RIVERSIDE LAWYER
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MAGAZINE

Family Law

RIVERSIDE COUNTY BAR ASSOCIATION
RCBA
EST. 1894

The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

Membership Benefits

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

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

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

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

Calendar

JUNE

20 General Membership Meeting

"Forensic Accounting"

Speaker: David Tuttle, CPA

RCBA Bldg., 3rd Floor – Noon

(MCLE)

RCBA/SBCBA Bridging the Gap

Free program for new admittees.

SB Superior Court, Dept. S-35

8 am – 2:30 pm

(MCLE: 4.5 hrs, includes 1 hr Ethics)

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25 EPPTL Section

RCBA Bldg., 3rd Floor – Noon

(MCLE)

JULY

2 Bar Publications Committee

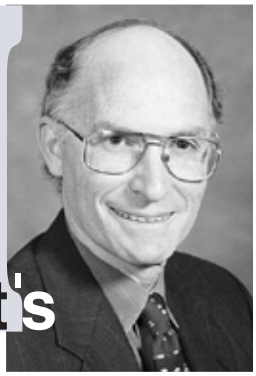
RCBA – Noon

4 Holiday

SAVE THE DATE

Thursday, September 18, 2008
5:30 p.m.

Annual Installation Dinner
Mission Inn, Riverside



President's Message

by Daniel Hantman

Our April *Riverside Lawyer* contained several articles about our 2008 Mock Trial Competition. The top four teams were Temecula Valley High School, Murrieta Valley High School, Hemet High School and Woodcrest Christian High School. John Wahlin, an attorney with Best Best & Krieger, is the Chair of the RCBA Mock Trial Steering Committee. In his article, he indicated that this was the first time that the top two teams, Murrieta Valley High School and Temecula Valley High School, had come from the southwest region of the county. Temecula Valley won this year's competition. They had also been county champion in 1998.

The 2008 State Mock Trial Competition was again held in Riverside and included 32 teams. Riverside is a favorite venue for the statewide competition, which is sponsored by the Constitutional Rights Foundation (CRF). The CRF used to hold their statewide competitions in Sacramento or Oakland. They love our beautiful Historic Courthouse and the hospitality that our judges, attorneys and volunteers have provided over the past several years. We previously hosted the statewide competition in 1999, 2001, 2003, 2005, 2006 and 2008.

This year's State Mock Trial winner was La Reina High School, an all-girls Catholic school in Ventura County. Temecula Valley High School won 7th place and San Bernardino's Redlands East Valley High School won 6th place. The other schools that placed in the top eight were Piedmont (Alameda County), 2nd place; Tamalpais (Marin County), 3rd place; Gabrielino (Los Angeles County), 4th place; Stockdale (Kern County), 5th place; and Buchanan (Fresno County), 8th place.

The Riverside County Mock Trial competition began in 1983. Perris High School won that year. Polytechnic High School ("Poly"), in the Riverside Unified School District (RUSD), has been the county champion ten times: in 1987-1988, 1990-92, 1996, and 2002-05. They have also been state champion in 1992, 1996, and 2003. John W. North High School (RUSD) has been county champion three times: in 1986, 1989 and 2000. Arlington High School (RUSD) has been county champion three times: in 1993, 1994 and 2001; it was also state and national champion in 1994. The other county champions were Ramona High School (RUSD) in 1984 and 1985, Norte Vista High School (Alvord Unified School District) in 1995, Corona High School in 1997, Woodcrest Christian High School in 1999 and 2006, and Martin Luther King High School (RUSD) in 2007.

We would like to thank all the judges, attorneys, court administrators and other volunteers who have provided many, many hours of their time. Mock trial "attorney coach, mom, and supporter" Virginia Blumenthal added up the approximate volunteer hours provided this year and multiplied them by a nominal hourly rate to estimate a total value of over $1 million of volunteer time.

As you know, the RCBA and its members have been involved in many community organizations. On Friday, April 25, the VIP Mentors, Partners In Success held their Eighth Annual Recognition Luncheon at the Mission Inn Hotel. This is one of the wonderful programs that the RCBA supports. The VIP program establishes a one-on-one relationship between a parolee and a volunteer attorney mentor.

The VIP program started in 1972, initially as a project of the State Bar of California. Its stated mission is to provide "a unique mentoring program which combines the humanitarian goal of salvaging lives with the social and economic benefits of building better and safer communities." Its efforts have resulted in many, many successes.

Justice Douglas P. Miller, of the California Court of Appeal, did a wonderful job as master of ceremonies. Governor Arnold Schwarzenegger was represented by Larry Grable. Assemblyman John Benoit was represented by Cheryll Bisco. The County of Riverside was represented by Donna Johnston, Senior Legislative Assistant to Supervisor John Tavaglione. The City of Riverside was represented by Darlene Elliot,

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Administrative Assistant to Mayor Ron Loveridge. Many awards were presented, and the mentor-mentee stories were very moving. Judy Davis, the VIP Mentors Program Director for the past eight years, has done a tremendous job of matching mentees with mentors and supporting them through the program. Kudos to Judy!

Attorney Jody Isenberg and her co-mentor, Don Crouch, received the "Outstanding Attorney Volunteer" Award. Past years' "Outstanding Attorney Volunteers" have included Douglas Edgar, Albert Johnson, Mary Ellen Daniels, Forest Wright, Kennis Clark, David Philips, and John Vineyard.

One of the best parts of the program was the presentation by Presiding Justice Manuel Ramirez of the Court of Appeal. He spoke very eloquently about the program, the mentors and the mentees. He also told a story about starfish that reminds us all of how each of us can contribute to the VIP program and many other legal and community programs.

I cannot remember the exact version of the starfish story that Justice Ramirez told the audience, but I quote the version I found on Google:

"Once a man was walking along a beach. The sun was shining and it was a beautiful day. Off in the distance he could see a person going back and forth between the surf's edge and the beach. Back and forth this person went. As the man approached he could see that there were hundreds of starfish stranded on the sand as the result of stormy weather.

"The man was struck by the apparent futility of the task. There were far too many starfish. Many of them were sure to perish. As he approached, the person continued the task of picking up starfish one by one and throwing them into the surf.

"As he came up to the person, he said, 'You must be crazy. There are thousands of miles of beach covered with starfish. You can't possibly make a difference.' The person looked at the man. He then stooped down and picked up another starfish and threw it back into the ocean. He turned back to the man and said, 'It sure will make a difference to that one!'"

I urge all of us to continue to be "starfish" people when we see challenges that seem insurmountable.

Dan Hantman, president of the Riverside County Bar Association, is a sole practitioner in Riverside.

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EMPLOYMENT DISCRIMINATION: Supervisors and other nonemployer individuals cannot be personally liable for retaliation under the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). (*Jones v. Lodge at Torrey Pines Partnership* (Mar. 3, 2008) 42 Cal.4th 1158 [72 Cal.Rptr.3d 624, 177 P.3d 232].)

"In *Reno v. Baird* (1998) 18 Cal.4th 640 . . . , we held that, although an employer may be held liable for discrimination under [FEHA], nonemployer individuals are not personally liable for that discrimination. In this case, we must decide whether the FEHA makes individuals personally liable for retaliation. We conclude that the same rule applies to actions for retaliation that applies to actions for discrimination: The employer, but not nonemployer individuals, may be held liable." This is so even though Government Code section 12940, subdivision (h) forbids retaliation by "any employer, labor organization, employment agency, *or person* . . . ." *Taylor v. City of Los Angeles Dept. of Water & Power* (2006) 144 Cal.App.4th 1216 and *Walrath v. Sprinkel* (2002) 99 Cal.App.4th 1237 are disapproved.

PUNITIVE DAMAGES: In action for underground contamination of plaintiffs' property, evidence of defendant's conduct in connection with two massive oil spills was too dissimilar to be considered with respect to either defendant's liability for, or the amount of, punitive damages. (*Holdgrafer v. Unocal Corp.* (Mar. 4, 2008) 160 Cal. App.4th 907 [Second Dist., Div. Six].)

Plaintiffs' property was contaminated by leaks from defendant's underground pipelines. In a punitive damages phase, plaintiffs introduced evidence that defendant had tried to evade responsibility for two other oil spills. The jury awarded $10,000,000.76 (76 cents, because the defendant operated as Union 76) in punitive damages, which the trial court reduced to $5 million.

