nevertheless expect to see more of them.

***Which class action waivers are enforceable is before the Supreme Court.*** In *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148 [30 Cal.Rptr.3d 76], our Supreme Court held a class-action waiver in an arbitration clause was unenforceable because the contract was procedurally and substantively unconscionable. But that decision was based on a finding that the contract containing the clause waiving the right to a class action was a consumer contract of adhesion. Where plaintiff was given 30 days to opt out of such a contract in an employment case, the Court of Appeal held that the contract was not one of adhesion and therefore the class-action waiver should be enforced. (*Gentry v. Superior Court* (2006) 135 Cal.App.4th 944 [37 Cal.Rptr.3d 790, 2006 DJDAR 737] [Second Dist., Div. Five].)



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And in another case, a credit-card holder was given an option to decline an amendment to the credit agreement waiving class actions. If she exercised this option, her credit card would remain in effect until it expired and the existing payment terms would likewise stay in effect. Under these circumstances, the court held, with a dissenting opinion, the amendment was not procedurally unconscionable and therefore could be enforced. (*Jones v. Citigroup, Inc.* (2006) 135 Cal.App.4th 1491 [38 Cal.Rptr.3d 461, 2006 DJDAR 1131] [Fourth Dist., Div. Three].)

On April 26, 2006, the California Supreme Court granted review in both cases. (Case No. S141502 [*Gentry*]; Case No. S141753 [*Jones*].)

**Beware of “metadata” embedded in your email.** A recent ABA publication warns that deleted matter may be accessible to the recipients of email. It defines “metadata” as “data embedded in an electronic document that is not readily visible or available to the reader.” The publication warns that “using appropriate software, a recipient of the emailed document can recover this data, information the sending lawyers thought they had deleted.”

**Another win for the baby boomers.** A San Diego theater company producing a musical called “Boomers” offered reduced-price tickets to members of the baby-boom generation. Plaintiffs were either too old or too young to qualify as “baby boomers” and were denied the discount. They sued, claiming a violation of the Unruh Civil Rights Act (Civ. Code, § 51) and the unfair competition law (Bus. & Prof. Code, § 17200 et seq.). The trial court sustained defendant’s demurrer without leave to amend. The Court of Appeal affirmed, holding that the age-based discrimination was reasonable under these facts. (*Pizarro v. Lamb’s Players Theatre* (2006) 135 Cal.App.4th 1171 [37 Cal.Rptr.3d 859, 2006 DJDAR 927] [Fourth Dist., Div. One].)

**Don’t throw snowballs while snowboarding.** Under the doctrine of primary assumption of risk, participants in a sport do not owe a duty of care to others engaged in the sport if the risk created is inherent to the sport. In *Mammoth Mountain Ski Area v. Graham* (2006) 135 Cal. App.4th 1367 [38 Cal.Rptr.3d 422, 2006 DJDAR 1085] [Third Dist.], the trial court applied the doctrine to grant summary judgment to a defendant who, while simultaneously snowboarding and engaging in a snowball fight, slammed into plaintiff. The Court of Appeal reversed. The doctrine does not apply where the participant in the sport intentionally injures another or where the conduct is so reckless as to be totally outside the range of ordinary activity involved in the sport. Here, there was

a triable issue of fact as to whether the snowballing snowboarder acted recklessly.

**Defrocked lawyer is not a “layperson” authorized to represent clients in administrative proceedings.** Benninghoff resigned from the State Bar with disciplinary charges pending. Thereafter, he represented professional licensees in administrative hearings. The State Bar, contending that he was engaged in the unauthorized practice of law, successfully petitioned the Orange County Superior Court to assume jurisdiction over his practice. Benninghoff sought writ review in the Court of Appeal, contending that laypersons may represent others in administrative proceedings. The Court of Appeal denied the writ. Without deciding whether or to what extent such representation by laypersons is permitted, the court concluded that Benninghoff did not qualify. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61 [38 Cal.Rptr.3d 759, 2006 DJDAR 1218] [Fourth Dist., Div. Three].)

**Soon-to-be ex-spouse enters into a bigamous marriage; spousal support continues.** Family Code section 4337 provides that, unless otherwise agreed in writing, the duty to support a former spouse terminates upon remarriage of that spouse. In *In re Marriage of Campbell* (2006) 136 Cal.App.4th 502 [38 Cal.Rptr.3d 908, 2006 DJDAR 1555] [Sixth Dist.], Mrs. Campbell jumped the gun and purported to enter into a new marriage before the decree dissolving her marriage to Mr. Campbell was final. Too bad for Mr. Campbell. The Court of Appeal held that since the wife’s subsequent marriage was bigamous, it was void, and hence Family Code section 4337 did not apply. Spousal support did not terminate.

**Kangaroos may be safe after all.** In our January 2006 Litigation Update, we reported that in *Viva! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2005) 134 Cal.App.4th 133 [36 Cal.Rptr.3d 19, 2005 DJDAR 13495] [First Dist., Div. One], the Court of Appeal invalidated a California statute banning the importation of kangaroo products into the state, on grounds of federal preemption. Those of our readers who were about to plan their next menu around tasty kangaroo

fajitas may have to wait a little longer. On March 1, our Supreme Court granted review in the case. (Case No. S140064).

**Attorney affidavit of fault is competent even though the attorney executing the affidavit represents client in another action.** Code of Civil Procedure section 473, subdivision (b) entitles a party to have a default set aside if a timely affidavit wherein an attorney acknowledges that the default resulted from his or her mistake accompanies the motion. The attorney signing the affidavit of fault need not be the attorney in the action in which the default is sought to be set aside. An attorney representing the client in another action was held to be competent to execute the declaration. (*SJP Limited Partnership v. City of Los Angeles* (2006) 136 Cal.App.4th 511 [39 Cal.Rptr.3d 55, 2006 DJDAR 1558] [Second Dist., Div. Two].)

**Governmental agency may be estopped from relying on time limits for filing claims.** In a case involving allegations of continuous sexual abuse of a student by a school counselor, threats by the counselor of public humiliation if student disclosed the abuse would estop the school district from relying on the claim-filing time requirements of Government Code sections 905 et seq. (*Doe v. Bakersfield City Sch. Dist.* (2006) 136 Cal.App.4th 556 [39 Cal.Rptr.3d 79, 2006 DJDAR 1587] [Fifth Dist].)

**Exculpatory clause does not apply to negligence per se.** Health clubs and similar organizations usually include a provision in their contracts releasing them from liability for, among other things, their own negligent acts. But Code of Civil Procedure section 1668 invalidates certain contracts that exculpate a party from liability based on a violation of law. Therefore, a claim for such a violation, i.e., negligence per se, is not subject to the exculpatory clause. (*Capri v. L.A. Fitness International, LLC* (2006) 136 Cal.App.4th 1078 [39 Cal.Rptr.3d 425, 2006 DJDAR 1900] [Second Dist., Div. Four].)

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*Mark A. Mellor, Esq., is a partner of The Mellor Law Firm specializing in Real Estate and Business Litigation in the Inland Empire.*



## C.A.R.E. PROGRAM

by Michael Gouveia

**I**nspiration and a sense of duty reach into even the farthest corner of the financial world – the bankruptcy court. Here in Riverside, the Honorable Meredith A. Jury of the United States Bankruptcy Court for the Central District of California is spearheading the C.A.R.E. Program – Credit Abuse Resistance Education Program – for local high school seniors. Assisting her are attorney members of the Inland Empire Bankruptcy Forum.

C.A.R.E. is a national program started by the Honorable John C. Ninno, II, Chief Bankruptcy Judge of the United States Bankruptcy Court for the Western District of New York. The C.A.R.E. program educates students about the nature of credit and how to use it effectively and not destructively. It teaches students about the true cost when buying on credit and how to avoid the pitfalls that lead to bankruptcy. It involves respected judges on the bankruptcy bench and leading bankruptcy practitioners, who teach and counsel the young teens.

Indeed, the bankruptcy court and the bankruptcy bar have seen too often the effects of poor financial choices. As Judge Jury observes, from her years sitting on the bench: “The number of young people who become overwhelmed by credit card debt because they do not understand that making a minimum payment does not reduce the debt is significant and can be minimized by early credit card education.”

Echoing the same, Nancy Clark, an associate of Borowitz, Lozano & Clark, LLP, notes: “We were surprised at how little teens knew about credit card debt and what they face when they get out of high school. We participate in C.A.R.E. because we don’t want to see people suffering when they come into our office and have to file for bankruptcy. It affects not only the individuals filing, but their whole families as well. It’s a wonderful feeling to teach others how not to become a slave to their debts.”

