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MAGAZINE

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California's Rising Wage-and-Hour Collective and Class Actions

The official publication of the Riverside County Bar Association

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This is Soheila Azizi, Principal of Soheila Azizi & Associates and Class of 1993 graduate.

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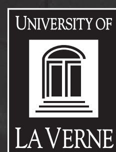

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Riverside Lawyer

MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

Calendar

March

8 RCBA Board
RCBA 5:00 p.m.

Joint RCBA/SBCBA Landlord-Tenant Section Meeting
Napoli Italian Restaurant at 24960 Redlands Blvd., Loma Linda
6:00 p.m. to 8:00 p.m.
Speaker: The Honorable Christopher B. Marshall
"Policies & Procedures for Unlawful Detainers in San Bernardino Central Court"
(MCLE)

Federal Bar Association – IE Chapter – Noon
"Cameras in the Courtroom: And How They Got a Bad Name"
Speaker: The Honorable Vaughn R. Walker
Federal Courthouse-3470 Twelfth St., Riverside
RSVP: Kim Connelly (951)686-4800
(MCLE)

10 Solo & Small Firm Section Meeting
RCBA John Gabbert Gallery – Noon
Speakers: Kina Mundy, Dennis Boyer, August Farnsworth
"Resources to Cut Overhead & Increase Profits for Small Law Firms"
(No MCLE)

15 Family Law Section Meeting
RCBA John Gabbert Gallery – Noon
Speaker: The Honorable Jackson Lucky, Erik Bradford, Esq. & Richard Lorenzi, Esq.
"Bardzik Imputation & Other Child Support Issues"
(MCLE)

16 Estate Planning, Probate & Elder Law Section Meeting
RCBA John Gabbert Gallery – Noon
Speakers: Frank Campbell & Jay Schumaker, Trinity Financial Partners
"Trust Owned Life Insurance, Trustee Liability & the Prudent Investor Act"
(MCLE)

18 RCBA General Membership Meeting
RCBA John Gabbert Gallery – Noon
Guest Speaker: Mike Farrell, Actor & Social Activist
President of Death Penalty Focus
"California's Death Penalty: Broken Beyond Repair"

25-27 California State Mock Trial Competition in Riverside

31 HOLIDAY – Cesar Chavez Day
(Courts & RCBA Offices closed)

President's Message

by Harlan Kistler

I warned most attorneys that my monthly articles would give some tribute to those hard-working warriors called King wrestlers, whom I have been coaching for the past eight years. For the most part, my articles have been silent on what I like to refer to as the "Sports Illustrated section" of the *Riverside Lawyer,* because the King High School wrestling team was plagued with significant injuries this year. We had three fractured collarbones, three severe ankle injuries, two broken hands, with one requiring surgery, and three knee injuries, with one requiring surgery. I can't explain the tremendous number of injuries this year. Perhaps it was a soda beverage diet and lack of calcium? Maybe the kids are just becoming stronger pound for pound?

Despite the numerous injuries to our varsity King wrestlers, the younger wrestlers were able to step up the intensity and achieve a successful season for the team. We had only four varsity wrestlers in our lineup at the Riverside County tournament, and the team still managed to come in eighth in the county. My freshman son, Nolan, took third at 125 pounds and has been an inspiration to the team all year. He runs a five-and-half-minute mile during the team's four-mile runs. His older brother, Harlan II, has been out all season with an ankle injury. The team has won nine duel matches, despite having only a remnant of their varsity team. We were fortunate to get most of our injured varsity wrestlers back into the lineup before the league finals. The six successful King wrestlers are competing in the CIF wrestling tournament this week.

I think everyone can draw some inspiration from the adversity that the King wrestling team members have endured and from their ability to persevere and move forward. Every attorney I know has been afflicted by the troubled economy and is adjusting his or her practice accordingly. I have made many adjustments, but I have avoided the temptation to take bad cases that I will regret later on. Instead, I use the extra time to coach a youth wrestling team and spend more time with my family. There are a lot of pro bono activities waiting for attorneys with a little more time on their hands. The experience is very rewarding and could lead to something else!

It is with great sadness that we say goodbye to one of our colleagues, Aurora Hughes. She was a courageous soul who loved our association. After she was diagnosed with a terminal illness, she still resumed her duties as president of the RCBA, because the members meant so much to her. Even after her presidency, she still attended board meetings and supported the RCBA. She was a professional, if ever you knew one, and she will be greatly missed.

The Riverside County Bar Association and the San Bernardino Bar Association held the "Bridging the Gap" Program for new bar admittees. The program provided a comprehensive overview of practicing law in our legal community. Attorneys and judges welcomed the participants and taught them the nuts and bolts of practicing law in various legal fields. The participants toured the local courts and met some of the judges, who spoke to them about issues that arise in a civil law practice. A special thank you is extended to all those who volunteered their time for this worthy event.

The RCBA thanks Terry Bridges for speaking at our February monthly membership meeting. We all appreciated the information he provided regarding civility in and out of the courtroom.

The RCBA is pleased to announce that Mike Farrell will be our speaker for our monthly membership meeting on March 18, 2011. Mr. Farrell is best remembered as B.J. Hunnicutt of television's historic *M*A*S*H* and as the producer of Universal Pictures' hit, *Patch Adams*. He is currently the president of Death Penalty Focus, and he will discuss issues regarding the death penalty.

The RCBA urges all members to join us for our monthly meetings to get to know other practicing attorneys in the community.

Harlan B. Kistler, president of the Riverside County Bar Association, is a personal injury attorney for the Law Offices of Harlan B. Kistler.

Barristers President's Message

by Jean-Simon Serrano

In February, the Barristers took a long overdue moment to honor past President, David Cantrell, and presented him with a plaque for his excellent leadership in the 2009-2010 year. This presentation was the start of a very engaging February meeting which featured Deputy Public Defender R. Addison Steele II. The topic of the speech was "Better Trial Results by Humanizing Your Client." Steele proved to be an exceptional speaker and the topic was one that was helpful to civil and criminal practitioners alike. Based on his eloquence, humor, and commanding presence, it is no surprise that he is a recent recipient of the California Public Defenders Association's "Defender of the Year" Award.

Being half-way through my term also means that it is time to start thinking about elections for next year's board. I am extremely satisfied with the enterprising nature of the present board. To have held a meeting such as the January 2011 meeting at which roughly 170 people attended was both ambitious and, I believe, unprecedented in the history of the Riverside County Barristers Association. Nothing would make me happier than to see the Barristers' involvement in the community continue to grow and thus I strongly encourage those interested in being a part of the organization to contact me so that they can be placed on the ballot.

Jean Serrano with last year's Barristers president, David Cantrell

We have yet to finalize plans for our next meeting (March); however, the RCBA will have this information as soon as it is available. As always, those who follow the Barristers' Facebook page will be automatically notified as soon as details are available. Further information can be found at the Barristers' webpage: http://riversidecountybar.com/barristers. Before the year is through, I anticipate we will have a meeting offering MCLE pertaining to Detection and Treatment of Substance Abuse. These are always popular meetings and all are welcome to attend.

I am constantly impressed with the Barristers Board this year and their dedication to the community as well as the desire to improve the quality of the Organization and the monthly meetings. I am further encouraged by the above-average attendance we have seen this year. Keep up the great work!

Jean-Simon Serrano, president of Barristers, is an associate attorney with the law firm of Heiting and Irwin. He is also a member of the Bar Publications Committee.

Kwikset Corp. v. Superior Court – Unfair Competition Law Standing

by Eli Underwood

The California Supreme Court recently decided *Kwikset Corp. v. Superior Court (Benson)*, 2011 WL 240278 (Cal. Jan. 27, 2011), which appears to address only the issue of standing under California's Unfair Competition Law. But appearances, like labels, can be misleading.

Kwikset began as a representative class action in 2000, based on allegations that the plaintiff purchased a lock labeled "Made in the U.S.A." (*Kwikset Corp*., 2011 WL 240278 at *1.) The trial court found that the lock was partly assembled in Mexico, and contained parts made in Taiwan. (*Ibid*.) In 2004, Proposition 64 amended the standing requirements under California's Unfair Competition Law to add injury in fact and lost money or property. The plaintiff amended his complaint to meet the new requirements, and the defendant demurred. On appeal from demurrer, the California Supreme Court granted review to determine the standing requirements under Proposition 64, particularly the meaning of "lost money or property."

During oral argument, plaintiff's counsel argued that a consumer has lost money or property under Proposition 64 if he or she buys a hot dog mislabeled as kosher. Defense counsel pushed this theory further, arguing that the plaintiff's subjective intent should determine whether there was "lost money or property." In response to Chief Justice George, defense counsel asserted that recovery would require that the plaintiff would not have entered the marketplace but for the misrepresentation. And under questioning from Justice Werdegar, the defense again asserted that the plaintiff would have to show that he would never have bought anything comparable in order to meet the requirement of "lost money or property."

The court agreed, but held that the plaintiff met the "lost money or property" requirement by paying more than what he or she considered to be the actual value of the product. According to the majority, "That increment, the extra money paid, is economic injury and affords the consumer standing to sue." (*Kwikset Corp*., 2011 WL 240278 at *10.) "Plaintiffs who can truthfully allege that they were deceived by a product's label into spending money to purchase the product, and would not have purchased it otherwise, have 'lost money or property' . . . and have standing to sue." (*Kwikset Corp*., 2011 WL 240278 at *1.)

Justices Chin and Corrigan, in dissent, found that the majority opinion directly contravened the electorate's intent, because subjective intent was a flawed measure for "lost money or property." (*Kwikset Corp*., 2011 WL 240278 at *17-*19.) And they pointed to several newspaper editorials using this same case (referred to as *Benson*) as typifying the "shakedown lawsuits" that Proposition 64 would curb. Despite the dissent's emphasis on the electorate's intent in passing Proposition 64, the court overruled the demurrer on standing grounds and remanded the case for further proceedings.