Under *State Farm Mutual Automobile Insurance Company v. Campbell* (2003) 538 U.S. 408, "a defendant's dissimilar conduct cannot provide the basis for an award of punitive damages." "*State Farm* dealt with dissimilar evidence offered to prove the *degree* of the defendant's reprehensibility in assessing the *amount* of punitive damages to be awarded. Here, the challenged evidence was . . . also offered to establish the predicate finding that [defendant] was *liable* for punitive damages, i.e., that it was guilty of malice, fraud or oppression . . . . But we discern no legitimate reason why the due process concerns identified in *State Farm* do not apply with equal force . . . ." Unlike the two other oil spills, the oil leak in this case was relatively small and "apparently pose[d] no threat to the environment or the health and safety of anyone." There was no evidence that defendant had tried to conceal it. The evidence was also improper character evidence under Evidence Code section 1101. The trial court compounded the error by refusing to instruct the jury that it should not consider dissimilar conduct.

UNFAIR COMPETITION: Failure to disclose a discount available to those who request it does not violate the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.). (*Buller v. Sutter Health* (Mar. 5, 2008) ___ Cal.App.4th ___ [2008 WL 588399] [First Dist., Div. One].)

Plaintiff Buller sued two health care providers, alleging that their failure to disclose that they would discount patients' bills for timely payment, on request, violated the UCL. The trial court sustained a demurrer, without leave to amend.

Absent a duty to disclose, nondisclosure is not "fraudulent" under the UCL. Plaintiff did not allege that defendants had an affirmative duty to disclose the availability of a prompt-pay discount. Despite an allegation that the amount stated on the bill is deceptive (i.e., in light of the discount), the gist of the complaint is failure to disclose; in any event, the amount stated on the bill is accurate, unless and until the patient requests a discount. The alleged conduct also is not "unfair" under the UCL. "'[T]his court . . . has followed the line of authority that . . . requires the allegedly unfair business practice be "tethered" to a legislatively declared policy or has some actual or threatened impact on competition.' [Citation.]" Moreover, "taken to their logical conclusion, [plaintiff]'s arguments would effectively require a business to disclose all discretionary discounts it might offer. . . . [W]hen viewed from the standpoint of consumers in general we believe [defendants]' practice is beneficial rather than harmful, inasmuch as they apparently are not required to offer privately insured patients any discounts whatsoever."

VEXATIOUS LITIGANTS: A court can vacate a prefiling order against a vexatious litigant. (*Luckett v. Panos* (Mar. 24, 2008) ___ Cal.App.4th ___ [2008 WL 756758] [Fourth Dist., Div. Three].)

Plaintiff Luckett had been declared a vexatious litigant and made subject to a prefiling order, requiring him to obtain leave of court before filing any new litigation. (Code Civ. Proc., § 391.7.) After he was arguably success-

ful in some subsequent litigation, he moved to vacate the vexatious litigant finding. The trial court denied the motion.

A prefiling order is an injunction, and, as such, it can be modified pursuant to Code of Civil Procedure section 533. Moreover, an order refusing to vacate a prefiling order is appealable as an order refusing to dissolve an injunction. "However . . . mere success in some litigation. . . is not evidence of a mending of the ways." Four factors are relevant: (1) The applicant must be *honest*, particularly about how he or she became a vexatious litigant in the first place. (2) "[T]he applicant should show some genuine *remorse* . . . ." (3) The applicant should "show some genuine effort at *restitution* toward the previous victims of his litigation . . . ." (4) "[T]he applicant must actually give up the habit of suing people as a way of life. It is not some success in litigation, even after a person is adjudged to be a vexatious litigant, that shows a change of circumstances." Finally, "any attempt to erase a vexatious litigant prefiling order should be brought in the forum that originally entered the prefiling order."

CHOICE OF LAW/CHOICE OF FORUM: The fact that the underlying contract contained California choice of law and choice of forum clauses, and the speculative possibility that a foreign court might not apply California law, did not require the trial court to enjoin related foreign litigation. (*TSMC North America v. Semiconductor Mfg. Intern. Corp.* (Mar. 27, 2008) ___ Cal. App.4th ___ [2008 WL 803116] [First Dist., Div. Three].)

Plaintiffs sued defendants for breach of a contract that included California choice of law and choice of forum clauses. Defendants then sued one of the plaintiffs in China. The trial court refused to enjoin defendants from litigating the Chinese action.

Under *Advanced Bionics Corp. v. Medtronic, Inc.* (2002) 29 Cal.4th 697, "enjoining proceedings in another state requires an exceptional circumstance that outweighs the threat to judicial restraint and comity principles.' [Citation.]" There were no exceptional circumstances in this case. First, the Chinese court "has not taken, and has not been asked to take, any action that is forbidden by our state or federal constitutions." Second, a court can issue an antisuit injunction to protect its jurisdiction only if (1) the proceeding is in rem, or (2) the foreign court is asserting exclusive jurisdiction; neither is the case here. Third, "[t]he mere possibility that the [foreign] court may someday make a ruling . . . that contradicts California public policy does not constitute an exceptional circumstance sufficient to justify an injunction against pursuit of the foreign proceedings. [Citation.]" Here, the foreign court may yet choose to apply California law. Fourth, the fact that the parties agreed that California law would apply is not an exceptional circumstance. "[I]f the [Chinese] court ultimately fails to provide [plaintiffs] with due process, . . . [they] can of course raise this fact in arguing a [Chinese] judgment should not be binding in California."

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ATTORNEY-CLIENT PRIVILEGE: Court can review assertedly privileged letter in camera to determine whether privilege applies; to obtain writ of mandate, party objecting to release of letter must show irreparable injury. (*Costco Wholesale Corporation v. Superior Court* (*Randall*) (Mar. 27, 2008) ___ Cal.App.4th ___ [2008 WL 803143] [Second Dist., Div. Three].)

Plaintiffs worked for Costco as "ancillary managers." They claimed it had failed to pay them overtime by misclassifying them as exempt employees. One Costco attorney wrote a 22-page letter to another, concerning the exempt status of managers; it was based on interviews with two managers, other information from Costco, and legal research. Plaintiffs moved to compel production of the letter. The trial court ordered Costco to produce it to a referee, in camera. The referee recommended redacting portions of the letter that she found were protected, but releasing portions that she found were "factual observations . . . based on non-privileged documents (Costco's written job descriptions) and interviews with two Costco managers." The trial court ordered Costco to produce the unredacted portions. Costco filed a petition for a writ of mandate.

The general rule is that when the trial court cannot require in camera disclosure before determining whether a communication is privileged. (Evid. Code, § 915, subd. (a).) However, this rule is "not absolute." Thus, "courts permit in camera disclosure to address whether waiver exists and when the application of an exception depends upon the content of a communication." In a mandate proceeding, Costco must show "not only that the letter is protected by the attorney-client privilege or work product doctrine, but also that extraordinary relief is warranted." The appellate court reviewed the redacted letter, which had been filed under seal. The letter contained factual information available from nonprivileged sources; it did contain any legal analysis, opinion or strategy. Hence, it did not reveal any information that could irreparably harm Costco.

ARBITRATION: Arbitration of dispute over dating service contracts was not required where contracts were statutorily "void and unenforceable." (*Duffens v. Valenti* (Mar. 27, 2008) ___ Cal.App.4th ___ [2008 WL 802369] [Fourth Dist., Div. One].)

Plaintiffs entered into written agreements for defendants' matchmaking services; the agreements included an arbitration clause. The trial court refused to compel arbitration, based on its finding that the agreements violated Civil Code section 1694.3, regulating dating service contracts, because they did not include certain required provisions and also because they were entered into "under misleading circumstances."

Defendants forfeited a claim that the Federal Arbitration Act applied by failing to raise it below. In California, under *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, "when an illegal contract . . . contains an arbitration agreement, the arbitration agreement will not be enforced. [Citation.] However, 'when . . . *the alleged illegality goes to only a portion of the contract* (that does not include the arbitration agreement), the entire controversy, including the issue of illegality, remains arbitrable. [Citations.]' [Citation.]" Under Civil Code section 1694.4, subdivision (a), a noncompliant dating service contract is "void and unenforceable." Accordingly, once the trial court found that the agreements did not contain the required provisions, it correctly refused to compel arbitration.

Note: See here for an interesting critique of *Duffens*: http://calapp.blogspot.com/2008/03/duffens-v-valenti-cal-ct-app-march-27.html.