Currently, the program can be tailored to be given during a typical class period or for a longer period, such as two hours. The program Judge Jury and the Bankruptcy Forum envision runs for approximately two hours and is comprised of a short introductory video, an interactive discussion, and a Q&A session, addressing key aspects of finance and credit, and also the Office of the United States Trustee’s video on identity theft.

To date, the C.A.R.E. program has met with great success in New York as well as San Diego and Santa Barbara. Hopefully, in the near future, it will also be coming to a high school near you.

For more information about the program or to become involved, please visit <http://www.careprogram.us>, or contact Michael Gouveia at [mlgo@sbcglobal.net](mailto:mlgo@sbcglobal.net).



# ARE YOUR CLIENTS STILL ELIGIBLE TO FILE BANKRUPTCY?

by Martha A. Warriner

Last year, the credit card lobby finally succeeded in making sweeping changes to the Bankruptcy Code – with a little help from Congress. Known as BAPCPA, most of these changes became effective last October. Designed to prevent abuse and to discourage or eliminate chapter 7 filings by placing various tests and obstacles in a potential debtor's path, the changes seem to have succeeded, although not necessarily in the way they were intended.

BAPCPA was intended to disqualify all but the most poverty-stricken from filing under chapter 7 by establishing a presumption of abuse (resulting in dismissal or conversion to chapter 13) if a means test is not passed. The premise, touted for years by the credit card lobby, is that the bulk of bankruptcy filings are by people who intentionally run up a lot of credit card debt so that they can then file bankruptcy in order to avoid paying their bills. Never mind that study after study has shown that the most common causes for filing bankruptcy are uninsured medical expenses, loss of a job, or divorce. The solution to all of the supposed abuse, we've been told, is to keep people with relatively high incomes from filing chapter 7s, forcing them to pay back at least a portion of what they owe under a chapter 13. Hence, the means test was born.

Based on the Census Bureau Median Family Income, the means test establishes a maximum "current monthly income" level based on state and household size. For example, in California, the median for a family of four is \$68,310. If the debtor's annual income (based on an average of the last six months, and excluding certain types of income, such as Social Security benefits) falls below that number, there is no presumption of abuse if a chapter 7 is filed. If the income exceeds that amount, a second test applies, where certain "allowable expenses" (based on the IRS National Standards for Allowable Living Expenses) are deducted from the current monthly income number to determine current *net* monthly income. Under this test, for example, a family of four in Riverside County is allowed to spend up to \$1,781 per month for housing, including utilities, between \$468 and \$868 (depending on income) for food, and so on. Regardless of what the family *actually* spends, these amounts are deducted from the current monthly income. In addition, actual expenses for "other necessary expenses," as specified by the IRS, average monthly payments for secured debt (over a 60-

month period), monthly expenses for priority claims (over 60 months), and certain other expenses, including child care and documented excess home energy costs (such as air conditioning, if the debtor lives in the desert), can be deducted. A case is presumed to be abusive if the net monthly income (allowed median income less allowed expenses) is more than \$100<sup>1</sup>.

The biggest surprise has been that most potential chapter 7 filers pass the means test. That's right, most people who want to file bankruptcy will pass the means test, meaning that they can file chapter 7 without any presumption of abuse, just as they could have done before the new law went into effect<sup>2</sup>. And for those whose incomes exceed the permitted median, many will still pass the means test after their net monthly income is determined. The net result is that not many debtors will find themselves falling into the category of presumed abuse, which was intended to drive down the number of chapter 7 filings.

Nonetheless, chapter 7 filings are down significantly. So, if it's still so easy to file bankruptcy, why are there so few cases under the new law? In the short term, it's explained by the large number of filings immediately before BAPCPA went into effect – it's taking a while for the pipeline of potential debtors to fill up again. But the numbers are still far below what one would expect more than six months after BAPCPA became effective. No studies have been done on the question, but the primary reason may well be perception – people have heard that most people can't file, so they don't even try. And while that's not necessarily a bad thing, if you have a client who's in financial trouble, bankruptcy may still be a viable option. If you have any clients who are considering bankruptcy, encourage them to find out if they qualify – chances are good that they do. Once they know if they qualify, they can make an informed decision.

There are, however, a few more obstacles that may also be contributing to the decline in chapter 7 filings. In addition to the means test, BAPCPA requires credit coun-

<sup>1</sup> These examples are illustrative; there are other expenses that may be allowed, particularly if documented, as well as procedures for seeking allowance of extraordinary expenses.

<sup>2</sup> Because section 707(b) (the previously existing procedure for determining abusive filings based on excess income) continues to apply, it is possible that some debtors who pass the means test might still find themselves subject to a motion to dismiss under section 707(b).

## (OR, WHAT IS THE “MEANS TEST” AND HOW DOES IT WORK?)

selling before a bankruptcy can be filed, and it requires that each debtor take a financial management course before receiving a discharge. These requirements sound more imposing than they really are. Information on qualifying courses is available from the clerk’s office at the Bankruptcy Court<sup>3</sup>. If cost is an issue, providers are required to offer the courses at a reduced fee, or no cost. Many courses are available over the internet. A few – like Money Matters – are taught in person. Whether these courses serve as anything more than another obstacle to discourage filing is another question. But like traffic school, if everyone leaves with one or two good tips, they may decide the class was worth the price.

The largest impediment, however, may well be the added cost of filing bankruptcy. Not only are there the debtor education courses, but the new requirements have resulted in higher attorney fees, both because more legal/paralegal work is required, and because many experienced bankruptcy attorneys are no longer doing chapter 7 cases. Attorneys are now required to investigate their client’s

<sup>3</sup> Reid & Hellyer attorneys provide a post-petition financial management course called “Money Matters.” Information on this course is available on our web site at [rhlaw.com/moneymatters](http://rhlaw.com/moneymatters).

assets and liabilities in order to “certify” the information in the bankruptcy schedules, and they must also now refer to themselves in any advertising as a “debt counseling agency.” When combined with the decline in bankruptcy filings, these added requirements have caused many attorneys to leave the practice.

Like most legislation, BAPCPA doesn’t work quite as it was intended. The much-touted means test doesn’t affect most potential filings. On the other hand, the higher cost of filing, the difficulty of finding an attorney, and the added education requirements, combined with the common perception that most people no longer qualify, seem to be discouraging many people. But for those who see no way out, and who are willing to work within the system, chapter 7 bankruptcy can still give most of them a fresh start. So don’t believe everything you’ve heard about the new law, and please don’t hesitate to recommend bankruptcy to your financially troubled clients.

*Martha A. Warriner, Senior Attorney with the firm of Reid & Hellyer, practices in the areas of Bankruptcy and Creditor’s Rights.*



# SHOULD I FILE FOR BANKRUPTCY?

*by Raymond C. Prospero*

## Is Bankruptcy the Right Choice For Me?

Every month thousands of Americans file for bankruptcy relief. Despite the numbers, do not be fooled: filing for bankruptcy relief is a serious decision that will impact your life for several years. Before filing for bankruptcy, you must first weigh the pros and cons. Among the most obvious of consequences is the negative impact that a bankruptcy will have on your credit report. It may be listed on your credit report for seven to ten years. If your debt is high and this does not serve as a deterrent, you must then consider under which chapter will you be seeking relief (Chapter 7 or 13). If your debt is comprised mostly of credit cards, it is likely that you will seek relief under Chapter 7 of the Bankruptcy Code.

The Chapter 7 bankruptcy is commonly referred to as the “Fresh Start” option. Under a Chapter 7 petition, the debtor’s assets are liquidated and become part of the bankruptcy estate under the supervision of the bankruptcy trustee. These assets are then used to pay a portion of the debtor’s secured and unsecured claims. By contrast, under a Chapter 13 petition, the debtor can pay off the secured and unsecured debts under a payment plan (if the plan meets certain criteria and is approved by the court). The plan is also supervised by the bankruptcy trustee.

The problem is that obtaining a discharge under a Chapter 7 petition has become more difficult under the new bankruptcy reform laws that went into effect on October 17, 2005. Perhaps the most significant change pertaining to Chapter 7 bankruptcies is the implementation of the “means test,” which is supervised by the United States Trustee’s office. It is designed to force those debtors who have the ability to pay some of their debts into a Chapter 13 as opposed to a total liquidation under a Chapter 7. In sum, the means test consists of two steps. The first step is determining whether your gross bankruptcy income exceeds the state’s median income, as determined by the Census Bureau. If the gross bankruptcy income is less than the state’s median income, then the second step of the analysis will not apply. The second step of the means test consists of three elements: (a) current monthly income; (b) a list of allowed deductions from current monthly income for support and repayment of higher priority debt; and (c) defined bright-line areas, at which the income remaining after the allowed deductions would result in a presumption of abuse. If you do not meet the criteria of the means test, you are ineligible for Chapter 7 bankruptcy relief. Therefore, before filing the bankruptcy petition, you must carefully consider and determine whether you qualify for a discharge under the new laws.