But the case may have larger implications than the narrow standing issue. Code of Civil Procedure section 382 requires that "one or more may sue for the benefit of all" when "the question is one of a common or general interest." Although brought as a representative class action, *Kwikset* emphasized that standing requires that each individual plaintiff must demonstrate individual *subjective* reliance. "The dissenting opinion objects to having a plaintiff's subjective motivations in making a purchase play any role in deciding standing. Of course . . . we will allow *one* party who subjectively relied on a particular deception in entering a transaction to sue, while simultaneously precluding *another* who subjectively did not so rely." (*Kwikset Corp*., 2011 WL 240278 at *10, fn. 14, emphasis added.)

It is unclear whether there can be a common or general interest on a question of subjective intent. (See *Silva v. Block* (1996) 49 Cal.App.4th 345, 350 [if the ability of each member of the class to recover clearly depends on a separate set of facts applicable only to that person, then all of the policy considerations that justify class actions equally compel the dismissal of such inappropriate actions at the pleading stage].)

Further, each plaintiff must *demonstrate* reliance on the advertisement after the pleading stage. "Because the issue here is only the threshold matter of standing . . . [i]t suffices that a plaintiff can allege an 'identifiable trifle.' [Citation.] Once this threshold pleading requirement has been satisfied, it will remain the plaintiff's burden thereafter to *prove* the elements of standing and of each alleged act of unfair competition." (*Kwikset Corp*., 2011 WL 240278 at *10, fn. 15, emphasis added.)

In *Kwikset*, the court decided that at the pleading stage, mislabeling alone would support an allegation that the plaintiff lost money or property. But the court also emphasized that it would allow one party who subjectively relied on a particular deception to sue, while precluding another who did not rely, and that each plaintiff must subsequently demonstrate but-for subjective reliance.

Eli Underwood, a member of the Bar Publications Committee, is an associate with Redwine and Sherrill in Riverside.

Caveat Attorneys: Can You Succeed in Mediation Without Really Trying?

by Barrie J. Roberts

California's "Mediation Week" is here once again, giving us the opportunity to celebrate mediation's "many potential benefits to litigants, the courts, and the public."[1] And we in Riverside have much to celebrate, thanks to the skill, dedication and generosity of our Civil Mediation Panel, the Master Calendar Settlement Conference Panel, the RCBA, Dispute Resolution Service, the Desert Bar Association, the Chapman Law School Mediation Program, and the Community Action Partnership's Small Claims Mediation program.

Along with the celebrations, however, we might also use this occasion to reflect on the word "potential" and ask: Are we fulfilling or squandering the "many potential benefits" of Riverside's court-ordered mediation program?

Green Lights

When I began working as the court's first ADR Director in March 2008, my colleagues from courts around the state welcomed me with dire predictions.

"Your biggest challenge will be finding even one judge who supports mediation," they warned. But every bench officer has fully supported the court's developing mediation programs.

"Court staff won't support new programs," warned my colleagues. But our staff has been remarkably supportive, despite the considerable work required to create new systems and websites.

"You'll have a hard time attracting and keeping quality mediators," was the loudest warning of all. But we have a stellar panel of over 90 attorney-mediators, certainly one of the best in the state.

Red Lights

As it turns out, however, there is an obstacle that can deprive litigants of mediation's potential benefits: Their attorneys!

Some attorneys secure three hours of free mediation services for their clients and then simply waste this golden opportunity.

Some fail to schedule a mediation session, treat scheduling as an adversarial process, or try to shift this logistical burden onto the mediator. Some schedule and then "no show," or show up without their clients or adjusters.

When attorneys do appear, too often, it is with furrowed brows. They can't provide the relevant law, facts, recent verdicts, reasonable settlement options or even an understanding of what their clients really want.

And too often, attorneys fail to prepare their clients for mediation – preparation which should certainly include a reality-check on the gap between what has been so confidently stated in pleadings and what is a realistic expectation for settlement or trial.

What a waste: of the court's scarce resources (the court pays panel mediators $150 per case from Trial Court Trust Funds and employs staff to run the program); of the mediator's precious pro bono time and goodwill; of the opposing side's time and potential spirit of cooperation; of the client's opportunity to achieve a satisfying resolution; and according to author John Lande, of the attorney's own opportunity to "get good results for clients and make money."

Try to Succeed

At the University of La Verne's recent symposium on "Cutting Edge Issues in ADR," Professor Lande presented key ideas from his upcoming book, *A Lawyer's Guide to Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money*.[2]

Instead of "unplanned late negotiation," Lande encourages attorneys to "get ahead of the curve": rather than "going with the flow" of court-imposed deadlines, "take more responsibility for managing your case, including intelligently using neutrals."

Lande addresses the lawyer's "Prison of Fear" that can block negotiations. He presents common fears – looking weak, giving away too much, committing malpractice and losing revenue – and suggests antidotes. He also consid-

1 Judicial Council of California, Standing Resolution recognizing the third week of March as "Mediation Week."

2 For a summary of the ideas in this book, see: meetings.abanet.org/webupload/commupload/DR020600/otherlinks_files/ABA_mediation_institute_early_negotiation_Nov_10.pdf.

ers current economic realities, their impact on client attitudes toward legal fees, and billing arrangements that are favorable to both attorney and client when the case settles early.

Riverside's ADR Info Sheet

In Riverside, the simplest way to get ahead of the curve is to review the court's ADR Information Sheet with clients early in the life of the case. See www.riverside.courts.ca.gov/adr/adrciv.pdf. This is no boilerplate form. I wrote it myself for the very purpose of providing attorneys a user-friendly way to start the ADR conversation with their Riverside litigants. (Of course, I also wrote it to comply with California Rules of Court, rule 3.221.)

Simply reading the Information Sheet out loud with clients and answering their questions could be the first step in "planned early negotiation" for the benefit of all concerned.

Conclusion

Not all cases can or should resolve before the day of trial. But all attorneys who request and receive mediation services provided by the court and by the generosity of an attorney-mediator colleague should do the work needed to take full advantage of mediation's potential benefits.

Barrie J. Roberts received a J.D. from U.C. Hastings College of the Law and an LL.M. in Dispute Resolution from the Pepperdine University School of Law (Straus Institute). She practiced law for 14 years in northern California and became the court's first ADR Director in March 2008. She can be reached at Barrie.Roberts@riverside.courts.ca.gov. The ADR Program's website is at www.riverside.courts.ca.gov/adr/adr.shtm.

Consumer Fraud Cases Are a Little Different From Most Cases

by Richard McCune

Most consumers do not profess to be experts about the law, but when a consumer feels they have been cheated by a business, they are sure they have a slam-dunk multi-million dollar class-action case. When hearing a story about a business that is cheating, most lawyers can determine if the case has legal merit, but here are a few practical things to look at when deciding if a business practice should be the subject of a consumer fraud class action.

Is the Business Practice Really Unfair, or Is It a "Gotcha" Case?

"Gotcha" cases are those that focus on a business's legal or technical violations, without regard to the bigger practical picture of whether there is anything really unfair or harmful about the practice. When reviewing published class-action cases, just look at the facts. Most of the time these were "gotcha" cases. Just because Froot Loops does not contain real fruit does not make it a good class-action case (a lesson learned by several lawyers). But do not confuse a "gotcha" case with a small-damages-per-consumer case. If the business practice is targeted at cheating a lot of customers out of a small amount of money each, these are good cases, provided they meet the rest of the practical requirements.

Is the Business Practice Uniformly Applied to Each Class Member?

Establishing a uniform practice is often the most difficult part of getting a class action certified. In a consumer class action, the background, experience, motivating factors for purchasing, and manner of purchasing the product are rarely the same for each customer. Since the consumer experience is rarely uniform, it is very important that the business practice is applied in a uniform way. For a case that involves misrepresentations, that usually means written misrepresentations. Any story from a prospective client that involves "and they told me" is usually not a good case. Sometimes, businesses provide scripts for their employees, so the misrepresentations are the same as to each customer. But most of the time, when the unfair business practice involves verbal misrepresentations, it is a difficult case to get certified, because each customer was likely told something a little different. On the other hand, businesses, for marketing and legal reasons, usually present their products in a consistent way through marketing and disclosure materials. As long as the written misrepresentation passes the "gotcha" test, it has a good chance of meeting the uniformity test.

When it is a practice itself that is being challenged, rather than marketing or disclosures, the practice should be carried out in a similar way as to each class member in order to qualify as a good class-action case. For example, a bank that has a computer program that manipulates the order of posting transactions to maximize overdraft fees meets the uniformity test, even though the results are different for its many different customers. In contrast, an auto repair shop that is suspected of diagnosing unnecessary car repairs is a very difficult class action, because the practice is carried out differently for each customer. Look to see if it is likely that the practice is carried out by the business in a uniform way.

Is the Case Big Enough to Justify Filing as a Class Action?

The problem with most potential consumer fraud class actions is that there just is not enough money for the class representative, the class, or the lawyers to justify the risk. Plaintiff consumer fraud class actions involve a lot of high-level attorney work and the advancement of substantial costs, and usually must be handled as contingency fee cases. If the total damages are not a large number, they are likely not going to warrant taking the case. This problem is heightened because, even when the case is resolved favorably, the attorney's fees and costs must be awarded and/or approved by the court. It is often difficult to get the court to focus on the relative merits and risks of the case when you first took it if there is not a substantial payout to the class at the conclusion. Often, the fee award is less than anticipated or seems unfair considering the risks and the length of time between advancing fees and costs to getting paid.