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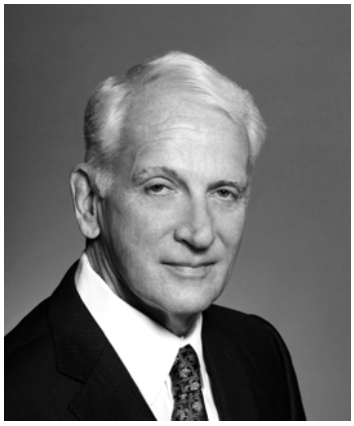

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Family Law Court

by the Honorable Becky Dugan

Last year, when I was the presiding judge of juvenile court, I wrote about our kids and how honored I was to have an opportunity to be a juvenile court judge. This year, I have been asked to write about family law, since I am now supervising judge of that court.

I have not really moved so far. The kids enmeshed in their parents' divorces, domestic violence, drug use and financial battles display many of the same behaviors and have many of the same needs as our kids in juvenile court. In fact, many of the families we see bounce between the two courts, as the risks these children are exposed to ebb and flow.

There is a very big difference between the two, however. In juvenile court, every parent, every child, every county social worker, is represented by his or her own attorney, at no cost to the party. There is an array of services: drug treatment, therapy for kids and parents, anger management, parenting, mental health assessment and medications, help with deposits for housing and beds, etc. In short, a plethora of services, people and money, at no cost to the litigants, to get them back on track and to make homes safe and peaceful for kids. The reason for this also highlights the major difference between the two courts – juvenile court judges have the awesome power to both remove children from and return them to their parents.

Family law court, however, is civil, which means that the litigation is driven by the petitioner and respondent and their requests to the court. The judge has no power to remove kids, jail parents, or make orders not requested by the litigants, no matter how much we think one is needed. Nobody coming to family law court has the right to an attorney, not even a child (except a person charged with contempt, since that is punishable by jail, and that person must still demonstrate indigence). Consequently, in over 50% of our cases, neither side is represented. In another 20%, only one side has an attorney. In other words, in only about 30% of our cases are both sides represented by counsel.

While many of the problems with this lack of representation are patent, what has happened over time in family law is that the judge has had to step into the shoes of an attorney, accountant, social worker, realtor, and inquisitor, in order to ferret out the information necessary to help the family dissolve in an equitable way.

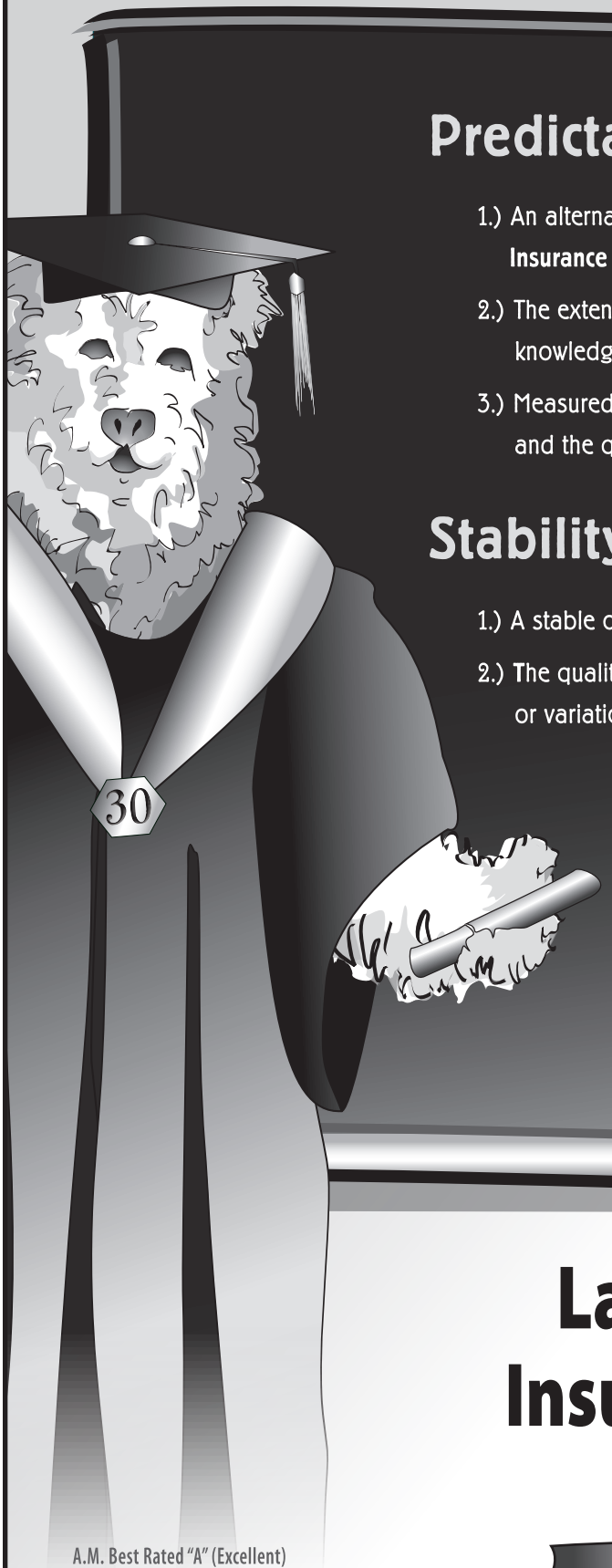
Over time, we have been given some tools by the state to assist with this process. Our court has excellent mediators and evaluators to meet with parents and assist them in resolving their disputes regarding their children. We now have five attorneys who are full-time facilitators, both to advise litigants on how to prepare their documents, and to assist them in actually doing it, once they come out of the courtroom with their orders. We also have staffed self-help centers in each court. In addition, in the appropriate case, we can appoint minor's counsel for the children, and if the parents cannot pay the fees, the court will.

The big gap is obvious. While the court can order parents into counseling, drug treatment, batterer's treatment, and supervised visitation, in family law, the parents must pay for these services. With an average income hovering around $2,000 per month, there is no extra money in these families, and we add to their frustration and stress.

The only leverage we have to get parents to comply with our orders in family law is to take away time with their kids, thus punishing the kids as well. The practical effect, when we make orders that cannot be followed, is that either kids lose a parent, if the other parent is actually following the order prohibiting contact, or kids are endangered, exposed to violence, drugs and crime. Clearly, the court has not helped the family in these circumstances.

We are extremely fortunate to have a close-knit family law bar where attorneys understand the need to defuse hostilities instead of increasing them and work on getting parents focused on their kids instead of a war with each other. Many attorneys volunteer countless hours as pro tems and mediators for our court. Until very recently, they often represented children in our most conflicted cases pro bono, occasionally getting sued by a litigant as thanks for their assistance. We now can at least guarantee them a whopping $60 per hour for their efforts.

While this article highlights our many challenges, it is these challenges, and finding ways to overcome them with our partners, that makes being a family law judge worthwhile, intellectually stimulating, never boring and highly fulfilling.



Predictability – pre·dict′·a·bil′·i·ty, noun

1.) An alternative for Confidence. ie – **Lawyers' Mutual Insurance Company (LMIC)**

2.) The extent to which future states of a system may be predicted based knowledge of current and past states of the system. ie – **LMIC**

3.) Measured by the variability in achieving cost, performance objectives and the quality of being predictable. – syn: **LMIC**

Stability – sta′·bil′·i·ty, noun

1.) A stable order. ie – **Lawyers' Mutual Insurance Company (LMIC)**

2.) The quality of being enduring and free from change or variation. – syn: **LMIC**

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Passport Release

by Hirbod Rashidi

For those who owe a substantial amount in back child support, traveling internationally may first require a visit to the family law court – and in almost all cases, that will be an exercise in futility.

Federal law mandates that a passport will not be issued to an individual who "owes arrearages of child support in an amount exceeding $2,500." (42 U.S.C. § 652(k)(1) & (2); 22 C.F.R. § 51.60(a)(2).) The law creates a two-pronged test: (1) Is the right individual implicated? and (2) if so, does he or she owe more than $2,500 in back child support?

No Local Authority

One key mistake that moving parties make in these passport cases is to assume that the local child support agencies – dispersed throughout the counties and operated with state oversight – have the authority to issue and release passports. But in reality, these agencies are under a federal mandate to report all individuals who owe more than $2,500 in child support to the state – and the state in turn must report these individuals to the federal government. (42 U.S.C. § 654(31).)

In other words, the agencies simply have a reporting obligation. For example, if a court were to order an agency to release a child support obligor's passport, it would effectively be ordering the agency not to report the individual. The judiciary has no authority to order the executive not to execute a law unless the law is declared unconstitutional. (Cal. Const., Art. III, § 3.)