## The Effects of Filing for Bankruptcy.

If you meet the criteria and decide that filing for bankruptcy is the right decision, you must next consider the effects of filing the petition. The immediate effect of filing a petition is the imposition of the “automatic stay.” The automatic stay protects debtors and their property from creditors. While the automatic stay is in effect, creditors are

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precluded from engaging in conduct that is an attempt to collect the debts owed by the debtor.

In the case of Chapter 7 bankruptcies, the debtor is required to appear at the scheduled 341(a) meeting, also known as the meeting of creditors. At the meeting, the bankruptcy trustee will ask informational questions, which will likely include a series of questions intended to confirm that all creditors and debts are included in the petition and schedules. Certain creditors may also attend the 341(a) meeting and are entitled to ask the debtor questions concerning the debt owed.

A debtor receives a discharge if he/she is successful in the bankruptcy proceedings. If a debt is discharged, the debtor is no longer personally liable for that debt. However, there are certain debts that are not dischargeable under a bankruptcy. The most common non-dischargeable debts are alimony payments, child support payments, recent income taxes, federal student loans and debts not listed in the debtor's petition and schedules. The above list is not exhaustive by any means. In addition, the discharge does not extinguish the lien on property arising out of secured debts. For example, with respect to real estate, a mortgage is considered a secured debt because, in exchange for the money borrowed, the secured creditor (lender) retains a lien on the property until the loan is paid in full. In a bankruptcy scenario, if the borrower falls behind on pay-

ments, files for Chapter 7 bankruptcy relief, and is successful in obtaining a discharge, the borrower no longer has personal liability for the mortgage arrears listed in the schedules; however, the lien still remains on the property. Therefore, although the lender can no longer attempt to contact the borrower and assert personal liability to collect the debt discharged, the lender is still entitled to protect its interest in the property by commencing foreclosure proceedings if the loan is still delinquent (an action that is considered "in rem" or against the property, rather than against the borrower individually).

As you can see, bankruptcy may have different effects on certain debts. In addition, the above is simply a brief informational summary that does not cover all aspects of the bankruptcy process. Therefore, before you decide whether or not to file for bankruptcy relief, you should thoroughly weigh your options and consult with an experienced bankruptcy attorney.

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# INTERVIEW WITH CHAPTER 13 TRUSTEE ROD DANIELSON

by Michael Gouveia

Welcome to the brave new world of bankruptcy. Since the passage of the new bankruptcy law in April 2005 and its taking effect on October 17, 2005, there has been a subtle shift in the type of petitions filed. Before October 2005, ninety percent of the petitions filed were Chapter 7 cases (liquidations) and ten percent were Chapter 13 cases (wage-earner repayment plans). Since the change went into effect, the split is now seventy percent Chapter 7 and thirty percent Chapter 13.

What, then, is Chapter 13? To find out, I went to our local Chapter 13 Trustee for the Riverside Division of the Central District of California, Rod Danielson. The Chapter 13 Trustee's office is behind the United States Bankruptcy Court on Thirteenth Street in Riverside.

Mr. Danielson invited me into his office and allowed me to ask him a few questions. I felt like Terry Gross from "Fresh Air" asking these questions.

## **What is Chapter 13?**

Chapter 13 is a portion of the bankruptcy code that permits debtors to repay their debts over a period of from three to five years. That differs from a Chapter 7 case, where a debtor simply seeks to discharge all existing debts without making any payments to creditors.

## **To whom do the debtors make payments?**

That would be me. I collect the payments from the debtors and I disburse them to the creditors through a plan proposed by the debtors. Currently, I have around 1,600 cases, which is down from the peak of 4,000 cases that I had four years ago.

## **What has caused the drop in cases?**

I think it is a combination of factors. Most people would talk about the changes in the laws, but the real cause is the inflation of real estate values. People are now able to refinance to pay off their debts, or sell their houses, and they haven't had to resort to bankruptcy. This has also led to the reduction of Chapter 7 filings in Riverside and the whole Central District.

## **Is this what you are seeing across the nation?**

It depends. San Diego has the same situation. There are a lot of places around the country where real estate is not going through this wild appreciation. In the South, for example, filings have been steady, though they have noticed a slight drop in filings because of the new law. The "metro" areas around the country have also seen

significant drops in filings, but that is also where the property values have tended to appreciate more.

## **What has been the most surprising aspect of Chapter 13 under the new law?**

I was surprised at the significant drop in filings, and I really attribute that to attorneys – not being afraid to file, but reluctant to file, since there was so much bad press about the provisions. I have been pleasantly surprised at how quickly the local attorneys have gotten on board with the new law. Many of the filers I see on a regular basis got on board right away, read the law, and figured out what they needed to do, and their cases were confirmable.

## **I saw two attorneys, Joe Borrie and Carey Pickford, who immediately knew what they were doing as soon as the law changed.**

Right after the law came into effect, these attorneys were in compliance with the new requirements. That is the thing about the new law, it is really not that different; there are more forms you have to sign, documentation you have to produce. And a lot of it was what good attorneys were doing beforehand, anyway.

The "enhanced attorney sanction provisions" are the same ones we had before the law changed, it just wasn't articulated in the code. If an attorney does his or her job competently, then there isn't anything to worry about. [11 U.S.C. section] 521 has all the debtor duties in it. It is a long list, but it is the same old stuff. For example, file your proof of income, but base it on six months of income, and file the last sixty days of pay stubs with the court. The good attorneys always had that information. They had competent evidence of income; now you have to file it with the court.

I also expected to see a lot more problems with filings than we have seen.

## **What are the common mistakes made by debtors' attorneys?**

The problems I am seeing are the same things. I'm required to get the most recent filed tax return seven days prior to the 341(a) meeting of creditors. If I do not have that, the law says the case shall be dismissed. I am not pushing that, but that is something I can see a creditor's attorney pushing, and I don't think the judge has any discretion. I am encouraging attorneys to make

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sure that they get a copy of the tax return to me a week before the hearing.

We have two new declarations that debtors have to sign. [Declaration re: Proof of Filing Last Four Years of Tax Returns and Declaration re: Domestic Support Obligation Payments. Both of these are available on the Chapter 13 Trustee's website.] It is helpful if we have those beforehand, but at the same time we can take care of that at the 341 hearings.

**Are there similar things that are going on in other districts?**

I'm not aware of that in any other district. These are forms that I came up with because the court has to now make findings as to those two issues as a condition of confirmation. And rather than require the debtors to have to testify before the judge, or just rely on the testimony at the 341 meeting, the filed declarations make the confirmation more "bullet proof."

Incidentally, while we have been having confirmations on different days than the 341 meetings of creditors, we will be going back to "same day" confirmations in June 2006. We may be the only division in the country that has "same day" 341 hearings and confirmations.

**Are there any other innovations you have developed here in Riverside?**

For discharge, though we are not seeing any discharges yet on cases, the court has to make a series of findings. I have developed a declaration form, and when we get the last payment from the debtor, we are going to send the declaration to the debtor to sign and file it with the court. That gives the court the information it needs to issue the discharge. I think the court will adopt that form at some time.

**Is that the one that deals with S.E.C. violations?**

Yes, we are calling it the Certification of Plan Completion. It has the debtor certify that there are no charges pending for S.E.C. violations, and other things the court has to find to issue a discharge. For example, the court must find that the debtor is current with child support and there are no charges for crimes of violence. Ninety-nine percent of the people, it is understood these things do not relate to them, but the court has to make a finding. The form makes it easier for the court and it makes the discharge of the debtor "bullet proof" down the line.

**What are some common mistakes that our debtors' attorneys make?**

A common problem is not submitting tax returns to the trustee eight days before the meeting of creditors. In addition, the judges want the term, "Attorney fee will be paid at one half the plan payment," clearly spelled

out in the plan if the attorney wants to be paid at the beginning and through the plan. The reason for this is that the new law requires that secured creditors be paid in equal periodic payments. The way we pay in the Riverside Division is to pay attorneys first. So the judges want it made clear to creditors that attorneys are going to get some priority over creditors. If the term is not there, then the attorney fee payment is paid over the life of the plan.

Attorneys are not making the "adequate protection payments" on vehicles that are required by the code. [Payments made directly to a secured lender after the start of the bankruptcy case.] Vehicle creditors are objecting if they have not received those payments.

Though not a problem specific to the new law, we are still not getting the debtor's proof of income eight days in advance; some plans are not being served or being served late. Debtors' counsel are using the wrong exemptions.