Will the Likely Resolution of the Case Be Viewed as Providing Value to the Class Members?

The days of $0.50 coupons toward the purchase of a new product as a settlement of a class action are fortunately nearly a thing of the past. Those cases made judges and the public skeptical of class-action cases. However, that means there must be some consideration of what achievable results will be viewed favorably by the class members, the public and the court. Often, the only resolution of the case that would provide value to the client is a change of practice. When that change will cost the defendant millions of dollars, a trial and an injunction, it may be the only way to resolve the case. These are dangerous contingency cases. They almost certainly involve trial, appeal, potential bankruptcy, and years of litigation. Most good cases are those that can be resolved short of all-or-nothing.

Can the Client Make the Case for the Class?

This is often a difficult issue. After Proposition 64, unless you can prevail on your client's individual case, you will not prevail on the class case, no matter the merits of the case for the class. Often, the client is the class representative because they came to you. That does not make the client the best spokesperson or the most typical class representative. In addition, the client, no matter how many times they are told not to expect different compensation than other members of the class, will have unrealistic expectations. It takes a special client who will spend an enormous amount of time responding to discovery and undergoing grueling depositions while the case drags on for years, who will stay engaged knowing they can expect to get back only the same $100 as everyone else in the class. It is important to know you have a solid client who is pursuing the case for the right reasons.

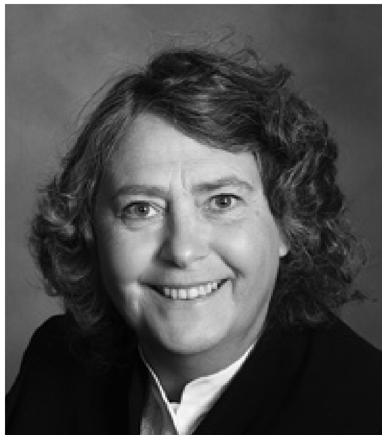
There are, of course, exceptions to these rules, but for the most part, these are the practical considerations that separate the good consumer fraud class actions from the bad.

Richard McCune is a partner with McCuneWright, LLP, a plaintiff consumer fraud and product liability law firm in Redlands. As co-counsel in an August, 2010 trial, he obtained a verdict of $203 million in the consumer class action of Gutierrez v. Wells Fargo Bank, N.A.

In Memoriam: E. Aurora Hughes

by James O. Heiting

I always knew Aurora Hughes as Aurora. I thought everybody knew her as Aurora, pretty much. But thinking back on meeting her, she told me, "My good friends call me Rory. You can call me Aurora." (That was the kind of relationship we had.) She asked me to speak at her funeral. These are some of my thoughts that I expressed, or wish I had expressed, there.



E. Aurora Hughes

I first met Aurora when she was in the Los Angeles County Bar Association and I was in the Riverside County Bar Association, and we were both involved in the Conference of Delegates at the State Bar convention. The Conference of Delegates is like a senate or a legislative group where, each year at the State Bar convention, a group of delegates from different bar associations get together to debate and recommend proposed laws. The Board of Governors then reviews the proposals and forwards on to the legislature any proposals it is willing to support. Aurora was very proud that one particular law that she wrote was actually debated, passed by our Conference of Delegates, moved on to the Board of Governors and then the legislature, and then passed by the legislature, becoming the law of the land.

She was very dedicated to any project in which she was involved, and a very dedicated lawyer. She was the chair of the Los Angeles County Bar Association delegation to the conference, a very large delegation; there are about 60,000 lawyers in Los Angeles (of the 230,000-plus lawyers in the state). She was very confident, she was very energetic, and she was special. She knew how to move things. She was a great advocate. She would take hold of some concept or premise and would carry it through to its conclusion, without fail.

When she moved to Riverside, I was thrilled, because I knew we could tap into her knowledge and her experience and her talents, and we could use those. We did. She became the chair of our delegation to the Conference of Delegates.

But even before that, she seemed to be successful in everything she did. I was really impressed by how successful she was. She was part of her high school boys' baseball team (until they wouldn't let her play anymore because she couldn't wear a man's "cup"). She attended the University of Arizona and then went on to Southwestern University law school.

She became the president of the Federal Bar Association locally, and she became a delegate to their federal convention, where laws were debated on a federal level. She was an author of children's books and vice president of the California Writers' Club. She was an award-winning shooter (shotguns).

But that's not all. She gave back and volunteered in every way, not only in those things mentioned and in those organizations, but she gave back to the lawyers, the citizens of our state, and the courts. The courts recognized her abilities and appointed her to act as a judge pro tem – a temporary judge – sitting in for judges when they were absent for some reason. She also sat as an arbitrator and decided cases, and was a mediator and a settlement officer, bringing people together. She was a genuinely good person, and people quickly picked up on that. She found her greatest satisfaction in the law in "taking the burden off" the client and shouldering it herself. She reveled in bringing people together, in resolving conflicts for them.

She became the president of the Riverside County Bar Association the year she was diagnosed with Lou Gehrig's disease. She also maintained memberships (actively) in the Los Angeles and San Bernardino County Bar Associations, and continued to be active in State Bar politics. All the while, she mentored young people (in Mock Trial) and young lawyers. She taught them. She gave instruction on the practicalities of the practice and the "how to" of the practice of law. When we get to be lawyers, some of us (most of us?) are kind of lost as to how actually to practice law. She wrote articles and taught "Bridging the Gap" programs and many continuing legal education courses.

Many of us – most of us – find our success in life measured by money, property and prestige. She managed a large law firm. She was successful. She did all that; but she found her satisfaction, her feeling of success in

life, in the area of service. In every aspect of her life that I ever saw, she was oriented toward service. If she saw something that you could use to succeed or be better, she would give you that. She would give of herself. Even at the end, she continued to give us her most precious possession, time.

Some of the words that have been used to describe her are courage, strength, intelligence, dignity, faith, class, a leader, positive, optimistic, energetic, diligent, dedicated, loyal, warm, and caring. They all fit . . . very well.

She gave of herself to the very end, no matter how sick she was. She showed up when she was past president of Riverside County Bar Association at board meetings even into late 2010. She called the bar association in December of 2010, in great spirits and with great energy, wishing everybody a cheerful and happy new year.

She lived in a way that encourages us and inspires us to do better, to do more, to be grateful. She lived her life expressing her absolute joy in her husband Joe, in her family, in her grandchildren, in being a lawyer (she loved being a lawyer), in being a bar leader and in all that she did. She did not live in self-pity or in the query of, "Why me?" She said in her actions, as well as in her words, what the man whose name is attached to this terrible disease said at Yankee Stadium (and as she lived her life as long as I have known her): That she considered herself the luckiest woman on the face of the earth. She said her only regret was that she was not able to mentor more, to give back more.

Her memory will serve us well. It will help to teach us how to live, how to face adversity. It will teach us how to make a difference. Many recognized this in her. In San Bernardino, she received one of the highest awards given to any attorney, one of the greatest awards in our area, the Florentino Garza Fortitude Award (a recognition of people and professionals who overcome significant personal obstacles and achieve success in the practice of the law). The judge who presented her that award, Judge John Pacheco, described her as "the most courageous warrior I know."

She loved life. She loved without reservation. She did battle every day. She met her adversary and adversity head on and without complaint. She did love life, but best of all, she loved us.

I will always be grateful to have known her.

James Heiting is a past president of both the Riverside County Bar Association and State Bar of California. He is a partner with Heiting & Irwin in Riverside.

Let Justice Prevail . . .

by L. Alexandra Fong

On January 12, 2011, the Riverside County Barristers Association (Barristers), the young attorneys division of the Riverside County Bar Association (RCBA), hosted a special event, open to the public and all attorneys, featuring District Attorney Paul Zellerbach and Public Defender Gary Windom. The topic was "Access to Justice for Criminal and Civil Litigants."

This event was sponsored by the Riverside County Deputy District Attorneys Association – the union representing deputy district attorneys in the County of Riverside – and seven local law firms – (1) Redwine & Sherrill, (2) Varner & Brandt, (3) Gresham Savage Nolan & Tilden, (4) Best Best & Krieger, (5) Kinkle Rodiger & Spriggs, (6) Reid & Hellyer, and (7) Heiting & Irwin. It began with a tour of the 10th floor of the District Attorney's office and a social hour before proceeding to a discourse by District Attorney Zellerbach and Public Defender Windom, held in the training room under the dome.

The event was photographed by Michael J. Elderman, a local photographer who has had exhibits at the Brandstater Gallery at La Sierra University, the Riverside Art Museum, and his own gallery, Studio and Fine Art Gallery, located on Lemon Street in the heart of Downtown Riverside.

Over 150 attorneys and members of the public attended. Prior to the discussion by the two speakers, members of the Barristers Board, including Jeffrey Boyd, Brian Pedigo, and Scott Talkov briefly discussed Barristers, thanked the sponsors, unveiled the new Barristers logo, and promoted the organization.

District Attorney Zellerbach began the dialogue by discussing the RCBA and Barristers. He said he encouraged his attorneys to become involved with the local community, including the RCBA, Barristers, the Leo A. Deegan Inn of Court, and Mock Trial. Involvement in the local community is important, and an attorney will be evaluated, for purposes of promotion within the department, on his or her entire body of work as a person, rather than solely on statistics at trial.

He recalled when he first came to work in Riverside in 1978. As a young deputy district attorney, he socialized with deputy public defenders. Even though they would battle in court, he realized that they could behave professionally and civilly outside of court. If the deputy district attorney and deputy public defender did their jobs, justice would prevail and everyone – regardless of their status in civil or criminal courts – would have access to justice.