Also, once an individual has been reported to the Office of Child Support Enforcement (a federal agency), the state will not automatically "un-report" the obligor when the debt drops below $2500. "The decision to remove an obligor is based on State policies and procedures." CSS Letter 05-09 at 2, available at http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2005/css05-09.pdf. And obligors will not be subject to removal unless "[t]he obligor has paid his/her arrearages down to zero." *Id.*, at 3.

No International Travel Right

Another common mistaken belief is that the child support obligor's fundamental right to travel is implicated. However, unlike the right to interstate travel, international travel is not considered a fundamental right. (*Zemel v. Rusk*, 381 U.S. 1 (1965); *Califano v. Aznavorian*, 439 U.S. 170 (1978); *Haig v. Agee*, 453 U.S. 280 (1981).) Thus, "the Government need only advance a rational, or at most an important, reason" for imposing the travel ban. (*Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431 (9th Cir. 1996).)

Passing the Test

The passport scheme passes this test. As the Ninth Circuit recently opined, "There can be no doubt that the failure of parents to support their children is recognized by our society as a serious offense against morals and welfare. It is in violation of important social duties and is subversive of good order. It is this very kind of problem that the legislature can address." (*Eunique v. Powell*, 302 F.3d 971, 974 (9th Cir. 2002).)

Therefore, Congress can decree that a parent's obligations to his or her children "must take precedence over international travel plans." (*Eunique*, 302 F.3d, at 976.) The Second Circuit has likewise dismissed constitutional challenges to this scheme. (*See Weinstein v. Albright*, 261 F.3d 127 (2001)).

How Counsel Can Help

Once you have determined that the obligor was in arrears in excess of $2,500, it would be a waste of a client's money, and therefore possibly a violation of ethical duties, to file motions requesting a passport release. The court simply has no authority to order the passport released.

The one area in which attorneys can assist their clients is in determining whether an obligor was indeed in arrears on a child support obligation in excess of $2,500 at the time of reporting. Note that the law requires reporting child support arrears only. For example, if an agency is reporting all of an obligor's arrears, and less than $2,500 is for child support, the agency can be mandated to correct its reporting.

Likewise, if a balance of more than $2,500 is owed for child support arrears, with an additional sum owing for spousal support arrears, the obligor only needs to pay off the child support balance to get a passport released. This strategy should work, given the requirement that child support arrears are to be paid before spousal support arrears. (Cal.Fam.Code § 5238.)

Recent Changes to Federal Laws

Servicemembers Civil Relief Act – Servicemembers who enter active duty status may be eligible to have the interest on their pre-active duty debt reduced to 6 percent. 50 App. U.S.C. § 527 (*see also* Cal.Fam.Code §§ 3651(c)(4) (" . . . no interest shall accrue on that amount of a child support obligation that would not have become due and owing if the activated service member modified his or her support order upon activation to reflect the change in income due to activation"), 3653 (court has discretion to consider activation date in setting commencement date of any modification), 17440, 17560(f)(1)(B)(client should be referred to the local child support agency for a compromise if welfare arrears owing are "as a result a decrease in income when an obligor" entered active duty).

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – The automatic stay no longer applies to collection of "domestic support orders" for cases filed on or after October 17, 2005. 11 U.S.C. § 362(b).

Citation to unpublished decisions – Federal Rule of Appellate Procedure 32.1 has been amended to require all federal appeals courts (and presumably district courts) to allow citation to their own unpublished (or non-precedential) opinions issued on or after January 1, 2007. Limitations: only opinions issued on or after January 1, 2007 can be cited and, practically speaking, they are still non-precedential, i.e., one would only cite such a case in the absence of a published opinion on point.

Conclusion

Unlike license releases governed by state law, where the local child support agency has much discretion to work out deals, the release of passports is governed by a federal regulatory regime where rules are strictly delineated and observed.

Hirbod Rashidi is an attorney for Riverside County, in the Department of Child Support Services, and he teaches law, through extension, at UC Riverside and UCLA.

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Personal Injury Settlements – Community or Separate Property?

by Robyn A. Lewis

Suppose you had a client who was involved in a horrific automobile accident and was pursuing a personal injury claim. Let's also suppose that client was married at the time of the accident.

Continuing with our hypothetical, let's assume that the client had truly catastrophic injuries. The client had significant medical expenditures, suffered tremendous pain and suffering, along with other general damages, and was out of work for months.

Prior to any settlement, your client comes to you and informs you that he and his wife have separated and are getting a divorce. He wants to know if his personal injury settlement is his separate property. After all, he was the one who was injured, right? What are you to advise him?

Normally, that client's personal injury settlement is considered community property. Family Code section 2603 defines "community estate personal injury damages," including a personal injury settlement. However, the court has some discretion in determining what portion of those damages should be awarded to the injured spouse and to the non-injured spouse.

Pursuant to section 2603, community estate personal injury damages "shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages or the accrual of the cause of action, and all other facts of the case, determines that the interest of justice require another disposition." That same code section provides that "[i]n such a case, the community estate personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just, except that at least half of the damages shall be assigned to the party who suffered the injuries."

Referring back to my hypothetical above, I recently had a client who was involved in a similar type of motor vehicle accident and had similar damages. He was also married at the time of the accident. However, approximately one month after the accident had occurred, his wife left him. He spent the next year rehabilitating from his injuries, unable to work, and suffering physically and mentally, all while separated from his wife.

During the dissolution proceedings, his estranged wife requested half of his personal injury settlement, arguing that it was to be considered community property. Given the fact that his wife had virtually abandoned him shortly after the accident, my client argued that the court, using its discretion under section 2603, should award him the personal injury settlement in its entirety. Unfortunately, the court was not persuaded by his arguments and ultimately divided the settlement between the two parties equally.

Given that so many attorneys "dabble" in personal injury, it is important to note that a personal injury settlement is to be considered community property. While the court has some discretion in allocating a personal injury settlement during a dissolution proceeding, clients should understand that just because they are the injured party does not necessarily mean that they are entitled to the totality of the personal injury settlement if they are getting divorced.

Robyn Lewis, RCBA Secretary and a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler. She is also Co-Chair of Membership for the Leo A. Deegan Inn of Court.

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Positive Divorces

by Diana Renteria

As the song goes, "Breaking up is hard to doooooo." What happens after a couple goes through the romance of love, the romance of the wedding, the romance of having children (or not having children), and reality sets in . . . a mistake has been made? Now the romance is over and all anyone wants to do is to get out. How can clients *have a positive divorce*? Sometimes, it is best if family law attorneys take the time to lay down some basic rules with their clients regarding the kindergarten-yard policies of divorce.

1. Look to the value of your marriage estate. Each marriage has accumulated assets and debts throughout its existence. It is sometimes unnecessary to itemize and identify the number of eraser heads, paperclips and kitchen forks. (However, there are some clients from certain working backgrounds who would find this concept difficult to understand and have the OCD to get the division down to a penny.) Clients should determine the net value of the community property estate. The community property estate is generally the property obtained during the existence of the marriage until the date of separation. In some estates, items over $500 or more should be listed on the schedule of assets and debts (FL-142) and property declarations (FL-160), whereas in other marriages, items over $5,000 or more need to be identified on family law dissolution forms.

The attorney might explain that in property division, the parties should look at themselves as business partners, so that all the financial books and records are open to review and to equal division. (Of course, this umbrella analysis would not apply to situations regarding separate property, which will be left to a future article.)

Clients should play fair in making the financial disclosures. No need to conceal assets, because by doing so, you could lose the entire thing. Sometimes, hiring an expert to evaluate the assets in a marriage is necessary. The money in a savings account is not the same as stock; even if the amounts are equal, the stock may have more of a capital gain. Not all retirement plans and pension plans amount to the same value. Even the value of real estate is no longer the same as it was approximately three years ago, before the housing market started to fall.

Clients should collect as much financial information about the assets and debts of the marriage as possible, especially if one of the clients is not the household financial manager. It should be clear where the money came from and where in the household budget the money is going.

2. Revenge is not the best policy. When clients want to fight over every single issue, it can be exhausting for both attorney and client, though financially lucrative for the attorney. When there is high conflict in a dissolution action, the cost of the divorce goes up. Clients do not seem to understand that it is sometimes in their best interest to enter into a really bad settlement instead of having the very best trial. At the end of that trial, a client might have victory, but, the bill could be in the tens of thousands.

To this day, I regret not paying $218 out of pocket, because during a mandatory settlement conference, the parties were this far apart from a full judgment. Instead, the parties are paying their respective attorneys approximately $600 an hour to prepare for trial.