On the positive side, I have been surprised that the "means test information" has been filled out correctly by our attorneys.

**What are some of the new things in Chapter 13?**

In cases filed after February 22, 2006, attorneys in the Riverside Division are allowed to charge up to \$3,000 for a consumer case and \$3,500 for a business case. This fee can be taken up front; however a "Rights and Responsibilities Agreement" must be signed by the debtor and counsel and filed with the court before the meeting of creditors.

The fee was increased in the short term to address the additional responsibilities and tasks under the new law. In addition, we are going to have a new Chapter 13 plan form, which is currently being circulated for comment.

**What are the changes you have seen under the new law?**

Before the law changed, roughly ten percent of the cases filed in Riverside were Chapter 13 cases. After the law changed, now thirty percent of the cases are Chapter 13. The overall numbers of cases are pretty low, but the number of people filing Chapter 13 has increased dramatically. I think part of it is because attorneys do not want to mess with the sanction provisions of Chapter 7.

There is a "means test" and an automatic presumption of "bad faith" if you are over the median income in Chapter 7, and the debtor can pay a certain percentage to unsecured creditors. The United States Trustee has been fairly aggressive on those cases. Any creditor can also file those motions. So Chapter 13 is the path of least resistance. I think Congress intended that they do not





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want you in bankruptcy, but if you're in bankruptcy, you should be in a Chapter 13.

**The other day I saw my first zero-percent plan.**

The judges have acknowledged that, too; now we can put a twenty-five plan on the "consent" calendar, where we used to put only above-seventy plans on "consent."

**I have also seen here we are putting more debtors in 60-month plans.**

If the debtor makes over the median income for the state, the code requires that he or she be put into a 60-month plan. This debtor does not have the option of going less than 60 months. If the debtor falls below the state median income, then he or she can go for a maximum of three years, unless the debtor has "cause" to go the five years.

**How are the "debtor education" classes going?**

It is going well, but it is going slow. Debtors are not required to attend the class until they are ready for discharge. Many of the debtors are waiting. We run the class [free of charge] one or two times a month and get about four people in each class. So far, the feedback has been positive. This class is offered only to Chapter 13 debtors, which I am the trustee for; the Chapter 7 debtors must attend the class elsewhere.

**How has Chapter 13 changed since you have been associated with it?**

I have worked in a Chapter 13 office for about 13 years now, and over time, I am seeing more people filing now to save their homes than back when I first started. I am seeing fewer plans filed dealing with non-dischargeable debt. I am not sure why that would be. But overall, the profile of the debtors has been uniform. There have not been a lot of changes, other than those initiated by statutes.

For example, a few years ago, the charitable contribution became an allowable expense, but I do not see most people taking that expense. I see that as evidence that debtors are, by and large, honest people. When they are claiming expenses, they are not trying to "play the system."

**I had heard that a 401(k) contribution is now an allowed expense?**

Yes, 401(k) contributions and 401(k) loan repayments are both excluded from the definition of disposable income under the new law.

**Do you have any advice for creditors' attorneys?**

Very little in the new law is self-effectuating. Creditors need to be involved in the case to ensure that their clients get the maximum benefits under the new law. There are many debtor requirements, but if the creditor does not raise them, then no one else will. For example, the "adequate protection payments" are not a condition of confirmation. It is a requirement that the debtor "shall" make those payments, but unless somebody is there to ask

the question, it will not be addressed. The creditor needs to be there to raise the issue.

**What do you see in the future of Chapter 13?**

I think Chapter 13 will always be with us. People are always going to need a vehicle to repay non-dischargeable debts, like taxes and child support, as well back payments on secured debts, like cars and houses. I do think that, over time, Chapter 13 will become – if not the primary bankruptcy vehicle, it is certainly going to become more important.

I see Chapter 7 being relegated to the very destitute debtors. The norm will be filing a Chapter 13, and the exception will be filing a Chapter 7. The overall numbers of cases will also go back up.

**I am starting to see more attorneys filing again.**

There are many attorneys I talked to who said they are not going to file under the new law, and just got out. But once they get past that learning curve, it isn't rocket science. That is what law is, learning how to do something that you haven't done before. There are so many materials and seminars on how to do the new bankruptcies. The information is out there.

**What resources are available for attorneys?**

We have our website, [www.rodan13.com](http://www.rodan13.com), and the courts' website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov). We also have the new 341(a) checklist and our Chapter 13 handbooks.

**Thank you, Mr. Danielson, for your insight into the brave new world of Chapter 13 bankruptcy.**

You are quite welcome.

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*Michael Gouveia is a Riverside bankruptcy attorney who can be contacted at (951) 780-1972.*



# THE INDUCTION OF THE HONORABLE STEPHEN G. LARSON, UNITED STATES JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

by Jacqueline Carey-Wilson

Photographs by Jacqueline Carey-Wilson

On June 2, 2006, Stephen G. Larson was formally inducted as a United States District Judge for the Central District of California. Judge Larson joins Judge Virginia A. Phillips and Magistrate Judge Oswald Parada in serving in the district's Eastern Division, which includes both San Bernardino and Riverside Counties. Judge Larson replaced Judge Robert Timlin, who took senior status in September and is now serving in Los Angeles.

The induction was held at the George E. Brown, Jr. Federal Courthouse and attended by approximately 700 people from Riverside, San Bernardino, Orange, and Los Angeles Counties, including United States Senator Barbara Boxer, Congressmen Ken Calvert, Congressman Gary Miller, State Senator Robert Dutton, other local elected officials, 41 federal judges, and numerous state judges.

The ceremony began with a moving invocation by Sister Niamh Kelly. Sister Niamh prayed for Judge Larson "to act justly, love tenderly, and walk humbly with your God."

Chief Judge Alicemarie Stotler addressed those present and remarked that the large crowd "recognizes how fortunate our court is to have Judge Larson, with his energy, his commitment to justice and profound respect for the law, as a member of our bench." She then introduced the federal judges and recognized several of the prominent state court judges, including the Honorable Sharon Waters, Presiding Judge in

Riverside County; the Honorable Larry Allen, Presiding Judge in San Bernardino County; the Honorable Justice Manuel Ramirez, Presiding Justice, the Honorable Barton Gaut, the Honorable Betty Richli, and the Honorable James Ward, retired, Associate Justices of the California Court of Appeal, Fourth District, Division Two..

James Heiting, president of the California State Bar, was the first speaker. Jim spoke of the unwavering support Judge Larson had from the Riverside legal community and stated he knew "of no person more qualified by education, experience, reputation, or demeanor to receive this appointment. Judge Larson has the utmost respect of all of his peers and all of those who appear before him."

The next speaker was Theresa Han Savage, president of the Riverside County Bar Association. Theresa began by remarking on how she felt right at home with Judge Larson's six children present, because she has three young children of her own. Theresa then quickly turned the crowd's attention to the large workload of the federal judges and urged everyone's support for a new federal courthouse in Riverside, which could accommodate more federal bench officers. Theresa then spoke of Judge Larson's amazing record of public service: "Just here in Riverside, he has served on numerous boards, local and nonprofit, and community organizations, such as the Volunteer Center of Riverside County, the Red Mass Committee, VIP Mentors, the Federal





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Bar Association, and so many more. When serving on these organizations, Judge Larson dedicates himself like he dedicates himself to the bench. . . . In addition to his service on the bench and in the community, he has become a mentor, friend, and role model for many attorneys and law students, including myself.”

Penelope Alexander-Kelley, president of the San Bernardino County Bar Association, was the next speaker. Penny graduated from the University of Southern California in the same year as Judge Larson and brought a photo of their graduating class to show the crowd. Penny then shared a quote from an address Judge Larson gave to new admittees from USC in 2002: “It takes a special person, in my view, to defend those who have transgressed society’s laws; it takes a very special person to judge disputes between them and between individuals and companies and government; it takes a very special person to counsel with wisdom and humanity; it takes a very special person to represent another and, when necessary, to place that person’s interest ahead of your own.” Penny then added that Judge Larson was “a very special person” and offered her congratulations on behalf of the SBCBA.

The next speaker was Michael Trenholm, president of the Federal Bar Association, Inland Empire Chapter. Mike reflected on Judge Larson’s dedi-

cation and commitment to the Federal Bar’s mission of providing education and support to federal practitioners: “He has served on our board; he has been our president; he has given countless presentations; and in doing this has provided invaluable guidance in advancing our mission.” Mike then introduced William LaForge, president-elect of the national Federal Bar Association. Bill discussed how the FBA offered a commitment to Judge Larson and his colleagues on the bench in the district court, here and around the country, “to continue our cooperation, our work, and our support in the nation’s capital on behalf of the issues that are vital to you and to us: judicial independence; adequate compensation for judges...; courthouse security; new courthouse construction, including right here in Riverside; and support for a level of federal funding that befits the greatest judicial system in the world.”