District Attorney Paul Zellerbach and Public Defender Gary Windom

Deputy District Attorneys Michael Soccio and Jeff Van Wagenen

Standing room only at the event

Public Defender Windom informed the audience that the Public Defender's office receives 41 cents for every dollar the District Attorney's office receives. He estimated that four-fifths of the legal needs of the poor and two- to three-fifths of the legal needs of the middle class remain unmet, causing access to justice to be

impossible for many. He recalled cases (not in Riverside County) where the courts determined that it was not ineffective assistance of counsel for the defense attorney to fall asleep during the trial or to leave the courtroom to place money in a parking meter while the prosecution presented its case. He regaled the audience with statistics of indigent defense throughout the country, including Louisiana, which only has $10 million for indigent defense for the entire state.

He informed the audience that the public defender's job is not to presume guilt, but to make the district attorney prove his case beyond a reasonable doubt. If that occurs, justice will prevail. It is important to change the way business is done by having equal access to the courts, which leads to equal justice for all litigants. Equal access to justice should not depend upon the ability to pay for it.

After the speech concluded, there was a brief question and answer session. Several attorneys and members of the public made inquiries and comments before District Attorney Zellerbach and Public Defender Windom were presented with letters of appreciation from Barristers.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.

All photographs are copyrighted by and provided courtesy of Michael J. Elderman. Reprints of these photographs, and others taken at the January 12, 2011 event, may be ordered at this website: www.mjeldermanphoto.com/#/gallery/barristers-1-12-11.

Class Action Law Update: A Look at 2010 and Beyond

by William N. Hebert and Genevieve P. Rapadas

Introduction

The year 2010 brought significant developments for class actions in California, and for cases alleging violations of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§17200-17210. We saw the courts continuing to interpret Proposition 64, and in particular its impact on class actions. The next few years promise to generate new opinions in this dynamic area of the law.

Tobacco II Raises the UCL from the Ashes of Proposition 64

In 2009, the Supreme Court issued the long-awaited decision in *In re Tobacco II Cases*, 46 Cal. 4th 298 (*Tobacco II*), in which the Court gave its first interpretation of key provisions of Proposition 64 as it applies to class actions. Prior to the 2004 amendment of the UCL by Proposition 64, "[a]ctions for relief [under the UCL could be] prosecuted ... by the Attorney General or any district attorney or by any county counsel ... [or] by a city prosecutor ... [or] by a city attorney ... or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public." Bus. & Prof. Code, former § 17204. *See also Tobacco II*, 46 Cal. 4th at 305. Post Proposition 64, Section 17203 provides that "[a]ny person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure"; that is, "a person who has suffered injury in fact and has lost money or property as a result of [such] unfair competition." Bus. & Prof. Code § 17204, as amended by Prop. 64, § 3; *Tobacco II*, 46 Cal. 4th at 306.

The plaintiffs in *Tobacco II* were smokers who filed an action against tobacco companies alleging that they were exposed to and were injured as a result of the companies' advertising campaigns convincing them to begin smoking, and continue to smoke. Prior to the passage of Proposition 64, the trial court granted a motion to certify a class of smokers who alleged that the defendants' cigarette advertisements were false. After the passage of Proposition 64, the defendants moved to decertify the class. The trial court granted the motion and the plaintiffs sought appellate review.

The Supreme Court accepted review on two issues: first, who in a UCL class action must comply with Proposition 64's standing requirements, the class representatives or all unnamed class members, in order for the class action to proceed? Second, what is the causation requirement for purposes of establishing standing under the UCL, and in particular what is the meaning of "as a result of" in Section 17204? *Tobacco II*, 46 Cal. 4th at 306.

On the first question, that Supreme Court held that the standing requirements are applicable only to the class representatives, and not all of the absent class members. The Supreme Court reasoned that the authorizing statute requires only the "person" or "claimant" who brings the claim to have "lost money or property as a result of the unfair competition." *Tobacco II*, 46 Cal. 4th at 315. Because this provision is in the singular, not plural, the Court concluded that only the named representative is the "person" or "claimant" who must meet Proposition 64's standing requirements. *Id*. at 316. The Court also reviewed its own decisions, and decisions of federal courts under Rule 23 of the Federal Rules of Civil Procedure and treatises interpreting that rule. These authorities supported the Court's conclusion that the absent class members do not need to prove standing; rather, the validity of their claims are assessed by the trial court's analysis of the other elements for class certification, namely, adequacy, commonality and typicality. *Id*. at 316-324.

On the second question, the Supreme Court held that a class representative proceeding on a claim of misrepresentation as the basis of his or her UCL action must demonstrate actual reliance on the allegedly deceptive or misleading statements, in accordance with well-settled principles regarding the element of reliance in ordinary fraud actions. *Tobacco II*, 46 Cal. 4th at 326. Under the "fraud" prong of the UCL, a plaintiff must plead and prove that the defendant's misrepresentation or nondisclosure was "an immediate cause" of the plaintiff's injury-producing conduct: in other words, that in the absence of the misrepresentation or nondisclosure, the plaintiff in all reasonable probability would not have engaged in the injury-producing conduct. *Id*. The misrepresentation or non-disclosure need not be the only cause; it only needs to be a "substantial factor" influencing the plaintiff's decision to buy the product. *Id*. at 326-27. A presumption or inference of reliance arises if the plaintiff can show that the misrepresentation was "material." *Id*. at 327. See William N. Hebert, *Listerine™ "Freshens Up" California's False Advertising Law* 1, 3 (Summer 2006) (predicting that after Proposition 64 courts were likely to find reliance where misrepresentation was material in advertising); and see *Bomersheim v. Los Angeles Gay and Lesbian Center*, 184 Cal. App. 4th 1471, 1485 (2d Dist. 2010) (in action for damages for re-treatment for a disease where the first treatment was negligently administered, an inference of causation arises when a material event impacts an individual whose subsequent actions constitute a reasonable response; in class context, where individuals are uniformly subjected to a material stimulus and thereafter uniformly act in a manner consistent with a reasonable response, a class-wide inference is raised that the stimulus caused the response). In false advertising cases under the UCL, the plaintiff need not point to a specific misrepresentation, or show with an "unrealistic degree of specificity" how the defendant's message reached her. *Tobacco II*, 46 Cal. 4th at 327.

With these principles in mind, in 2010 the Supreme Court and lower courts sought to apply the teachings of *Tobacco II* in

a variety of contexts. We summarize below some of the major recent cases from the past year.

Right to Seek Injunctive Relief Under the UCL Does Not Depend Upon Right to Seek Restitution

After *Tobacco II*, standing continues to be a hot topic in the lower courts and in the Supreme Court. In *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758 (2010), plaintiffs were retail pharmacies who brought a price-fixing action against pharmaceutical companies. Plaintiffs alleged that the defendants -- companies that manufacture, market, and/or distribute brand-name pharmaceutical products -- had unlawfully conspired to fix the prices of their brand-name pharmaceuticals in the United States market, including California. Plaintiffs asserted claims for violation of the Cartwright Act and for restitution and injunctive relief under UCL. The Court of Appeal for the First District affirmed the trial court's order granting summary judgment in favor of the defendants. The Supreme Court held that the pharmacies met the standing requirements under the UCL and that the right to seek injunctive relief under UCL is not dependent on the right to seek restitution.

After thoroughly discussing plaintiff's Cartwright Act claim, the Supreme Court turned to the UCL claim, and confirmed that a plaintiff who did not purchase a product "directly" from the defendant may nonetheless bring a UCL claim and recover restitution if the plaintiff's loss can be traced to the defendant's pockets, such as in cases involving purchases of products from retail intermediaries. *Clayworth*, 49 Cal. 4th at 766-77.

The Court adopted the rule of *Shersher v. Superior Court* (2007) 154 Cal. App. 4th 1491 (holding that indirect purchases may support UCL standing) and stated that the plaintiff pharmacies acted as retailers for the manufacturers' drugs and thus had indirect business dealings with manufacturers. The plaintiffs allegedly lost money in the overcharges they paid which was the result of a purported unfair practice: the plaintiff pharmacies claimed they had paid more than they otherwise would have because of a price-fixing conspiracy in violation of state law. The Supreme Court concluded that granting the plaintiff pharmacies standing in this case was consistent with the voters' intent under Proposition 64 that suits be limited to those who suffer injury in fact. *Clayworth*, 49 Cal. 4th at 788-89.

The defendants also contended that the plaintiff pharmacies lacked standing because they sought only injunctive relief, not restitution. In rejecting this contention, the Supreme Court stated:

> The Court of Appeal held Pharmacies were barred from seeking injunctive relief because, it concluded, they had suffered no monetary loss. To the extent this holding rests on the conclusion Pharmacies lacked standing under section 17204, it is erroneous; as discussed *ante*, Pharmacies have standing. To the extent the holding rests on the conclusion that even if Pharmacies had standing, they could not seek injunctive relief unless they could also seek restitution, it similarly is erroneous. Section 17203 makes injunctive relief "the primary form of relief available under the UCL," while restitution is merely "ancillary." [*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319.] Nothing in the statute's language conditions a court's authority to order injunctive relief on the need in a given case to also order restitution. Accordingly, the right to seek injunctive relief under section 17203 is not dependent on the right to seek restitution; the two are wholly independent remedies.

Clayworth, 49 Cal. 4th at 790 (internal citations omitted).

Treble Recovery Statute Does Not Apply to Cases Seeking Restitution Under the UCL

In *Clark v. Superior Court (Nat'l Western Life Ins. Co.)*, 50 Cal. 4th 605 (2010), the plaintiffs were senior citizens who filed an action against National Western Life Insurance Company. Plaintiffs alleged that the defendants violated the UCL by using deceptive business practices to induce senior citizens to buy high-commission annuity contracts with large penalties for "early surrender." Plaintiffs sought an injunction, restitution and treble recovery under Civil Code § 3345, which permits an enhanced award of up to three times the amount of a fine, civil penalty, or "any other remedy the purpose or effect of which is to punish or deter" in actions brought by or on behalf of senior citizens or disabled persons seeking to "redress unfair or deceptive acts or practices or unfair methods of competition." The Court of Appeal for the Second district held that treble damages did apply to restitution under the UCL and the Supreme Court granted review.