In Los Angeles County, the courts have adopted a collaborative divorce process. The parties can agree to select attorneys, forensic experts, counselors, and child custody and visitation mediators to assist in their dissolution. The parties must agree that there is no intent to have a judicial officer to determine the outcome regarding custody, visitation, support, and the division of property. The clients become the instigators and control themselves and the outcome of their "collaboration." A collaborative dissolution agreement is signed by the parties and their attorneys. In some ways, the clients learn to adopt this process of collaboration as a model in how they handle themselves after the dissolution process is over. Instead of being out of control, the clients feel in control. The attorneys are available for support and not for litigation.

However, once the parties cannot agree on an issue and a judge has to make a ruling, the parties lose their attorneys, forensic experts, counselors and mediators. They must start again, utilizing new attorneys and experts. All decisions are to be made via a court proceeding. Now the clients are paying twice for decisions that could have been easily made out of court and in peace.

Don't think clients are the only ones who like revenge. There are attorneys whose names will cause a client's retainer to immediately triple because these attorneys handle their business of law in an overbearing, litigious manner; of course, the actions of counsel are all taken under the guise of zealously protecting their client's interest. Some of the litigated issues are nominal, but ultimately intended to raise the amount of attorney fees

earned. And there are attorneys who are not professional enough to provide a courtesy call the day before a hearing, despite knowing that they are going to be detained at another hearing. This lack of civility only causes the costs of litigation to go up.

3. Think about the kids. Clients who have decided to divorce should remember that their children are listening, so they shouldn't use kids as messengers ("tell your mom . . ."). Divorce affects kids. If your client's children are young, have them pick up a book that explains why mommy and daddy no longer live together. In parenting classes, it has been said that one-third of children of divorce do fine, one-third do okay and one-third cannot adjust at all. Having kids does mean the parents must communicate about their children, regarding school, the first job, braces, baseball versus basketball, medical concerns, bedtime and discipline. Clients should speak amicably about each other. Remind your clients that the other parent is half the biology of the child; a client who speaks poorly about the other parent is speaking poorly about half of that client's own child. The children will adjust to living in two different homes, but the rules (bedtime, meals, discipline) need to be the same in each home; otherwise, clients will have children who learn to manipulate their parents.

The whole point of a divorce is to legally separate the property of the parties involved and revert their status from being married to being single. So if a client calls and states that the other parent wants to keep the kids a couple more hours to miss the 91 Freeway traffic, what is the problem? Life is too short to raise mentally unhealthy kids. If your office is getting one too many phone calls from a parent client, its time for your client to receive the approved list of coparenting classes from the family law mediation department, and for you to suggest that a certificate be obtained for filing with the court.

4. Divorce is the beginning. Divorce has been analogized to the loss of a loved one, and it will contribute additional stress to your client's life. If your client is unable to see the positive side of the dissolution process, or of life in general, then it is time to advise the client to seek a licensed therapist who is trained to handle the grief, anger, control issues, and bitterness. The client needs to know that his or her attorney is only licensed to practice law.

So far, I have seen several positive divorces; however, there is one that sticks out in my mind. The parties agreed to the appropriate property division: he would get the three dry cleaning businesses; she would receive the six-figure family residence. He would pay the mortgage and child support. Spousal support was set at zero and reserved. The parties agreed to mutually agree on how to coparent their eight-year-old son. All of these decisions were arrived at collaboratively, written up, reviewed by their respective counsel, executed and filed with the court

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for judgment. From start to finish, it took approximately three months, and the attorneys followed the lead of their clients' wishes. The parties showed up *together*, after riding in the same car, to review their final judgment, laughing about this or that, almost to the point where both counsel had to ask, "Are you sure you want a divorce?" The answer was the same, "Yes." What made this divorce so different from the others? Their approach was to view dissolution as a beginning, instead of an end. I have not seen them in the office since, and I call it my divorce of the century.

Diana Renteria is a local family law attorney with her own practice. She currently serves on the board of the Public Service Law Corporation, the governing committee of the Lawyer Referral Service of the Riverside County Bar Association, and volunteers her time with the Junior League of Riverside (a nonprofit training organization for women). Oh, yes, and she has a rational husband, Gary, a daughter, Marina, and a son, Sebastian.

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Same-Sex Marriages

The hottest news on the family law front is the California Supreme Court's holding that California's statutory prohibition of same-sex marriage is invalid under the state constitution.

On May 15, the court issued its opinion in *In re Marriage Cases* (2008) ___ Cal.4th ___ [2008 WL 2051892]. The opinion resolved six consolidated appeals, all arising out of the decision by the city of San Francisco to issue marriage licenses to same-sex couples. Chief Justice George authored the majority opinion, joined by Justices Kennard, Werdegar and Moreno. Justice Baxter (joined by Justice Chin) and Justice Corrigan wrote separate dissents.

California statutes define marriage as a relationship between a man and a woman. However, as the court noted, California's domestic partnership legislation already "affords [a same-sex] couple virtually all of the same substantive legal benefits and privileges, and imposes upon the couple virtually all of the same legal obligations and duties, that California law affords to and imposes upon a married couple." Accordingly, the narrow question before the court was whether the state could constitutionally designate a relationship between an opposite-sex couple, but not an otherwise identical relationship between a same-sex couple, as a "marriage."

The court held that the California constitution provides a fundamental right to marry. This right extends "to *all* individuals and couples, without regard to their sexual orientation." The right is violated whenever a same-sex couple's official family relationship is not accorded the same dignity, respect, and stature as all other officially recognized family relationships.

The court also held that denying marriage to same-couples violates the state constitutional equal protection clause. Sexual orientation, like sex, is a suspect class; hence, discrimination based on sexual orientation is subject to strict scrutiny. The state's purported interest in denying marriage to same-sex couples was to retain the traditional definition of marriage. However, in light of the negligible resulting benefits to opposite-sex couples or to the institution of marriage, and the significant resulting harm to same-sex couples and to their children, this is not a *compelling* state interest.

Because the court relied exclusively on the California constitution, its decision cannot be overturned by the United States Supreme Court. However, it could be overturned by the voters, if they adopt a state constitutional amendment banning same-sex marriage. Such an amendment is likely to be on the ballot in November. Accordingly, same-sex couples are expected to stampede to the altar to beat a possible November deadline.

Note that the federal government can and does refuse to recognize same-sex marriages. Accordingly, same-sex couples, even though legally married in California, will not be entitled to be treated as married for purposes of federal taxation, Social Security, immigration, etc. The federal ban may well become an issue in the upcoming presidential and Congressional elections.

Incidentally, Justice George is facing a retention election in 2010. This opinion will almost certainly be a hot button in that campaign.

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Welcome to Family Law

by Larry Maloney

Welcome to Family Law . . . . Oh, you haven't been over here in a while. Well, let me remind you that in Family Law, you will find the best lawyers. These are the lawyers who can tell a criminal act from a stock issue while evaluating a self-managed business. They can distinguish a tax problem from a bankruptcy while handling three or four hearings a day. We have the busiest judicial officers in the county, and they are up to the challenge. They must read dozens of files a day in preparation for dealing with each day's crop of lawyers, not to mention a flood of self-represented contestants. I am sure you already know this.

But there may be some things you don't yet know. We have a new ex parte rule, Local Rule 5.0065. It can be found at http://www.riverside.courts.ca.gov/localrules/title5.pdf.

Let me try to explain. We don't, officially speaking, like ex parte orders. Okay, there I said it! Now if you really need one, here are some things to consider. First, have you considered asking for an order shortening time (OST) for either service or hearing? If that approach does not appeal to you, and you still feel you have an emergency, the court will consider your request for an ex parte order, based solely on the pleadings. Oral argument will not be allowed in most cases. Say it on paper or wait for the noticed hearing.

The court will be expecting strict compliance with Code of Civil Procedure section 1008 and rules 3.1200-3.2107 of the California Rules of Court. Guys, this means watch your declarations! Let me refresh your memory: The court wants to know who the parties and their attorneys are (name, address and phone number). The court wants to know how you gave notice (before 10 a.m. on the day before the hearing), or if you did not give notice, why not. Be specific. Further, the court wants to know, exactly, what you are asking for, and why you think it is an emergency. Please spare the court your client's feelings, wishes, fears, speculations and conclusions. If you don't give your friendly judicial officer something solid to base an order upon, your request will be denied. You will probably not get the chance to correct this deficiency with oral argument.