United States Senator Barbara Boxer took the podium and remarked that Judge Larson’s youngest child, Mary, age one, was providing a “glorious show.” Senator Boxer discussed the bipartisan support Judge Larson received prior to his nomination by President Bush, and noted that he received no dissenting votes in the Senate. Senator Boxer concluded her remarks by reminding Judge Larson to “always remember that in you resides justice for people who do not often have a voice as loud as someone

- 1 Dr. Thomas Haider of the Riverside Mosque is giving a blessing to Judge Stephen Larson and observing is Rabbi Hillel Cohn and the Most Reverend Rutilio del Riego
- 2 Senator Barbara Boxer speaking at the induction
- 3 Judge Larson being officially enrobed by his wife, Dena, and six children
- 4 Judge Larson being sworn in by Judge Virginia Phillips
- 5 Mitchell Norton, Paul Watford, Carol Greene, and Irena Leigh Norton
- 6 The Larsons with their children: (left to right) Thomas, 3; Mary, 1; Brendan, 6; Michaela, 10; Joseph, 8; and Patrick, 4 years old
- 7 Aurora Hughes, Dennis Wagner, Theresa Han Savage, Luis Lopez, Judge Jeffrey Prevost, and Judge Craig Riemer
- 8 Yogenee Braslaw and Chief Judge Emeritus Consuelo Marshall
- 9 Phil and Theresa Savage
- 10 Judge Stephen Larson, Robert Prata, and Roger Hawkins
- 11 Judge Stephen Larson and his wife, Dena Larson
- 12 John Holcomb, Mark Schnitzer, Judge Stephen Larson, and William LaForge
- 13 Judge Larson’s parents Dale and Sheila Larson and his sister, Murette Larson

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else's, and that's the key. And if you get up every day and say, 'What can I do to do the right thing for people, whoever they are?,' you are going to be such a star."

Judge Virginia Phillips was then called to administer the oath to Judge Larson. Prior to administering the oath, Judge Phillips compared Judge Larson to several notables of the federal bench, suggesting that Judge Larson possesses the integrity of the late Chief Judge Emeritus William Matthew Byrne, Jr.; the dignity and fairness of the late Judge William Rea; the enthusiasm for the law and the intellect of the late Judge Harry Hupp; the strong moral convictions of Chief Judge Emeritus Terry Hatter; and the incredible efficiency and organization, and most of all, leadership of the current Chief Judge, Alicemarie Stotler. Judge Phillips then administered the oath of office, and Judge Larson's wife, Dena, and their six children, Michaela, 10, Joseph, 8,

Brendan, 6, Patrick, 4, Thomas, 3, and the youngest, Mary, 1, assisted in the official enrobing.

Three good friends of Judge Larson spoke next. The first was Terry Bridges of Reid & Hellyer, located in Riverside. Terry reviewed the widespread and enthusiastic support Judge Larson had received from the local bar associations and many civic organizations. Terry continued, "We stand and we applaud this confirmation, your enrobement, and your excellence as a human being and as a judge. We also stand back, Judge Larson, and wait with assuredness that in the future those qualities of character and dignity and civility that so exemplify you will continue on and that your ambassadorship of this legal system to this community will continue on even a brighter light."

Robert Prata of Hawkins, Prata & Daley, spoke next. Robert grew up with Judge Larson and recalled

lessons learned in their childhood about taking responsibility when you do something wrong, such as when Robert, at the age of seven, ran his bicycle into a parked car and, after they initially absconded from the scene of the crime, Judge Larson suggested that they should turn themselves in. A lesson on the Bill of Rights was also learned at the early age of nine, when, after reading a very demeaning inscription about then-President Richard Nixon, Judge Larson remarked, "Bob, I think America is one of the few places where you can say bad things about its leaders." Robert concluded his remarks by quoting an inscription that Judge Larson showed him on Robert Kennedy's grave at Arlington Cemetery: "Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of

energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.’ I look at my good friend as providing that ripple of hope. I believe his integrity, his knowledge, and his sense of fairness is an inspiration to us all.”

David Scheper, from Overland Borenstein Scheper & Kim, was the last speaker. Laughter filled the courthouse when David recounted their early days at the U.S. Attorney’s Office, when Judge Larson knew he could make it in the office after meeting David, and when Judge Larson, whom David described as an “edgy Beaver Cleaver,” won over law enforcement agent Dena Nordman, now his wife. The laughter continued when David stated that “it was no surprise at all that it is somebody like Stephen Larson who can be nominated by President Bush and have this wonderful lady [Senator Boxer] come and speak at his enrobing. I mean, that’s a guy who could talk a dog off a meat wagon.” David concluded his remarks by reflecting on their shared passion for Robert Kennedy and how “Stephen has chosen to make his ripples turn into currents and wipe down the mightiest walls of oppression from the bench . . . and I do think he is a walking, talking, clarion call to all of us to go out later today, go out tomorrow, be better, be less divisive, be more uniting.”

Judge Larson then addressed the crowd and thanked everyone for their support. Judge Larson recalled the words of a good friend, the late Robert Holstein, who stated “judgeships weren’t something people deserved.” Judge Larson understood what Bob meant: “None of us – and I speak for all of us judges here . . . believe that we have somehow earned this position. It is a gift. We have received a gift from the People, a charge, a tremendous responsibility, and a sworn obligation to protect and defend our constitution, that great document that ensures our liberty.”

Prior to and separate from the induction ceremony, Judge Larson celebrated an ecumenical liturgy of thanksgiving at Saint Francis de Sales Catholic Church in Riverside with approximately 300 family and friends. The celebrant was Monsignor Lloyd Torgerson, who was joined by the Most Reverend Rutilio del Riego, the Auxiliary Bishop of the Diocese of San Bernardino, and fifteen other priests. Also participating in the liturgy were Rabbi Hillel Cohn, Rabbi Emeritus of Congregation Emanu El in San

## Host Committee

The Riverside County Bar Association, San Bernardino County Bar Association, and Federal Bar Association Inland Empire Chapter would like to thank the following individuals and organizations for being a part of the host committee for Judge Stephen G. Larson's reception:

Penny Alexander-Kelley Altura Credit Union	Lewis, Brisbois, Bisgaard & Smith, LLP
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Jones Day Law Clerks of Judge Larson: Stephen Chavez, Michael Kowsari and Barbara North	University of La Verne College of Law Varner & Brandt, LLP John Vineyard and Carol Greene Volunteer Center of Riverside County
Law Office of Robert L. Kern Knobbe, Martens, Olson & Bear, LLP	Wagner & Pelayes, LLP Welebir & McCune

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Bernardino, Pastor James Pike of Grace Lutheran Church in Upland, and Dr. Thomas Haider of the Riverside Mosque.

At the conclusion of the mass, Judge Larson thanked all for sharing in the liturgy with him, especially the representatives of each of the faith traditions present, and stated: "It is in this spirit of unity and with profound and humble respect for these great religious traditions that I seek your blessings – on my work, on my life, and on my family and friends gathered here today. I ask those present to join your prayers with those from whom I now seek a blessing. Pray that I will always be faithful to the vow I will take this afternoon to support and defend the Constitution of the United States and to always be mindful of the fundamental truth, that all of us – male or female, rich and poor, native and immigrant, powerful and powerless, believer and nonbeliever – are created equally in the divine image and likeness, and therefore enjoy, in the immortal words of Thomas Jefferson, the self-evident rights of life, liberty, and the pursuit of happiness." Following Judge Larson's remarks, Rabbi Cohn, Dr. Haider, Pastor Pike, and Bishop Rutilio separately laid hands on and blessed Judge Larson.

Judge Larson has served as a magistrate judge for the Central District since October 2001. He was born in Fontana and raised in Upland, where his parents still reside. He received 12 years of parochial education before traveling to Washington, D.C., to begin his undergraduate studies at Georgetown University.

Judge Larson graduated from the School of Foreign Service at Georgetown University, with a major in International Politics and an emphasis in Russian Studies, but he chose to become a lawyer. Judge Larson came back to California and received his law degree from the University of Southern California Law School.