The Supreme Court reversed the decision of the Court of Appeal, holding that the applicability of the treble recovery statute is limited to actions under Consumer Legal Remedies Act and the treble recovery statute does not apply to an award of restitution under the UCL. The Supreme Court agreed with the defendant's interpretation of the statute that Subdivision (b) of Civ. Code §3345 allows up to three items the amount of a fine, civil penalty, or "any other remedy the purpose or effect of which is to punish or deter." Thus, the Court of Appeal erred when it read in isolation, rather in context the statutory phrase "the purpose or effect of which is to … deter", which in turn led the court wrongly to conclude that any remedy with a deterrent effect falls within subdivision (b)'s trebled recovery provision. The Supreme Court held that the "deter" language must be read as pertaining to a remedy that is designed to punish or that is in the nature of a penalty.

Further, the Supreme Court examined whether the UCL, which was the basis of plaintiffs' private party action, falls within the category of a remedy that is designed to punish. The Supreme Court held that it did not. Restitution is the only monetary remedy authorized in a private action under unfair competition law. Restitution is not a punitive remedy, because it is measured solely by what was taken from plaintiff.

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William N. Hebert, a partner at Calvo Fisher & Jacob LLP, is the President of the State Bar of California. Mr. Hebert represents clients in business litigation, including class actions, business torts (such as antitrust, trade secret litigation, and interference with economic advantage), and California's Unfair Competition Law.

Wal-Mart v. Dukes and the Future of Class Action Litigation

by Warren Snider

This March, the United States Supreme Court will hear oral argument on whether class certification was proper in the case of *Wal-Mart v. Dukes*. Petitioner Wal-Mart Stores, Inc. is the largest private employer in the country. The respondent class seeking certification includes every woman employed by Wal-Mart at any time after December 26, 1998 and could number upwards of 1.6 million. Respondents brought suit under Title VII of the Civil Rights Act of 1964,[1] claiming that Wal-Mart engaged in payroll and promotion discrimination against women.

In 2004, the United States District Court in San Francisco certified two separate classes: one for plaintiffs seeking only injunctive relief and back pay, and the other for plaintiffs also seeking punitive damages. Class action certification is largely governed by Federal Rule of Civil Procedure 23. Rule 23(a) lists four requirements – numerosity, commonality, typicality, and adequacy of representation – which must all be met. Numerosity requires that the class is so numerous that joinder of all members is impractical. Commonality requires that there are questions of law or fact common to the class. Typicality requires that the representative parties' claims and defenses are typical of the class as a whole. And adequacy of representation requires that the representative parties will fairly and adequately protect the interests of the class.

Rule 23(b) lists three types of class actions; a class action must also meet the requirements of one of these categories in order to be certified. Rule 23(b)(2) is for class actions seeking injunctive relief, while Rule 23(b)(3) is a catch-all category for those suits in which a class action is the most efficient means of resolution. As the requirements for a Rule 23(b)(3) class action are less strict, they are traditionally judged with more scrutiny, and they have additional requirements, such as notification of all class members and an opt-out provision. All courts have traditionally considered back pay under Title VII as equitable relief, and thus have allowed it in Rule 23(b)(2) class actions.[2] Further, the circuits are in general agreement that some monetary relief is allowed under Rule 23(b)(2), although they disagree on the specifics.

The district court certified both classes under Rule 23(b)(2), but imposed some of the additional requirements of a (b)(3) certification on the class seeking punitive damages (a common practice).[3] Wal-Mart appealed, arguing that class actions seeking monetary relief should not be certified under Rule 23(b)(2). In 2007, a three-judge panel of the Ninth Circuit upheld the district court's decision; Wal-Mart requested a hearing *en banc*. In 2010, the Ninth Circuit ruled 6-5 to uphold the certification of the class seeking injunctive relief and back pay.[4] It then turned to the class seeking punitive damages.

As noted, the circuits disagree on when cases seeking damages may be certified under Rule 23(b)(2). The majority view is that such cases may be certified only if damages are incidental to the injunctive relief sought.[5] The minority view looks to the plaintiffs' subjective intent. Although the Ninth Circuit previously followed the minority view, it departed from it in this case and created a third test. Under this new test, the damages sought must not be "'superior [in] strength, influence, or authority' to injunctive and declaratory relief." The Ninth Circuit then remanded certification of the second class so the district court could determine whether the punitive damages outweigh the injunctive relief sought and whether the class should more properly have been certified under Rule 23(b)(3). Wal-Mart petitioned for certiorari. In granting certiorari, the Supreme Court has not only asked for argument on when certification is proper (if ever) for cases seeking monetary relief, but also on whether the classes properly met the certification requirements of Rule 23(a).

Wal-Mart's position on the general certification issue is that cases seeking any monetary compensation, even

1 42 U.S.C. § 2000.

2 *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir. 1998).

3 As established in *In re Monumental Life Ins. Co.*, 365 F.3d 408, 417 (5th Cir. 2004).

4 *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010).

5 *Allison* at 415.

back pay, should never be certified under Rule 23(b)(2); or, in the alternative, a variation of the majority rule should be used. Respondents in the first class contend that every court treats back pay as equitable relief and allows it under Rule 23(b)(2). It is unclear what respondents in the second class will argue – previously their argument was that class certification was not ripe for review because the issue had been remanded. The Supreme Court's ultimate decision here could be a blow to class action lawsuits if every plaintiff seeking damages is required to satisfy the stricter requirements of Rule 23(b)(3).

As to the merits of certification in this particular case, the argument has revolved around whether the commonality requirement of Rule 23(a) was met (as well as typicality and adequacy, to the extent that all three requirements overlap). The district court found that there was evidence of company-wide discriminatory policies, along with both statistical and anecdotal evidence of gender disparity. Wal-Mart argues both that it has antidiscrimination policies in place and that individual managers have so much discretion that there cannot be a general policy of discrimination. Respondents' brief has not yet been made available – and this issue was not brought up in the cert petition – so it is uncertain what, if anything, they will argue in addition to the district court's findings.

To date, there have been 15 *amicus curiae* briefs filed – all in support of petitioner. They have, unfortunately, added little to Wal-Mart's argument that the district court was wrong in finding commonality. A few have additionally split on the question of whether there should be no monetary relief under Rule 23(b)(2) or the majority rule should be used.

This could end up being a very important case. Any changes the Supreme Court makes to Rule 23 will affect all future class action litigation. In addition, if the class gets certified, Wal-Mart will be in a suit with a class of hundreds of thousands, and the outcome of that suit could have a huge impact on the millions of people who work or shop at Wal-Mart's stores.[6]

Warren Snider is a newly sworn-in attorney. Christopher Buechler was a great help in writing this article. Warren can be reached at snider2009@gmail.com.

6 For more information on the case, you can go to the page devoted to it at SCOTUSblog, which is constantly updated with new documents. It is available at: www.scotusblog.com//case-files/cases/wal-mart-v-dukes.

Civil Management and Trials in the Historic Courthouse

by the Honorable Mac R. Fisher

Many months ago, then-Assistant Presiding Judge Sherrill Ellsworth asked me to become the Supervising Judge at the Historic Courthouse. Additionally, I was asked to head a task force to restructure the civil courts in Riverside County. The hope was that we could develop a plan for the future, specifically returning many of our criminal trial judges to their previous civil trial status.

We cannot predict with any certainty what will happen with our criminal trial departments, but Judge Ellsworth is determined to make our trial courts available to civil cases. My responsibility is to implement a plan that would open up civil trial courts in downtown Riverside.

Statistics can be boring and sometimes misleading. I recognize that no two counties are alike, and I further realize that we are limited in our resources in Riverside County.

In 2007, I was appointed as a judge and was immediately assigned to civil, to case manage around 1,500 cases, and to try criminal trials. Those 1,500 cases grew to 2,200 as I tried approximately 85 criminal trials. San Bernardino County civil judges handle around 600-800 matters in a direct (individual) calendaring system and they do not try criminal cases. Orange, Los Angeles, and San Diego Counties are similar to San Bernardino County. Our civil cases are older than other counties', as well.

Master calendar has done an outstanding job in previous years using the resources at the Historic Courthouse, in Indio and, with our assigned judges, at Hawthorne. Despite these efforts, the active case count remains too high.

The real problem is that we have clearly and obviously strayed from "fast track" as defined in the Trial Court Delay Reduction Act (Gov. Code, §§ 68600-68620). Lawyers could proceed to trial when they picked the trial dates, and they often delayed in picking them. Consequently, many of our cases have aged, and unlike fine wine, they do not get better with age. You may recall the days when a lawyer could file an at-issue memorandum. Essentially, this was the procedure utilized to determine if a case was trial-ready. The lawyers made that determination. The legislature chose to implement "fast track" (Trial Court Delay Reduction Act). These changes were made 20 years ago. This law requires the court to take responsibility in "actively" managing its caseload.

We have a master calendar system in the Historic Courthouse. Our local historian, Judge Rich, reminds me that we had a master calendar years ago; after that, we went to a direct calendaring system for many, many years. Some will argue that a direct calendaring system is more efficient; others believe that a master calendaring system is the better way to go. One advantage of the master calendaring system is that the system has flexibility because a trial can be sent out to whichever judge is available for trial.

My vision is as follows: By using a master calendaring/fast track system, we lower the number of cases per department and thus shorten the time that parties must wait in court for their case to be called. Further, we separate limited civil from unlimited civil cases in the case managing departments and we explore the possibility of a complex litigation department at some time.