You must include, in your client's rendition of the facts, at least a couple of good reasons that demonstrate why your request is really an emergency and should be granted. The Family Law Facilitator's Office would like to offer this sample declaration:

Last night we had a terrible fight;
I learned my kids will soon be on a flight.
My ex said she will move out of state
And take my children to a terrible fate.
I see my children almost every day.
This move will take them far away.
This same thing happed last year,
But the court helped me keep them near.
I know this order will change the status quo,
But please, don't let my children go!

Remember, be kind to your judicial officers and make your declarations short and to the point.

The new rule also reminds us that failure to follow the requirements could result in additional orders for attorney fees and costs.

We have also changed the process for filing an at-issue memorandum. The new rule, Local Rule 5.0070, can also be found at http://www.riverside.courts.ca.gov/localrules/title5.pdf. The party offering the at-issue memorandum must have completed the required disclosure process. The court requires that the requesting party must have filed a "Declaration Regarding Service of Declaration of Disclosure." Since that form is a sworn statement that the disclosure documents have been supplied to the other party, it would be a good idea to actually complete that process. It fact, it is a even better idea to complete the process and make a record of the disclosure information by filing the disclosure documents. Imagine if your still-friendly bench officer could find, easily, in the file he or she is reviewing, a current version of income and expense information and a complete schedule of assets and debts, on a recognizable Judicial Council form. But I digress. You can file the at-issue memorandum any time after the response has been filed and the requesting party has completed disclosure. There is no need to wait for the other party to understand and/or comply with the disclosure requirements. If you want the court to have the ability to strike the opposing party's pleadings, in the rare event that he or she does not or will not comply, you could also file, simultaneously, a notice of motion asking the court to strike the offending party's pleadings.

In case you have not heard, the new child support Guideline Calculator is coming! You should also know that our family law partner, the federal government, is intent on requiring everyone to use the new Guideline Calculator. This program is free and can be found at www.childsup.ca.gov (click on "Guideline Calculator"). At the present time, this calculator is the only calculator allowed in any Title IV D case. It is not yet required in other child support cases. It will be coming soon to a computer, and a courtroom, near you. I suggest that you get on line. Play with it. I am almost certain that you will find it a good way to stimulate conversation among colleagues. Training sessions will be available through the California State Bar. You should check on their web site. There is a proposed California Rule of Court that includes the following: "The court must use only the Department of Child Support Services' California Guideline Child Support Calculator to prepare support calculations and as the basis for its findings."

For those of you who did not notice, we have, after ten years, expanded the Facilitator's Office. We have a new facilitator in Riverside, Patricia Rich, a research attorney with experience in civil law. In Riverside, we also have a very fine paralegal, Stephanie. We also have a new facilitator at the Southwest Justice Center, Susan Ryan. All five Facilitator's Offices have paralegals. There are now full-time facilitators at each court in Riverside County that handles family law matters. Our goal is to help customers who cannot afford to see you in your fine law offices. One of the few restrictions we have is that we cannot see parties who are represented by counsel. The Facilitator's Office provides a valuable service to the public. We can also provide a useful service to attorneys. You may think this is an oxymoron, but let me explain: If you are involved in a matter in which the other party is unrepresented and skeptical of your pronouncements, you may refer such parties to your local facilitator. We can provide them with the information to assist them in understanding your kind and generous offer. The Facilitator's Office has form packets for almost every task. We are happy to share.

While I am on the subject of family law, I want to remind everyone that the Facilitator's Office conducts weekly workshops in the art of filling out divorce forms. On Tuesday at 1:30 p.m., we present "How to File for Divorce, First Papers" (petitioner, response or amended petition or response). On Thursday, we cover "How to Finish your Divorce, by Default." Of course, this workshop requires each litigant to bring copies of all documents filed in his or her case and to have actually completed the required disclosures. Workshops are open to anyone who is not represented by an attorney.

The Mandatory Dispute Resolution Conference program started almost five years ago. During this time, we have assisted in settling over 60% of the matters that were referred to the program. We accomplished this with the help of many fine family law attorneys, like you. Many things at the court have changed since that beginning. In response to those changes, we will be revising the Mandatory Dispute Resolution Conference program. We hope to set a specific day for settlement conferences and to handle them within the Facilitator's Office.

So let me wrap this up. Read our new rules, I think you will like them. Mind your declarations, they are really the heart of your case. There is a new Guideline Calculator. It is required when the Department of Child Support Services is involved. Play with it. If you have family law questions, drop by. We have form packets. We have workshops. We can help.

Larry Maloney is a Family Law Facilitator in Riverside.

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Your Pets Have Rights in Family Law, Too

by Luis E. Lopez and Ashley C. Sedaghat

When I was asked to write a family law article for the Riverside Lawyer, I thought, "Great, I will use this opportunity to express a family law lawyer's frustration with the overcrowded legal system and the difficult clients and topics we have to deal with"; or, I thought, "I will use this opportunity to discuss my views on drug-testing parents in family law and the constitutional issues associated with that." Then, I thought, "Nah! I will leave those topics for legal scholars."

I decided to write about something closer to my heart. Ashley C. Sedaghat, a law clerk in my office, and I decided to write about the forgotten (or, at least, so we thought) Fido, the family pet. Ashley's family and mine are dog owners, and we both consider our pets part of the family.

If you practice family law, how many times have you found yourself aiding a client in his quest to obtain more time with his children? How many conversations do you find yourself having with opposing counsel in the hopeful attempt to settle all of the property or support issues remaining in a case? And how many declarations have you drafted for clients in the endeavor of expressing to the court why the outcome of the case should be in *your* client's favor?

Seemingly endless issues pile up on top of each other throughout the course of a family law case. Trying to settle the issues so as to save your client's precious earned dollars is the goal. Leaving the client in a position that he or she can live with once your work is done is what pushes you to sift through all of the facts, the drama, the parties, the pieces of property . . . the *life* of these family law cases. But where does this leave the beloved pet? What about Fido?!

For most families, a pet is not only part of the family, like a child, but is a friend, too. Pets don't have a say in what happens to them. They cannot be deemed "mature enough" by the court to voice their opinion about whom they want to live with when a family breaks apart. They cannot speak up for themselves when they are being mistreated and used as a pawn in this chess game of family life.

Over the past several years, courts have set up custody arrangements for pets, customizing visitation schedules so that each party has time with their precious Fido. Some of you may have read about a case in the late 90's where a San Diego couple battled for two years over custody of their dog Gigi. This case has been discussed in many legal publications, when the issue of pet custody comes up, because of the elaborate steps the parties took to show the court why they were each the better "parent."

And who can forget about Leona Helmsley, the New York real estate billionaire, who left millions in trust for her pooch? Ms. Helmsley passed away in August 2007 and left approximately $12 million in a trust fund for her cherished Maltese named Trouble. What does little Trouble need with this much money? Well, apparently Ms. Helmsley had such love for her pet that she wanted to be sure the dog was provided for, for the rest of its days. Ms. Helmsley even left millions more to her brother, who was named as caretaker for the beloved pet. This just goes to show what great measures people will take to see that their pets are taken care of.

Now, what happens when one party starts to abuse the family pet out of frustration or anger towards the other party? What happens when one party uses threats of harm to the pet as a means of manipulating the other into seeing things "their way"? Often people will succumb to the pressure of another in order to protect the things they love and cherish. Wouldn't you trudge through the desert valleys and climb to the highest mountain for *your* pet? Most would exclaim, "Yes!," without even questioning the logic of that query.

Thankfully for those of us who treasure our pets, California legislators are pet lovers, too, and see the importance of protecting your cuddly pooch or adorable feline friend. Family Code section 6320, effective January 1, 2008, titled "Ex parte order enjoining contact; companion animals," does just that – protects what some of us hold so dear – protects our pets!

Family Code section 6320, subdivision (b) states that, on a showing of good cause (naturally!), the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal (yes, that includes Gordy the pet pot-bellied pig) owned or possessed by either party, residing therewith. The court may further order that the respondent stay away from the animal and be forbidden from taking, concealing, striking, threatening (language sound familiar?!), or otherwise disposing of the animal.

While you may now only have to filter through questions about your client's pet(s), you may find yourself having to draft yet another declaration, but this time on behalf of lil' Fido. Now, you obviously won't know how Fido feels being stolen from the only home he knows, or being hurt by his one-time loving master, but you do have your client to fill you in on the details. And likely, if the pet is being abused, violence and/or manipulation is already part of the equation.

Protection for a pet walks hand in hand with the protection you seek for your client. Oftentimes a client will come to you describing not only the harm that was inflicted on them, but on a pet, too. Family Code section 6320 provides counsel and parties with an avenue for seeking redress from the court when a pet is being harmed by the other party involved in a case. As with ex parte orders for our clients, section 6320 provides a safe haven for our most loyal companions.