After law school, Judge Larson began his career at O'Melveny & Myers. He spent two years at the firm, but left temporarily, he thought, to get some trial experience

A three-year stint turned into a nine-year career. "My time at the U.S. Attorney's Office was among the most rewarding and challenging periods of my life," said Judge Larson. At the U.S. Attorney's Office, Judge Larson handled hundreds of cases and 50 criminal appeals before the Ninth Circuit. He successfully prosecuted various organized crime syndicates, including members of Russian-Armenian organized crime, for racketeering, narcotics trafficking, money laundering, tax evasion,

and communications fraud. He also prosecuted cases involving health care and insurance fraud, ATM and computer fraud, and embezzlement.

During his tenure with U.S. Assistant Attorney's Office, Judge Larson was made the head of the Organized Crime Strike Force. As the chief of that section, Judge Larson "earned the unwavering loyalty of the assistants who worked in that section," said Alejandro Mayorkas, a former U.S. Attorney for the Central District of California. "He was very much beloved as a leader because of his honesty, his integrity, and the loyalty with which he treated all of those who were so fortunate to follow him in the charge of law enforcement. He will bring those very same qualities to the bench."

Judge Larson has jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. Judge Larson will not tolerate inappropriate antagonism in his courtroom. "I appreciate attorneys zealously representing their clients, but that does not warrant their crossing the line and treating each other uncivilly. This civility and courtesy should be extended to my entire courtroom staff. Respect, in turn, will be extended to each and every person who appears before me. All of us as judges, and all of us as lawyers, can insure that in our practice we respect the dignity of each person who appears before us or with us in our courts. What I have come to believe is that there is something fundamentally sacred about every person and that there is much that we as judges can do to respect that."

Judge Larson resides in Upland with Dena, his wife of eleven years, and their six children.

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*Jacqueline Carey-Wilson is deputy county counsel for the County of San Bernardino, editor of the Riverside Lawyer, and a director of the Federal Bar Association, Inland Empire Chapter.*



# LAWS AND SAUSAGES

by Richard Reed

*"Laws are like sausages: it is better not to see them being made."*

– Attributed to Otto von Bismarck

The manufacture of sausages entails entrails, snouts, lips, buttocks, and tails. Any end will do, it seems, and so it is with the making of laws. On Tuesday, April 25, 2006, my friend Ken Stansbury and I found ourselves trudging up the marbled steps of the State Capitol to testify before the Senate Judiciary Committee in support of Senator Tom McClintock's bill to limit eminent domain abuse. We made our way up past the hardwood balustrade and around the gilt-domed rotunda to the senator's office and opened the door. The waiting room was a shrine: a bust of Lincoln on the left, a bust of Washington on the right, and looming between them, a life-sized portrait of Ronald Reagan. In the senator's private office, a bust of Jefferson kept watch over the Constitution.

Senator McClintock's staff made us feel right at home. The senator's legislative aide gave us rapt attention as we regaled her with the saga of our recent victory in *Riverside v. Stansbury* (now on appeal). The Judiciary Committee was to sit at 1:30. We were to address the committee at 3:00. So, Ken and I decided to take an art tour of the Capitol. Bouncing from office to office, we noted the many 19th-century oils (mostly landscapes) adorning the walls. Then we came to the office of Senator Ackerman, where his charming assis-

tant acted as docent as we went from painting to painting in unconcealed admiration of California's colorful vistas, some identifiably set in the San Joaquin Valley. She then showed us the jewel of the Ackerman collection: the entrancing, evocative depiction, by Charles Rollo Peters, of the sailing ship *Ramona*, plying the nocturnal waters of some exotic ocean, lit only by the watchful iridescence of a full moon.

Refreshed, we made for the committee room. Senator McClintock's capable legislative director informed us that we had been bumped, yet again, to 4:00, and that a severe time limit had been imposed on the bill's presentation. Our testimony was to be crammed. Ample time had been allotted, however, to a bill about car keys. It seems that the new model BMW had an electronic key that thwarted any attempt by AAA to render roadside assistance to hapless Beemer owners who had locked themselves out of their ostentatious automobiles. Over 20 minutes were devoted to this matter of statewide concern. I thought: The levee system all around Sacramento is straining under the weight of recent rains, gasoline is approaching \$3.50 a gallon, the state of California is about to be ceded to Mexico, and the Judiciary Committee is debating a bill about car keys.

Finally, around 4:00, we came up to bat. We were to give only our name, our affiliation, and our position on the bill. After two or three attempts

at getting the facts before the committee and getting cut off at each attempt by the chairman, I gave up and blurted out, "The City of Riverside sued my client for trying to put an eminent domain issue on the ballot." The chairman, eager to dismiss me, recognized Ken, who announced, "My name is Ken Stansbury and I'm the guy they're suing ..." The room fell silent and, for the first time during the proceedings, the chairman asked a question: "I was not aware of the lawsuit... What is the status of the case?" "We won, and now they're appealing it."

Our flight was leaving at 6:25. Ken and I grabbed our bags out of Senator McClintock's office; McClintock's legislative director called his wife and said, "Honey, bring the car." We all ran downstairs and out to the fountain in front of the Capitol, where Lance's gracious wife was waiting with the car. Off we sped to the airport. The levee system held long enough for us to board our plane; gasoline did reach \$3.50 a gallon; California continues to slide toward Mexico; and Senator McClintock's bill failed. That fate of BMW owners throughout the state has yet to be decided.

The *Senate Daily File* is the published program informing the legislators of each day's business. In it is a diagram of the senate chamber, emblazoned with these ironic words: *Senatoris Est Civitatis Libertatem Tueri* – *It is the Duty of a Senator to Protect the Liberty of the People*. What, I wonder, is the Latin for "car keys"?

*Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside.*





# VOLUNTEER RECOGNITION CEREMONY

by Kendra Bushong

The Volunteer Center of Riverside County honored 83 community volunteers at its annual Volunteer Recognition Ceremony held on April 20, 2006. The theme for the ceremony was "Volunteers: A Gift to the Community." The Volunteer Center holds an annual Volunteer Recognition Ceremony, sponsored by the Points of Light Foundation & Volunteer Center National Network, in honor of National Volunteer Week.

"Volunteers perform countless acts of service and are one of America's most valuable assets," said Robert K. Goodwin, president and chief executive officer of the Points of Light Foundation. "During the past year, volunteers nationwide have reached out to their neighbors both near and far, especially during the aftermath of the hurricanes on the Gulf Coast. National Volunteer Week is the ideal time to honor volunteers meeting community needs around the country and calling the public's attention to their tremendous contributions. We hope that National Volunteer Week will motivate others to volunteer their time and talent to help our country's most vulnerable residents – the homeless, the hungry, the elderly, at-risk youth, and the disabled," concluded Goodwin.

National Volunteer Week began in 1974 when President Richard Nixon signed an executive order establishing an annual celebration of volunteering. Every president since has signed a proclamation promoting the week.

The 83 volunteers recognized were from a variety of professions and non-profit organizations across Riverside County. Three volunteers from the legal community were honored.

The Riverside County Department of Mental Health recognized Tracy Estrada as its Volunteer of the Year.

Tracy was honored for inspiring her co-workers to collect school supplies and holiday gifts for children and families served by the department.



Tracy is an administrative assistant and human resource liaison for the U.S. Bankruptcy Court in Riverside.

The Riverside County Law Alliance recognized Cindy Heiting, wife of State



Bar President James O. Heiting, as its Volunteer of the Year. For the past 13 years, Cindy has contributed to the community of Riverside by volunteering her time and services to the Riverside County Law Alliance and its court tour program. Cindy has also held many executive board and committee chair positions within the Law Alliance. Cindy is officer manager for the law firm of Heiting & Irwin.

The Volunteer Center of Riverside County honored Jacqueline Carey-Wilson as its Volunteer of the Year. Jackie has been on the board of directors for the Volunteer Center for five



years and has been president of the board for the past two years. Jackie was instrumental in bringing 2-1-1 to Riverside County. By calling 2-1-1, individuals in Riverside County are now able to access social services 24 hours a day, seven days a week. In addition, Jackie increased the fundraising efforts of the agency through its annual appeal and Gaelic Gala. Jackie is deputy county counsel for the County of San Bernardino and editor of the *Riverside Lawyer*.

Since 1966, the Volunteer Center has provided an array of services in keeping with its the mission of "Linking people in need with those who can help." One such program is the Volunteer Connection, which maintains a database of approximately 300 agencies across Riverside County in need of volunteers. When an individual would like to begin volunteering, but does not know whom to contact, the individual can call the Volunteer Connection, complete a brief intake survey with the Volunteer Coordinator, and receive a list of compatible agencies seeking volunteers. The Volunteer Center is honored to provide this service for potential volunteers and volunteer-supported agencies. The Volunteer Center is also grateful for being able to host the annual Volunteer Recognition Ceremony, which provides volunteer supported agencies with a venue in which to publicly recognize and thank their hard-working volunteers.