It is my hope we all can convince our court leadership to place civil trial courts in other areas of the county in addition to the Historic Courthouse and Indio.

We now have ten bench officers in civil in our county. Judge Rich also reminds me that 20 years ago, when the population in the county was significantly smaller, we had more judges dedicated to civil than we do today.

It is my expectation that all trial attorneys will review the fast-track rules. They should adhere to the spirit of the rules and expect the same from their judge. If you file a lawsuit, make sure you have a game plan, serve your defendants, do your discovery, set the pleadings, and go to ADR, if appropriate. Be ready for a trial, in most cases, within two years. It is not good cause to delay discovery or a trial that you thought you were going to settle a case or that you were too busy. A lawyer has an ethical obligation to take on a workload that he or she can reasonably and competently handle.

We owe the citizens of the county our best effort to resolve their civil disputes in a timely and efficient manner. Judges are obligated to actively case manage and lawyers are responsible to advance their cases to conclusion within the time limits specified by law.

In the Historic Courthouse, we all hope that you will work with us to deliver justice to civil litigants in a timely manner.

One additional point needs to be made. For the first six weeks of 2011, the volume of cases called in Department 1 was significantly heavy. Court leadership chose to place these cases in Department 1 temporarily because case management was removed from Department 2 and Department 8. All case management responsibility has been removed from Department 1. We anticipate that this will be the last mass or voluminous transfer of cases.

I welcome your suggestions as to how to make our system in Historic Civil the best it can be.

In Memoriam: Robert Keller

by Andrew Roth

A legend among public defenders, Robert Keller died on February 1, 2011, a few months after being diagnosed with pancreatic cancer. With him at home near Lake Arrowhead were those who knew and loved him best: his wife Karla, daughters Mundy and Alli, grandson Aiden, and old friends Maureen, Jim and Patti, Diane, and me. We knew him as loving, generous, wise, and playful, a master gardener, voracious reader and irreverent storyteller. As a trial lawyer, his dedication, skill and tenacity were an inspiration to colleagues and a nightmare for prosecutors.

Robert had grown up in Los Angeles, gotten kicked out of almost every school he attended until college, joined the Navy, traveled through the South registering Black voters in the 1960's, and graduated from Hastings in 1967 before Pat Maloy hired him as a deputy public defender in Riverside. He spent two years in the Alameda County office and then returned to Riverside to complete 30 years of criminal defense work, retiring in 1997. He was a brilliant and fearless defender whose legacy is still seen among the scores of defense lawyers he taught and inspired.

As remembered by Robert Hurley, during the '70s, as an assistant public defender, Robert was the heart and soul of the Riverside County Public Defender's office, a magnet and mentor for young lawyers building a reputation as the most formidable criminal defense team in California. Lawyers from those years who went on to become leaders include Fred Herro, noted Monterey County Public Defender, and past president of the California Public Defenders Association; John Cotsirilos, past president of California Attorneys for Criminal Justice, who successfully appealed the death verdict in the Skip Farmer case and then won acquittal after two jury trials; Steven E. Feldman, noted San Diego criminal lawyer, an expert on scientific evidence establishing time of death, who won the notorious Robert Coronevsky murder case; Jack Earley of Orange County, who has defended dozens of murder cases, including Betty Broderick in a case yielding three books and a television movie; and James Herman, successful in both criminal and civil litigation, former California State Bar President and currently a Santa Barbara County Superior Court judge.

In the words of Steve Rease, who worked in the office in the '80s, Robert was "the best thing that could happen to a young public defender. He cared for us, he guided us, he cursed us, he laughed with us, he drank with us and when we needed it most, he was the one we would go to for solace."

Throughout his 30 years in the office, young lawyers flocked to court just to watch Robert cross-examine police officers. He won seven motions to suppress evidence in one day. Back before Proposition 115 allowed hearsay at preliminary examination, he would dismantle prosecution witnesses' testimony, often convincing a DA that the case would crumble if they dared proceed to trial. Among his successful murder cases was the second of Gary Lawton's three jury trials for the murder of Riverside police officers Christianson and Teel, where Robert's skills yielded a hung jury and set the stage for a third trial ending in acquittal. It was the longest, most intense, and highest profile criminal case in Riverside history, later memorialized in Ben Bradlee, Jr.'s book, *The Ambush Murders*, and a television movie starring James Brolin and Dorian Harewood.

In court, Robert was well-prepared, knowledgeable, razor-sharp, tenacious and usually right. He held back very little of what he thought, and he was fond of using colorful language and unexpected candor to disarm prosecutors and police. Experienced DA's would enjoy watching trainees' reactions after being told to introduce themselves to Robert at counsel table – knowing how likely it was that he would not even look up, as he grumbled, "What the f*&# do I care?" He never wavered from his view that, regardless of what he thought of a client, it was his mission to make sure that anyone intending to send them to prison was not going to have an easy time of it.

His fearless courtroom work got under the skin of police witnesses, prosecutors, and occasionally judges. Superior Court Judge Helios Hernandez, who spent years as a prosecutor in Riverside, recalls: "He gave rookie DAs a bad, bad time. At first, I wanted to protect the newbies and did not appreciate Bob's tactics. But later I came to appreciate him – much more after he retired. He gave the new DAs an experience they could get nowhere else. It wasn't just that Bob was such a difficult person. He was very skilled at cross-examination. The new DAs who went up against him were much better for the experience." Although few people knew about it, Robert for a period of time had, by invitation, trained new police officers in investigation, report-writing and courtroom testimony (a program said to have ended when, during a jury trial, he

mentioned that he had trained the DA's main witness).

In 1982, on the day I drove Robert to meet Jackson Chambers Daniels for the first time, we got stuck in traffic for hours, waiting for hundreds of California police and fire vehicles to pass. It was a motorcade for the two RPD officers, Phil Trust and Dennis Doty, whom Daniels had just been charged with murdering. A decade before, Robert had faced the spotlight and crucible of the Lawton trial, and by then he had moved on to the less grueling tasks of supervising and training new lawyers, tending his garden in the mountains, and raising his daughter. As each police car and fire truck slowly and solemnly passed before us, Robert grumbled and berated me mercilessly for trying to conscript him into another such case. Later, yielding to the argument that there was no one better suited to such a thankless task, he agreed.

Robert was confident, unconcerned about what others thought or said, and accustomed to being the center of attention. In 1997 we arranged a Riverside Public Defender "reunion" event at the Mission Inn, with MCLE credit. Learning that the scheduled speakers included Robert Keller, lawyers from all over California showed up. Since the event was concurrent with his retirement, Robert figured out that we were hoping to make it a tribute to him. He would allow no such thing, and he never showed up.

In contrast to his intimidating manner as a lawyer, Robert was patient, open, and attentive with children, and they adored him. In retirement, he almost always wore a blue Yankees cap, and one of the first words his grandson, Aiden, spoke was "Hat," a nickname Robert happily accepted. On my first day as a deputy public defender, Robert dropped by our house with a bottle of wine to welcome Diane – pregnant with our first child – to Riverside. When Samra was born soon thereafter, he made almost daily visits, dragging along Steve Cunnison, Jim Warren, and other public defenders to meet her. After she married and became a public defender herself, Samra's two little girls loved their trips to the mountains, where Uncle Robert would dote on them as he did on her so many years before.

In the last few months of his life, Robert was not interested in the reputation he had earned as a fearless trial lawyer or the legacy he had left through the lawyers he trained. He cared only for the love of his family and friends. A week before he died, he made sure we all knew how much he loved us, and that he had gotten just about everything he ever wanted from life.

Andrew Roth is with the law firm of Reid & Hellyer in Riverside.

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Opposing Counsel: Paul Zellerbach

by Donna Thierbach

A new district attorney was sworn into office in Riverside County on January 3, 2011. Saying "new," though, is misleading. Although Paul Zellerbach is new to the position, after winning a hotly contested election against incumbent Rod Pacheco, he is not new to the Riverside County District Attorney's office. He served as a prosecutor in the office for 22 years. During that time, he tried approximately 150 jury trials, including 50 murder trials, 30 of which had special circumstances, and 5 death penalty trials. He was named Felony Prosecutor of the Year in 1984 and selected as Outstanding Prosecutor of the Year in the State of California in 1996. Zellerbach left the office when he was elected to the superior court in 2000, where he presided over criminal trials and managed the domestic violence and mental health calendars for the court. Now, he has returned home to the District Attorney's office.

District Attorney Paul Zellerbach

However, home is a different place than it was when Zellerbach left the office in 2000. Major issues during the election revolved around the budget, the number and appropriateness of the cases going to trial, and the number of cases filed as death penalty cases. So how does it feel to be back home? Just two weeks after taking office, Zellerbach took the time to discuss with me his homecoming.

Zellerbach said that, although he enjoyed his time on the bench and it was a valuable experience, he is excited to go to work each morning to implement his plan for the District Attorney's office. His vision for the office is to return it to being one of the most respected offices in the state. He stressed the importance of communication, both within his office and with other agencies and the public, and of providing mentoring and training to new prosecutors, while empowering experienced deputy district attorneys to make decisions in the prosecution of their cases. Supervisors should be mentoring, evaluating and observing their staff. This will then assist new prosecutors in developing the ability and confidence to properly evaluate cases and to make decisions that are crucial in effectively and efficiently resolving them. Prosecutors should not be afraid of failure; they should have the freedom to think outside the box and the ability to make decisions regarding their cases. Rather than a cookie-cutter approach to evaluating cases, each case must be evaluated on its own merits while using parameters and guidelines to achieve consistency.