The Massachusetts Society for the Prevention of Cruelty to Animals-Angell Animal Medical Center (MSPCA-Angell) is one of the oldest humane societies in the United States. This organization conducted a study to research how the fear for the well-being of a pet prevents women from escaping an abusive relationship. The study found that up to 48% of battered women will not leave, or will return to a violent relationship, due to fear of what might happen to the animal if left behind.

If this study in fact is a reflection of the sentiment of domestic violence victims nationwide, you can see how the protection of a pet would be a concern to any pet owner facing similar circumstances. If a person has dealt with serious abuse first-hand, then he or she knows the risks of harm a pet may face if left behind. While a law to include pets in restraining orders may seem ludicrous to some, it is unfortunately, a real necessity for many.

California is just one of the many states now enacting laws to allow restraining orders to be issued for the protection of pets. In 2007, a Connecticut judge ordered a woman (an ex-spouse) to stay 100 yards away from her golden retriever because she had kicked the dog with both feet. In 2006, a New York judge issued a restraining order against a dog owner, too. So not only are laws like section 6320 in effect, they are being utilized by courts nationwide and should be taken very seriously.

It appears from secondary sources that on or before July 1, 2009, Judicial Council forms will be modified to included specific boxes to check off for pet restraining orders. With these forms and a declaration noting the surrounding circumstances, a party can obtain an ex parte restraining order that will allow exclusive control and possession of the pet to one person, with a stay-away order.

Well, for those readers who do not practice family law and who are thinking about joining our great family law bar, think of not only the typical issues that come up, such as child custody and support or spousal support, but also the potential drama over Fido. Think of all the great and wonderful family pets you can be helping.

Luis E. Lopez is a partner at Lopez & Morris, LLP. He has practiced in the Inland Empire since 1990. He is a graduate of the University of the Pacific, McGeorge School of Law.

Ashley C. Sedaghat is a law clerk at Lopez & Morris, LLP and a 2007 graduate of Loyola Law School.

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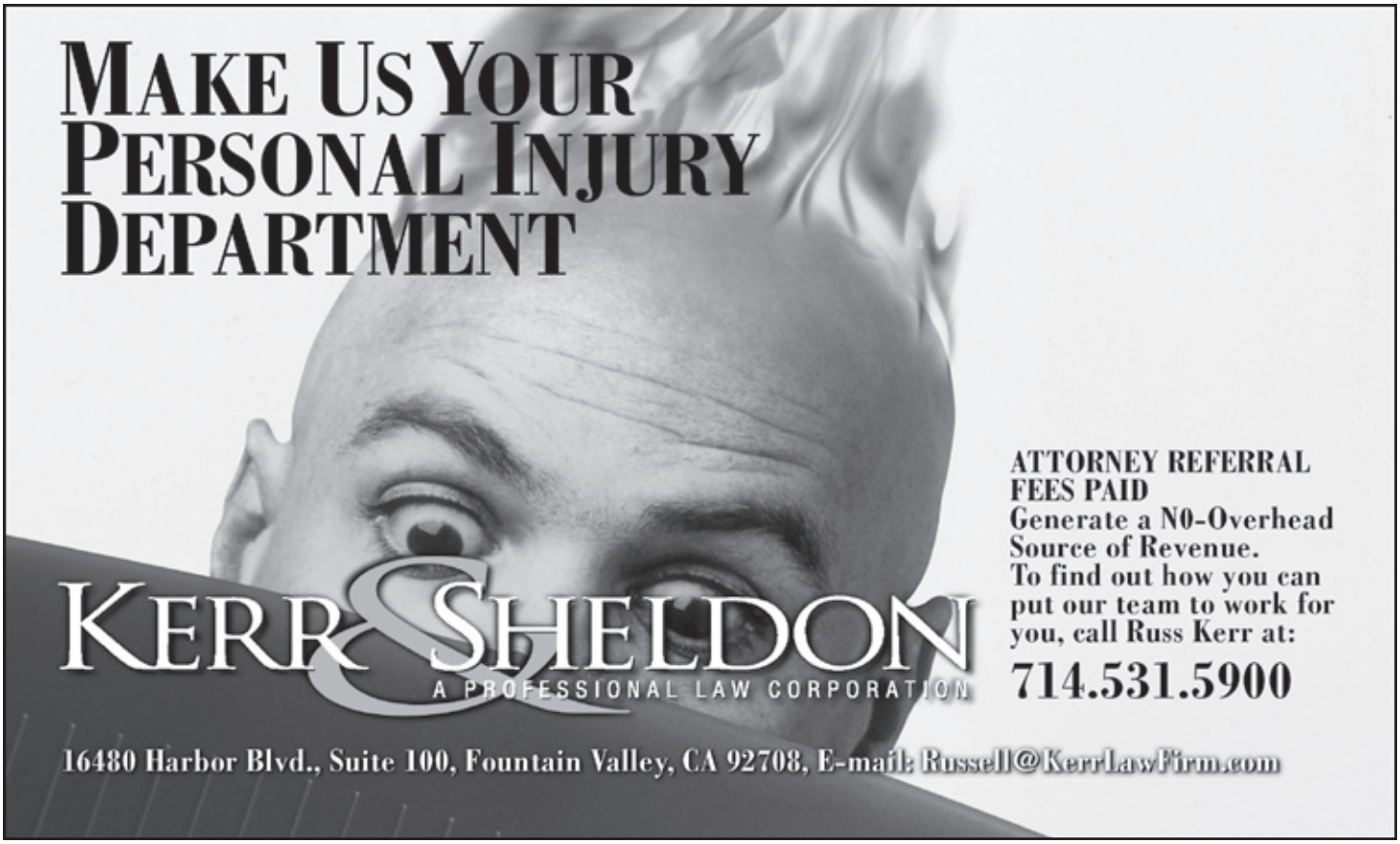

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Leo A. Deegan Inn of Court: Teams Kaiser, Littleworth and Moore

by Robyn A. Lewis

The teams of the Leo A. Deegan Inn of Court have continued its custom of honoring prestigious jurists and attorneys in the Riverside legal community by adopting such persons as team namesakes. March and April were no exception.

On March 12, 2008, Team Kaiser honored the Honorable E. Michael Kaiser during its presentation. As a practitioner, Judge Kaiser came to Riverside and joined the firm of Redwine & Sherrill, after practicing at the Los Angeles law firm of Chase, Rotchford, Drukker & Bogust, where he was the managing partner. Judge Kaiser is a past-president of the Inland Empire chapter of the American Board of Trial Advocates and of the Leo A. Deegan Inn of Court. He focused on business law and eminent domain before he took the bench in 1990. He became supervisor of the Riverside court's civil department in 1991 and assumed the role of presiding judge in 1993.

Judge Kaiser is perhaps best known for his role in the Stringfellow acid pits civil trials, over which he presided. In those cases, approximately 3,800 residents sued the state of California, alleging that toxic pollution from a hazardous waste dump caused illnesses, including leukemia.

Judge Kaiser has since retired from the bench, but his legacy lives on. He once said: "If I can leave the bench, whenever that may happen, and you can look back and say he was a good judge, he was fair, and say that with a smile, I will have been a success." Based on his reception at the March 12, 2008 meeting, there is no doubt that Judge Kaiser has exceeded his own expectations.

On March 26, 2008, Team Littleworth honored Arthur Littleworth, an attorney who is a legend in Riverside. Mr. Littleworth is one of the preeminent water law attorneys in the United States. A senior partner with Best Best & Krieger, Mr. Littleworth was appointed by the United States Supreme Court as a Special Master to hear a case of original jurisdiction in a dispute between Kansas and Colorado involving the Arkansas River. He was named as one of the top 100 attorneys in 2003 and is listed in *Best Lawyers in America*. Mr. Littleworth is a coauthor of *California Water*, which is considered to be the authority on that subject matter.

Due to an illness, Mr. Littleworth was unable to join his team for its presentation. However, his legal expertise and commitment to the Riverside legal community and the Inland Empire at large were well-noted. Members were reminded that, during his tenure as Chair of the Riverside Unified School District, it was Art Littleworth who spearheaded the voluntary desegregation of Riverside schools, for which he received the Federal Bar Association's Erwin Chemerinsky Defender of the Constitution Award.

Mr. Littleworth is a past-president of the Riverside County Bar Association. He was awarded the prestigious Krieger Meritorious Service Award, for his outstanding community service and civic achievement in the legal profession, and the Frank Miller Civic Achievement Award, for his outstanding civic leadership, service, and support for his community.