For more information about the Volunteer Center of Riverside County or volunteering in Riverside County, please call (951) 686-4402, or simply call 2-1-1.

*Kendra Bushong is communications coordinator for the Volunteer Center of Riverside County.*





# DIANE AND ANDREW ROTH: DEFENDERS OF THE CONSTITUTION

*by Jacqueline Carey-Wilson*

*Photographs by Jacqueline Carey-Wilson*

On May 5, 2006, the Federal Bar Association, Inland Empire Chapter, presented Diane and Andrew Roth with the Erwin Chemerinsky Defender of the Constitution Award. This award is given to individuals whose work clearly reflects their sworn commitment, as members of the federal bar, to support and defend the Constitution of the United States.

Diane and Andrew Roth, who were married in 1968, have a long history of defending the Constitution and representing individuals who otherwise might not have a voice to be heard. In 1984, Andrew represented Elizabeth Bouvia, who no longer wanted to receive medical treatment. From 1984 to 1991, Andrew represented Tom Maniscalco, a lawyer who was on trial for a triple murder.

The Roths joined forces in 1996. In that year, they represented Hilario Martinez, who had been beaten and thrown into Lake Evans by three officers from the Riverside Police Department, as well as a disabled student seeking access to equal education. Two years later, they represented a non-Christian employee in an employment discrimination suit against a Christian college.

In 1999, the Roths assisted the United States Department of Justice investigation into the practices of the officers of the Riverside Police Department. Following the tragic shooting death of Tyisha Miller by officers of the Riverside Police Department, the Roths successfully represented the victim's family in a federal lawsuit based on the officers' use of excessive force. In 2002, the Roths represented 12 warehouse workers who faced racial hostility in the workplace. Also in 2002, they represented a victim's family who wanted to have their own pathologist observe the official autopsy. Recently, the Ninth Circuit Court of Appeals reversed the 1983 murder conviction of Jackson Daniels after finding that the trial court erred in denying Daniels the right to representation by Mr. Roth.

In presenting the award on behalf of the FBA, Judge Stephen G. Larson commended the Roths for their lifelong commitment to protecting and defending the constitutional rights of the most vulnerable members



*Ken Stansbury, Richard Reed, Glenn Beloian, and Judge Larson*



*Penny Alexander-Kelley, Mark Schnitzer, Michael Trenholm, and Dan Hantman*



*David Bristow and Prof. Erwin Chemerinsky*



*Judge Stephen Larson presenting the 2006 Defender of the Constitution award to Diane and Andrew Roth*



*Judge Stephen Larson, Diane Roth, Andrew Roth, their daughter Samra Roth, and Judge Virginia Phillips*



*Michael and Doreen Trenholm, and Prof. Erwin Chemerinsky*

of society. Following the lunch, Judge Larson observed: “As evidenced by their moving testimonials about each other in receiving the award, the Roths’ love and commitment to our Constitution is surpassed only by their love and commitment to each other.” Diane and Andrew have



*Patty Wheeler, Theresa Han Savage, Ruth Stringer, and Danielle Wuchenich*

been married for 38 years and have four grown children and seven granddaughters.

Diane Roth attended college at the University of California, Berkeley. She received her law degree from Southwestern University College of Law and was admitted to the California State Bar in 1980. Diane spent her first eight years in a two-attorney partnership, and then the next eight as a deputy city attorney for San Bernardino. She went into solo practice in 1996 and then formed the partnership Roth & Roth LLP with Andrew in 2001. Diane has been active in the Riverside County Bar Association, has served on its board, and was president from 1998 to 1999. Diane was also active in the state bar, serving on its Commission on Judicial Nominees Evaluation (JNE Commission) from 2001 to 2005.

Andrew, too, received his undergraduate degree from UC Berkeley, and he graduated from Hastings Law School in 1972. Andrew joined the Riverside County Public Defender’s Office in that same year, where he tried misdemeanor and felony cases until 1978. He entered private practice in 1980 and maintained a certification as a Criminal Law Specialist from 1991 through 1998. Andrew chaired the Criminal Law Section of the RCBA and served on the board of California Attorneys for Criminal Justice. Both Andrew and Diane have been active with the county mock trial team as coaches and scorers.

The Roths continue to litigate civil rights claims. They specialize in employee rights, excessive force by police officers, and crime victims’ civil rights claims in the trial court and on appeal.

*Jacqueline Carey-Wilson is deputy county counsel for the County of San Bernardino, editor of the Riverside Lawyer, and a director of the Federal Bar Association.*



# JUDICIAL PROFILE: THE HONORABLE OSWALD PARADA

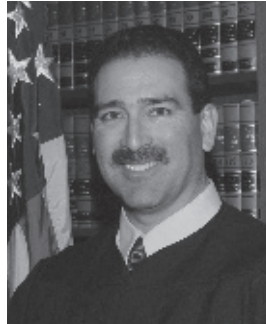
by John C. Rayburn, Jr.

Who the Honorable Oswald (“Ozzie”) Parada is can best be seen in the words of the person who knows him best, his wife, Esther Mendez: “I am confident that Ozzie will be a terrific judge, because he is so dedicated and always puts a lot of effort into his work to do his very best. He is very proud and extremely honored to have been given this marvelous opportunity to join two outstanding individuals and close friends, Virginia A. Phillips and Stephen G. Larson, on the Riverside federal bench. Yet no matter what successes his legal career brings, Ozzie's most cherished and significant accomplishments will always involve his family. Ozzie is an outstanding father and husband, and we are all extremely proud of him.” The judge and his wife have been married for seven years and have two children. Judge Parada also has an adult son.

On January 20, 2006, Judge Parada was sworn in as the newest federal Magistrate Judge for the Central District, sitting in the Riverside Courthouse, after a long and distinguished career as a Deputy Federal Public Defender (“DFPD”). His colleagues on the federal bench in Riverside speak of him in glowing terms. The Honorable Virginia A. Philips states, “Oswald Parada is the sort of lawyer that any judge is happy to see stroll into his or her court because he is always confident and does the utmost for his client. No matter how despised or hopeless the client’s cause, his attorney was prepared, he would make all the arguments that could and should be made, and he would have gone the extra mile to make sure that all legal research had been done and all legally appropriate defenses had been discovered.” The Honorable Stephen G. Larson says of Judge Parada, “We all are extremely fortunate to have a man of Judge Parada's intelligence, integrity, and compassion serving our federal legal community.” And the Honorable Robert J. Timlin explains, “Oswald is a very reasonable, honest, effective advocate who demonstrates all the attributes an attorney truly should possess.”

Even more telling, attorneys from both sides of the courtroom rave about Judge Parada.

DFPD Manuel Araujo states, “Since taking over the Directing Attorney position from Ozzie, now, more than ever, I appreciate the wisdom and common sense that he brought to our office. His insightful and sharp mind,



Judge Oswald Parada

along with his sense of fairness, enables him to narrow the issues truly in dispute, and will lead to a just resolution of matters that come before him.” And Assistant U.S. Attorney Robert Stacy II explains, “Judge Parada was one of the best defense attorneys I've ever faced, and he represented his clients with consummate candor, professionalism, and courtesy. My only regret about his elevation to the federal bench is that I will no longer be able to face him as an honored opponent.”

Judge Parada was born in New York, but, after a few harsh winters, his family relocated to Southern California. The judge’s father ran a service station in the San Gabriel Valley, where the family resided for most of Judge Parada’s childhood. Of his time working for his father, the judge says, “I was able to see my father’s work ethic first-hand, which was an important part in shaping me as a responsible individual. Unfortunately, given the personality clashes between a 16-year-old teenager who thought he knew everything and my father, it was the only job that I was ever fired from.” Judge Parada also notes, “Growing up, my parents always stressed the importance of education and hard work.” Judge Parada graduated from Damien High School, in La Verne, California, in 1980. (Damien also holds out Judge Larson as one of its most esteemed graduates and this author as one of its not-so-esteemed graduates.) He then attended California Polytechnic University, Pomona for one year before transferring to California State University, Fullerton, from which he graduated in 1987 with a degree in Criminal Justice. The judge worked his way through school by serving as a busboy, waiter, and bartender at several restaurants in the San Gabriel Valley. He explains, “I learned a lot about life, juggling the responsibilities of being a young father, a full-time student, and a full-time employee. Working as a bartender and having to help the bouncers break up fights from time to time also showed me the extremes of how some disputes get resolved. Obviously, my goal now is to help resolve disputes in a slightly more peaceful manner.”