Zellerbach's approach is to have an open-door policy and to provide management by walking around. He has filled key management positions with veteran prosecutors who back this approach, and he has been sharing his vision with his staff through meetings.

His first orders of business are to go back to the basics of successfully prosecuting criminals and to create an office attitude focused on the importance of professionalism and of building positive relationships. He views his office as a team, where each player on the team is essential and important. Additionally, a successful team must be comprised of a combination of experienced members and rookies. Since almost half the attorneys in the office have been in the office for only five years or less, he has brought back some experienced career prosecutors to help in mentoring and building fundamentals.

Zellerbach believes in the old adage that "justice delayed is justice denied." Delays do not allow victims to have closure; they create a burden on the jail and a tax burden on the public. Thus, he has empowered his managers with decision-making capability so that cases can be prosecuted in a timely manner. Furthermore, his expectation is that discovery should be provided early in the proceedings, and all cases, including death penalty cases, should go to trial within two years; certainly none should linger more than three years. He is currently reviewing all pending cases over three years old.

Regarding the number of pending death penalty cases, since the Penal Code requires that the district attorney make the decision to seek the death penalty, Zellerbach

believes it is his duty to review all of the cases currently pending in Riverside County. Additionally, he said it does not make sense that Riverside County would have as many death penalty cases as Los Angeles County. He and his team have already staffed several of the cases and invited the defense attorneys on those cases to make presentations.

Since Zellerbach's term began in the middle of the fiscal year, the budget is currently a real challenge. Zellerbach must make cuts, but he is trying to avoid layoffs by not filling positions at the top. He has also dismissed the executive division, as the grand jury recommended. At-will employees have been replaced with his team of career prosecutors who share his vision, style and goals, but he is not filling all positions.

Zellerbach believes it is also important to give back to the community. He has been active in the Riverside County High School Mock Trial Program and has served on the Riverside Human Relations Commission, the Riverside Family Services Association Board of Directors, and the Family Services Senior Housing Corporation Board of Directors, and also as a Riverside Youth Court judge. He encourages community service by his prosecutors and believes it creates a well-rounded life experience. So, how are the troops handling the change? The mood in the office seemed upbeat.

What about free time? I don't think Zellerbach will be having much free time in the upcoming months, but he and his wife Paige enjoy travel and sports. Paige is a pretty busy person herself, in that she is a practicing dentist in the Riverside area.

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

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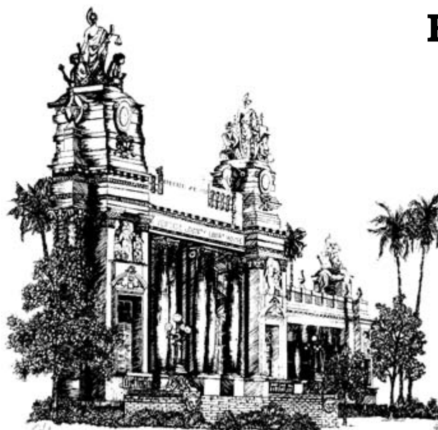

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We have made it easy for you to shop online and support us!
Enjoy $300 of Spa Services for only $59.
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1.) Each Spa Card entitles the recipient to 4 visits at a spa near them.

2.) Go to the website www.spasforacause.com and select/click on "pick a fundraiser." Type in Riverside County Bar Association.

3.) Select/click on "pick a spa" and type in your address or city for the spa nearest you or your recipient. The spa cards will be sent via email within 48 hours, Monday through Friday.

Thank you for continuing to support the RCBA and its giving-back programs.

California's Rising Wage-and-Hour Collective and Class Actions

by Joseph T. Ortiz

In a 2010 study, the U.S. Chamber of Commerce ranked California as having one of the worst lawsuit climates in the nation.[1] One of the reasons cited for California's low ranking was that California courts certify class actions more frequently than most other jurisdictions. More than four new class actions are filed *every day* the California superior courts are in session. The majority of class actions filed between 2000 and 2006 were employment cases.[2]

California's wage-and-hour laws undoubtedly make its employers easy targets. Unlike many of its sister states, California provides its employees with significant protections over and above those outlined in the federal Fair Labor Standards Act (FLSA). Because conventional industry wisdom often considers only FLSA protections, California's wage-and-hour laws can become a trap for the unwary. Oftentimes, small business start-ups research the federal Department of Labor's guidelines, but fail to account for or implement California's unique labor laws.

In the class action setting, even minor wage-and-hour violations can be business-busters. For example, imagine a situation where a small manufacturer fails to allow its $10-per-hour employees to have at least a half-hour, off-duty meal period prior to the fifth hour of their normal eight-hour shift, as normally required under Labor Code section 512. Pursuant to Labor Code section 226.7, the employer is obligated to pay an employee one hour's worth of wages for each time it fails to give the employee a proper meal period. Assuming a regular 260-workday year, if a single employee claimed back wages for the two years she worked for the employer, common sense would dictate that the employer *should be* liable to the employee for $5,200 (not including penalties). However, if the employee becomes a class representative, the employer's exposure dramatically increases: The claim would likely reach back four years,[3] rather than just the two the representative employee actually worked, and liability would extend to all employees belonging to the representative's certified class. If there are 100 employees in the class, the initial exposure immediately jumps from $5,200 to $1,040,000. "Waiting time" and other penalties assessed under Labor Code sections such as sections 203[4] and 225.5[5] then increase that amount. Adding to the pain, employees who prevail on these kinds of claims have a statutory entitlement to recover attorney's fees.[6] Moreover, most standard employment practices liability (EPL) insurance policies specifically *exclude* wage-and-hour claims from coverage, leaving many employers paying out-of-pocket for costs of defense and any resulting judgment. With this kind of money at stake, it is easy to see why between 2000 and 2005, employment class action filings rose by *313.8%*.[7]

1 U.S. Chamber Institute for Legal Reform, 2010 State Liability Systems Ranking Study, available at <www.instituteforlegalreform.com/lawsuit-climate.html>.

2 Judicial Council of California, Administrative Office of the Courts, Office of Court Research, *Class Certification in California* (Feb. 2010), available at <www.courtinfo.ca.gov/reference/caclassactlit.htm>.

3 There is a one-year statute of limitations for penalties assessed under the Labor Code. (Code Civ. Proc., § 340(a).) A three-year statute of limitations attaches to a wage-and-hour violation generally. (Code Civ. Proc., § 338, subd. (a); see also *Cuadra v. Millan* (1998) 17 Cal.4th 855, 859 ["If based on wage liability created by statute [the statute of limitations is] within three years after accrual"], disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1, 16, fn. 4.) And a four-year statute of limitations attaches if the wage-and-hour violation is the basis for an Unfair Competition Law claim. (Bus. & Prof. Code, § 17200 et seq.)

4 Pay at each employee's daily rate for up to 30 days for every day each employee had to wait for overdue payment.

5 $100 initial violation (for each employee); $200 for subsequent violations (for each employee, per violation, plus 25% of amount unpaid).

6 See, e.g., Labor Code, § 218.5.

7 Judicial Council of California, Administrative Office of the Courts, Office of Court Research, *DataPoints* (Nov. 2009), available at <www.courtinfo.ca.gov/reference/caclassactlit.htm>.

Examples of the potential liability are everywhere. In June of 2009, Washington Mutual Bank reached a $38 million settlement of a California class action, which asserted that its employees were misclassified and not paid proper overtime.[8] In September of 2010, AT&T paid $17 million to settle a California wage-and-hour class action alleging unpaid overtime due to misclassification of technical workers.[9] In November of 2010, a district court judge for the Northern District of California granted final approval to Wal-Mart Stores' settlement for up to $86 million.[10]

The class action landscape, however, appears poised to change in the near future. The California plaintiff's bar has historically cited cases such as *Cicairos v. Summit Logistics, Inc.* (*Cicairos*)[11] for the proposition that California employers must ensure that their employees are relieved of all duties during their meal and rest periods. Employment defense attorneys have vehemently contested this interpretation, since it puts the onus on employers essentially to police their break rooms. Relief finally came in 2008, when the California Court of Appeal published *Brinker Restaurant Corp. v. Superior Court* (*Brinker*).[12] The *Brinker* case made clear that the employer's duty was only to provide – not ensure – meal and rest periods. The importance of this distinction cannot be overstated: The duty to provide rather than ensure the meal and rest periods means that as long as the employer's policies and practices provide meal and rest periods, the fact that a single, or even a few, employees work through their meal and rest periods should not trigger a class action. The violations, if any, would arguably be *individual* rather than *class* claims, since the facts would surround the individual employees' actions in circumventing the employer's policies and practices, not the uniform policies and practices themselves. Unfortunately, the California Supreme Court accepted the *Brinker* case for review shortly after publication, removing the case from the realm of good authority.

Regardless, the *Brinker* decision is still having an impact. Following the decision, the California Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) revised its Enforcement Manual to expressly follow *Brinker*'s rationale.[13] As the administrative agency charged with enforcing California's wage-and-hour provisions, the DLSE's interpretation is "entitled to great weight."[14] Additionally, at the end of 2010, the California Court of Appeal published *Hernandez v. Chipotle Mexican Grill, Inc.* (*Chipotle*),[15] which addressed the same issues raised in *Brinker*. Rather than telling the trial court to certify the class and await the pending California Supreme Court decision in *Brinker*, the California Court of Appeal took the unusual step of essentially reaffirming the "provide, rather than ensure" standard, citing the DLSE's standing interpretation on the issue. On January 26, 2011, however, the California Supreme Court granted review of the *Chipotle* case, reserving its ruling until *Brinker* is decided.

Until the California Supreme Court issues its final decision in *Brinker*, the safest way for employers to proceed is to assume the more stringent standard of "ensure" will be applied.