Most recently, on April 30, 2008, the Inn was joined by the legendary David Moore of Reid & Hellyer for a presentation by Team Moore. Mr. Moore, who was met with a standing ovation, is perhaps one of the most well-respected trial attorneys in Riverside history. A civil litigator specializing in business and real estate litigation, tort defense and water litigation, Mr. Moore was named one of the top attorneys in the Inland Empire and one of the "Best Lawyers in America," and he is a recipient of the Leo A. Deegan Inn of Court Award for Legal Excellence. He is a former president of the Riverside County Bar Association, the Leo A. Deegan Inn of Court, and the American Board of Trial Advocates.

Perhaps Mr. Moore is most well-known for being a trial attorney. He is a fellow of the American College of Trial Lawyers, one of the premier legal associations in the United States. Fellowship in the College is by invitation only and presented to those trial attorneys who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and congeniality. There can be no doubt that David Moore embodies all of those qualities and has personified them throughout his impressive legal career.

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Judicial Profile: Hon. Michael Donner

by Donna Thierbach

Judge Michael Donner is a California native; he was born in Pasadena, in the same hospital as his mother and father. I know you are dying to ask, so for you history buffs, his grandfather told him they are indeed related to Jacob Donner of the Donner party. Judge Donner's father was a bailiff for Los Angeles County and his mother was a court clerk for the Presiding Judge of Citrus Municipal Court. Having been around judges and lawyers his entire life, it would seem only natural that Judge Donner would become a lawyer. However, he came to practice law by a very circuitous route!

Judge Donner said he aspired to be a veterinarian. He graduated from high school at age 17 and began attending a local community college. However, a professor told him there was only one veterinary college in California, and it was impossible to get accepted. That day, he left school, went to the local military recruiters' offices and selected the Air Force, because they could take him that week. He then talked his mother into signing a release, and he was at Lackland Air Force Base in San Antonio, Texas by the end of the week. He spent the next four years in the Air Police, serving in the Far East.

After four years in the Air Force, he retuned to California and got a job (one of many) working on pipeline construction. One day, his supervisor demanded that he totally submerge himself in a hole filled with water and mud so he could feel with his hands that the boring rod was going in a straight line. At that moment, he realized he needed to get an education. He walked off the job and he signed up for classes at Long Beach City College that day. He attended Long Beach City College for two years, and then earned his degree in psychology at California State University, Fullerton (CSUF). He chose CSUF because he had watched it being built and had always wanted to attend that particular school.

Sometime after graduation, he moved to Santa Barbara and ultimately opened a private investigation firm. The business was successful, but Judge Donner wanted a profession. He considered teaching, but did not think he would make enough money to support a family. He eliminated veterinary school and medical school, because it would take him too long to complete the necessary science-related core requirements. So by a process of elimination, he decided on law school. He closed his business, backpacked around Europe until school was about to start, and then attended Southwestern University School of Law. He attended school at night, and clerked for Gilbert, Kelly, Crowley & Jennett in Los Angeles during the day. When he graduated in 1983, he accepted a position with the firm. So how did he come to reside in Riverside? In 1988, he made partner and opened their Inland Empire office. Of course, the story doesn't end there! In 1998, Judge Donner and two friends opened their own practice, Donner, Fernandez & Lauby. Then, in January 2008, he was appointed to Riverside County Superior Court to fill one of the new positions created by Senate Bill 56. Judge Donner said he enjoys being a judge. The work is interesting, the people are great and every day he is able to learn something new.

Marley, Lerin, Rachel and Mike Donner

Judge Donner has three daughters, Rachael, Marley and Lerin. His oldest daughters attend college and his youngest is in high school. None of his daughters has an interest in law. In his free time, Judge Donner enjoys sailing.

Donna Thierbach, a member of the Bar Publications Committee, is Chief Deputy of the Riverside County Probation Department.

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Roundup at Eldorado

by Richard Brent Reed

In 2004, members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints built a compound known as the YFZ (Yearning for Zion) Ranch in Eldorado, Texas, 45 miles south of San Angelo. The sect practices polygamy[1], conducting marriage ceremonies among its members. These are "spiritual marriages," but not marriages in the legal – or illegal – sense. Even though Texas law prohibits polygamy and the marriage of girls under 16, the local sheriff had never observed any criminal activity on the 1,700-acre compound over the last four years.

In April 2008, over 400 children at the YFZ Ranch were snatched from their parents. On March 30, 2008, an informant, who said that she was 16, phoned a local violence shelter, claiming that her 50-year-old "husband" had beaten and raped her. The name that the informant gave turned out to be identical to that of several girls in the sect. The state and federal search warrants that issued covered all documents related to marriages among sect members. (Fundamentalist Church attorneys objected to the search warrants as unconstitutional violations of church sanctity.) A special master was appointed to determine the admissibility of hundreds of written and computer records that were seized. The sect members who remained at the ranch cooperated fully with the troopers and social workers who had descended upon them.

Common-Law Polygamy

Texas recognizes common-law marriage, but calls it "informal marriage." An informal marriage is established by filing a declaration at the courthouse or by meeting a three-pronged test, in which the couple must:

1. Agree that they are married;
2. Cohabit in Texas; and
3. Represent to others that they are married.

Since the YFZ marriages were informal, in the statutory sense, what we have in Eldorado, Texas, is common-law polygamy. But the theory of common-law marriage is one of estoppel: if the parties have told the world they are married, they should not be allowed to claim that they are not married in a dispute between the parties themselves. Since YFZ fundamentalists never sought recognition of their "spiritual" unions by the state, can Texas assert jurisdiction by using the doctrine against the parties offensively?

In Texas, intercourse with a minor is a sexual assault if the perpetrator is a legal adult at least three years older. However, a 16-year-old, under Texas law, may legally marry with parental consent, so the supposed sex offenders may be off the statutory hook.

Poisonous Fruit

On May 22, Texas' Third Court of Appeals ruled that the state had no right to seize all of those kids, since there was no evidence of imminent danger, and that the child protection people had acted hastily and without "any reasonable effort on the part of the department to ascertain if some measure short of removal and/or separation would have eliminated the risk."

And what if the tip was a hoax and the 16-year-old informant turns out to be a 33-year-old crank? The call was made by a Ms. Swinton, who, posing as Sarah Barlow and as Laura Barlow, claimed that her husband, 50-year-old Dale Barlow, had beaten and raped her and that his other wives had attempted to

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poison her. Swinton is single, as it turns out, with no children, and may have a multiple-personality disorder. (Curiously, the warrant against Dale Barlow was dropped.)

Can probable cause be based on an improbable source of information? Even if the state uncovers evidence of sexual abuse, that evidence may prove to be inadmissible. And if the state's key witness turns out to be a lunatic, the state's case may turn into applesauce made from the tainted, psychotic fruit of a poisonous tree.

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

[1] "Polygamy," or plural marriage, may be loosely defined as "multiple bigamy." There are several subsets and permutations to the concept of polygamy:

Bigamy: Marriage to two people;

Polygamy: Marriage to more than two people;

Polygyny: Marriage between a man and more than two women;

Polyandry: Marriage between a woman and more than two men.

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Launching of Attorney Volunteer Program

by Robyn A. Lewis

The Riverside County Bar Association is pleased to announce the launch of a new program it is offering to its members.

The Attorney Volunteer Program, which is being organized by the RCBA and the Riverside County Public Defender's Office, will allow attorneys to gain invaluable trial experience and skills that they might not otherwise have the opportunity to achieve.

Participants in the program will undergo a training program, under the supervision of the Public Defender's office, learning everything from cross-examination to voir dire to jury selection. More seasoned attorneys, who perhaps already have a firm understanding of trial advocacy, will be introduced to criminal trial practice and procedure. The program will offer significant continuing legal education credits and is free to all RCBA members.

In exchange for their participation, volunteers will then commit to act as deputy public defenders handling misdemeanor trials. With a commitment of no more than three misdemeanor trials per year (approximately six days), volunteers will then get to use the skills that they learned in the training program in an actual courtroom. In addition to this basic commitment, volunteers can also elect to be placed on a panel to handle misdemeanor cases on an on-call basis.

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Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2008.

Ardalon Fakhimi – California Criminal Defense Center APC, Riverside

Jamie C. Meyer – Lobb Cliff & Lester LLP, Riverside

Protima Pandey – Inland Counties Legal Services, Riverside

Sarah Starkey – Lobb Cliff & Lester LLP, Riverside

Bert W. Struck – Law Offices of Bret W. Struck APC, Corona

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