In 1987, Judge Parada began law school at Southwestern University School of Law, where he ranked eighth in a class of 245 first-year students and received the American Jurisprudence Awards in Criminal Procedure and Contracts. The judge completed his final two years

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of law school at Loyola University School of Law, graduating in 1990. While at Loyola, the judge again received the American Jurisprudence Award in Trial Advocacy, in a course taught by the Honorable William Matthew Byrne, Jr., United States District Judge, and graduated Order of the Coif. Judge Parada explains, "While law school was extremely demanding and challenging, I used my father's work ethic and the emotional support of both my parents to get me through. I attribute my accomplishments in law school to the values instilled in me by both my parents."

Judge Parada worked at El Rescate Legal Services during law school and for a period after graduation. The judge says of this experience, "At a time when tens of thousands were fleeing the daily horrors of civil war in El Salvador, it was very rewarding to help many of these people gain temporary safe havens and assist them in processing their legal residency applications."

In February 1991, Judge Parada began his 15-year career with the Federal Public Defender, serving first in the Los Angeles office. In September 1995, he transferred to the Inland Empire to open and run the Federal Public Defender's Riverside office. Judge Parada remained the Directing Attorney of that office until his appointment to the federal bench in 2006. He states, "My time at the FPD office was extremely rewarding. My legal career has been dedicated to public service. I was able to help many people with their legal troubles and provide a positive contribution to the justice system. The last ten years, I have participated in developing and expanding the federal court and legal community in the Eastern Division. I am very thankful to [former Federal Public Defender] Maria Stratton for entrusting me with the responsibility of establishing the Riverside Branch office. I view my appointment as a Magistrate Judge as a furtherance of my commitment to public service, the federal system, and the development of the Eastern Division. I also look forward to a long and rewarding future alongside my colleagues, Judge Phillips and Judge Larson."

In yet another example of the camaraderie between Riverside's U.S. Attorney's and Federal Public Defender's offices, Judge

Parada met his wife when he was a DFPD and she was working at the U.S. Attorney's office. The judge concluded the interview by saying, "I am truly grateful to my wife for her love, strength, patience, for being a wonderful wife and mother, and, most importantly, for making my life complete."

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*John C. Rayburn, Jr. is an Assistant U.S. Attorney and Chief of the Riverside Office.*

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# RCBA GOLF TOURNAMENT

*Photographs by Milenda Denholtz*

The Riverside County Bar Association would like to acknowledge all the sponsors and volunteers that made the Golf Tournament possible (April 24, 2006).

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Bruce Todd  
Lisa Yang



*Theresa Han Savage presents the 1st Place trophy to Michael Clepper, Erik Bradford, Bill Bratton and Rob McCarty, Jr.*



*2nd Place Winners: Jon Hendrickson, Kyle Snow, Paul Snowden, John Higginbotham*



*Dan Katz, Mike Kerbs, David Bristow*



*Richard McCune, David Wright, Jeffrey Kaatz and Jack Boren*



*David Hancock, Matthew Benov, Victor Wolf, Mark Easter*



*Hans Heiting, Aaron Heiting, James Heiting, Bill Sickinger*

# BENCH TO BAR



*Marica LaCour, James LaCour, Joe Gonzales, Aurora Hughes*



*Joel Friedberg, Dan Olson, Ray Schmitz*



*Rod Pacheco, Jay Harvey, Grover Trask, John Aki*



*Victor Greene, Bernie Skiles, Richard Bitonti, Jay Orr*



*Gary Mallory, Brad Giering, Dick Nixon, Chris Nolan*



*Don Grant, Allan Grant, John Boyd, Bob Swortwood*



*Hanlen Chang, Michael Yi, Jeff Keyes, Mike Snyder*



*David and Theresa with Brad Giering (right), winner of the Putting Contest.*



*Don Williams, David Wolfe*



*David Bristow, Theresa Han Savage with Aaron Heiting (right), winner of the Longest Drive and Closest-to-the-Pin Contests.*



*Lisa Yang, Dan Katz, Yoginee Braslaw, Robyn Lewis, Charlotte Butt, Theresa Han Savage, Roxanne Orrock, Milenda Denholtz*

## Riverside County Superior Court Now Offers Email for Probate Examiners Countywide

In an effort to simplify and encourage communication between litigants in the probate arena and probate examiners, the court now offers the ability for the public to email its probate examiners directly. The new email system is available on the court's website at [www.courts.co.riverside.ca.us](http://www.courts.co.riverside.ca.us), under the Probate Division, Calendar/Notes section of the web page. The direct email address for the probate examiners is [probate.examiners@riverside.courts.ca.gov](mailto:probate.examiners@riverside.courts.ca.gov).

Probate examiners review petitions and other documents filed in the probate court and check for compliance with the Probate Code. They work on guardianships, conservatorships, estates, trusts, and various other petitions covered by the Probate Code. When an examiner finds a deficiency in a document, the deficiency is posted as a note on the Probate Calendar on the court's Internet site. Examiners update the probate notes three times a day, giving attorneys and litigants the opportunity to correct any deficiencies in their petition prior to the court hearing. It is hoped that, with this new method of communication, the examiners will be able to provide more complete responses to specific questions from self-represented litigants and attorneys.

In addition to the new email access, the probate examiners can also be contacted via telephone at (951) 955-1970.

## Family Law Court Notice

Effective forthwith, the clerks in the Family Law Court will use the facsimile stamp of the Family Law supervising judge to expedite the processing of stipulated judgments. All parties to a matter must have attorney representation and all paperwork must be appropriately signed in order for staff to use the facsimile stamp.





# PSLC RECOGNIZES LAWYERS' CONTRIBUTIONS

*The needs of the indigent are often greater than those of the paying client. –Ward Albert*

The Public Service Law Corporation and the Riverside County Bar Association recognize the valuable contributions of the following lawyers who have volunteered their time and expertise on behalf of low-income clients in the months of January through May, 2006.

## CLASSIFIED ADS

### For Sale

Mint Condition Hard Cover Volumes; Pacific Report 2nd 1-120; Cal Reporter Pac 2nd 121-346; Cal Reporter 1-286; Cal Reporter 2nd 1-59; Wonderful addition to office walls. \$750.00. Contact James Ybarrondo, Esq., (951) 925-6666.

### Sell Homes

Does Your Client need to Sell their Home? I SELL HOMES. Any condition - Any Area - Any price range. \$1000 Attorney Rebate: Call 1-866-304-8838. ID # 4111. [www.inlandempirealestate.biz](http://www.inlandempirealestate.biz)

### Seasoned Counsel/New Admittees/ Paralegals:

Statewide, AV rated Construction Defect law firm seeks ATTORNEYS interested in contract work for appearances and depositions throughout the Inland Empire.

We are also seeking experienced litigation PARALEGALS on a full time basis or for contract work. Please fax resume/salary history to (619) 464-5414, or email [smcbride@ak.com](mailto:smcbride@ak.com).

### Seeking Attorney

PALM SPRINGS--Attorney 0-5 years experience. Computer literacy and writing skills required. Business & Real Estate Litigation, Probate, Estate Planning. Fax Resume & Salary History to (760) 406-4203.

### 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@riversidecounty-bar.com](mailto:charlotte@riversidecounty-bar.com).



Jeff Bertram	Paul Maineri
Kirby Combs	Hershel Martin
Tom Derryberry	Janet Nakada
George Dickerman	Diana Renteria
Adam Dodge	Judith Runyon
Mirna El Hazin	Paulette Sandler
Noreen Fontaine	Charity Schiller
Michael Geller	Ward Simmons
Raul Gimenez	Warren Small
Katie Greene	Jim Smith
Ralph Hekman	Quinton Swanson
Jim Husen	Michael Thompson
Kathleen Jacobsmeyer-Guzzetta	Roger Walker
Richard Kennedy	Herb Williams
Leah King	William Windham
Holly Maag	



## MEMBERSHIP

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

**Donis E. Borks** – Sole Practitioner, Riverside  
**Rosa M. Clark** – Lopez & Morris LLP, Riverside  
**Jeffrey M. Curtiss** – Varner & Brandt LLP, Riverside  
**Kenneth C. Gregory** – Office of the Public Defender, Indio  
**Alexander L. Haus** – Law Offices of Eric W. Bladh, San Bernardino  
**Jennifer R. Joslin** – Blumenthal Law Offices, Riverside  
**Michael C. Kersse** – Sole Practitioner, Riverside  
**Michelle A. Palmer** – Sole Practitioner, Murrieta  
**Mark D. Perryman** – Mitchellweiler Law Corporation, Riverside  
**Daniel A. Reed** – Varner & Brandt LLP, Riverside  
**Patricia M. Torres (A)** – Hahn & Bowersock Corporation, Costa Mesa  
**Jerry Yang** – Best, Best & Krieger, Riverside

(A) Designates Affiliate Member