The final take-away is this: Wage-and-hour class action filings continue to rise exponentially, and California's complex wage-and-hour laws can be a trap for the unwary. Employers should not rely solely on conventional wisdom when establishing wage-and-hour policies and practices. Employment handbooks – ideally ones that have been reviewed and approved by an employment attorney – that provide clear, written policies in compliance with California labor laws can provide some insulation.

Joseph Ortiz is an associate with Best, Best & Krieger in Riverside.

8 *WaMu Settles OT Class Actions for $38M*, Law360, June 29, 2009, available at <www.law360.com/articles/108673>.

9 *Waters v. AT&T Serv., Inc.*, Case No. 3:09-CV-03983 BZ (N.D. Cal.).

10 *In re Wal-Mart Stores Wage and Hour Litigation*, Case No. 02069SBA (N.D. Cal.), *Smith* Case, No. C-06-02069SBA and *Ballard* Case, No. C-06-05411SBA.

11 *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962.

12 *Brinker Restaurant Corp. v. Superior Court* (2008) 165 Cal. App.4th 25, review granted Oct. 22, 2008.

13 DLSE Enforcement Policies and Interpretations Manual ("DLSE Enforcement Manual") (2006) § 45.2.1.

14 *Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 815.

15 *Hernandez v. Chipotle Mexican Grill, Inc.* (2010) 189 Cal.App.4th 751, review granted Jan. 26, 2011.

The Central District's ADR Program

by Gail Killefer

I am very excited to serve as the Central District's new alternative dispute resolution (ADR) program director. This is a program with much potential for resolving cases early in the litigation process, at less expense – and often to the greater general satisfaction of the parties.

The Central District's ADR program is underutilized at this point, and we hope to change that, so in this note, I want simply to outline a "how to" recipe for proceeding, should you be interested in giving ADR a try. We hope you will!

Background

With the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651-658, Congress mandated that each United States district court "devise and implement" its own ADR program. The statute defines an ADR process as "any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy . . . ." 28 U.S.C. § 51(a).

The U.S. District Court for the Central District of California offers three ADR options: 1) a settlement proceeding before the district judge or magistrate judge assigned to the case; 2) a mediation-like proceeding before an attorney selected from the court's Attorney Settlement Officer Panel; or 3) a private, non-judicial dispute resolution process. See L.R. 16-15.4. Unless exempted by the trial judge, the parties in every civil case must participate in some form of ADR. *See* L.R. 16-15.1.

The ADR Process

In the Central District, cases may be referred to ADR in two ways: 1) under Local Rule 16-15.4; or 2) under a program, formerly known as the "ADR Pilot Program," outlined in General Order 07-01.

Under Local Rule 16-15.4, parties choose one of the three ADR options by filing a Settlement Procedure Selection: Request and Notice (form ADR-01, located on the court's website, www.cacd.uscourts.gov, under "Forms" or "ADR") with the accompanying Order (form ADR-01 Order) not later than 14 days after entry of the scheduling order under Fed. R. Civ. P. 16(b). *See* L.R. 16-15.2. Unless otherwise ordered, the parties must complete the ADR process no later than 45 days prior to the final pretrial conference. *Id*.

General Order 07-01 establishes an ADR Program in which, as of February 1, 2011, 23 district judges have chosen to participate. In this program, civil cases that meet certain criteria – the prayer for relief is $250,000 or less, or the nature of the suit falls into a specified category – are presumptively ordered to ADR.

When the complaint is filed, the Clerk's Office files a "Notice to Parties of ADR Program" (form ADR-08) and provides plaintiff's counsel with an ADR Program Questionnaire (form ADR-09). The parties jointly complete the questionnaire, in which they identify discovery that they contend is essential to adequately prepare for mediation, the damages claimed and whether they agree to use private mediation in lieu of the court's panel. The questionnaire is filed with the report required under Fed. R. Civ. P. 26(f).

After reviewing the questionnaire and the Fed. R. Civ. P. 26(f) report, around the time of the initial scheduling conference, the court files an Order/Referral to ADR Program (form ADR-12) or, with a minute order, orders the case to ADR. A participating judge may also refer a case to ADR that does not meet the criteria of General Order 07-01 if the judge determines that the matter would benefit from participation in the ADR program.

The Attorney Settlement Officer Panel

As of February 1, 2011, the Central District listed 166 attorneys on the Attorney Settlement Officer Panel. Panel members are appointed by the court for two-year terms, which may be renewed. They volunteer their preparation time and the first three hours in a settlement proceeding. Thereafter, if the parties choose to continue the session, the Attorney Settlement Officer may continue on such terms and rates as he or she and all parties agree on.

The court website maintains a profile for each Attorney Settlement Officer. The panel can be sorted by area of law specialization and by county.

How to Use the Attorney Settlement Officer Panel

Within 10 days after the Order/Referral to ADR, counsel should select an Attorney Settlement Officer from the court's panel. Once counsel have agreed on a panel member and the panel member has agreed to conduct the settlement proceeding, counsel file the Stipulation Regarding Selection of Attorney Settlement Officer (form ADR-02). After the stipulation is filed, the ADR Program files a Notice of Assignment of Attorney Settlement Officer (form ADR-11).

If counsel do not select an Attorney Settlement Officer within a reasonable time, or if counsel request that the court assign a panel member, the ADR Program staff will obtain the consent of an Attorney Settlement Officer with the requisite expertise and file a Notice of Assignment.

Once the Notice of Assignment has been filed, the Attorney Settlement Officer will contact counsel and arrange for a date for the settlement proceeding. He or she may request settlement conference statements. *See* L.R. 16-15.5(a).

After the settlement proceeding, the Attorney Settlement Officer will file the "Attorney Settlement Officer Proceeding Report" (form ADR-03), advising the court as to whether or not the case settled. The parties, counsel, and the Attorney Settlement Officer are also asked to return a completed survey to the ADR Program, evaluating the process. *See* ADR-15, Participant Survey, and ADR-16, Attorney Settlement Officer Survey.

Benefits to Using the Attorney Settlement Officer Panel

There are significant benefits to using the Attorney Settlement Officer Panel. For example, counsel may select an Attorney Settlement Officer with substantial experience litigating the type of case in issue (experience that may prove invaluable in assisting the parties to assess the strengths and weaknesses of the case). Moreover, the Attorney Settlement Officer selected may be more accessible and available than the magistrate judge assigned to the case. He or she may have more time to devote to the resolution of the case and may be available locally, in Riverside.

For More Information

Please feel free to contact me to discuss the ADR Program. The more you know about it, the more you will come to see how, in many cases, this offers an important alternative to trial (and all that leads up to trial). I can be reached by email at Gail_killefer@cacd.uscourts.gov. My phone number is (213) 894-2993. The program is described in more detail at www.cacd.uscourts.gov.

Bench to Bar

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
~NOTICE~

DATE: February 14, 2011

TO: Attorneys, Legal Professionals, and Attorney Services

RE: Changes in Case Assignments for Riverside Family Law

APPLICABILITY: Riverside

Effective immediately, Family Law cases filed in Riverside's jurisdiction will be assigned by ending case number between departments F201, F301, F401, F402 and F502. The ending case number division will be as follows:

Ending Number	Case Assigned to
1 and 2	Department F201
3 and 4	Department F301
5 and 6	Department F502
7 and 8	Department F401
9 and 0	Department F402

Domestice Violence Restraining Orders

Department F501 remains the dedicated Domestic Violence Restraining Order (DV/TRO) department for Riverside Family Law. The exception to assigning a DV/TRO to department F501 would be if a Family Law case has been previously filed, or if a new DV/TRO Request and a Family Law case are filed at the same time.

Department of Child Support Services

Department of Child Support Services cases (DCSS) filed in Riverside's jurisdiction will be assigned by ending case number as follows:

1, 2 and 3 will be assigned to Department F201
4, 5 and 6 will be assigned to Department F502
7, 8 and 9 will be assigned to Department F401

If the case number ends in a zero, the number immediately before the zero should be used to determine the correct department for assignment, Example: RIK1100530.

All 270 PC (Failure to Support) and 166.4 CCP (Contempt) cases from DCSS will be heard in Department F201.

Questions regarding the changes in case assignments for Riverside Family Law cases can be referred to Carrie Snuggs, Family Law & Juvenile Director, at (951)955-1533 or via email at Carrie.Snuggs@riverside.courts.ca.gov.

Thank you.

Classified Ads

Office Space – Riverside
Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle at 951-686-3547 or email towerpm@sbcglobal.net. Residential services available also.

Office Space – Temecula
Temecula law office has an executive office available for someone who is in need of virtual office space, $250 per month for 20 hours. Receptionist/Mail Service included. Please call 951-296-5492.

Office Space – Downtown Riverside
1 Block from the Court Complex. Full service office space available. Inns of Court Law Building. Contact Vincent P. Nolan (951) 788-1747, Frank Peasley (951) 369-0818 or Maggie Wilkerson (951) 206-0292.

Office Space – RCBA Building
4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Sue Burns at the RCBA, (951) 682-1015.

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 Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@riversidecountybar.com.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2011.

Matthew Boyer (S) – Law Student, Ontario

Deanna M. Brown – Brown & Ritner, Riverside

Suzanne V. Chamberlain – Chamberlain and Viau, APC, Newport Beach

Sylvia Choi – Office of the District Attorney, Riverside

Amrit Dhillon – Sole Practitioner, Corona

Sonia Lee Esteves – Gilbert Kelly Crowley & Jennett, LLP, Riverside

Shirish Gupta – Flashpoint Law, Inc., Irvine

Sami Hasan – Court of Appeal, Riverside

Elizabeth Anne James – Best Best & Krieger, LLP, Riverside

Arthur E. Johnston (A) – Best Best & Krieger, LLP, Riverside

Vit Liskutin – Sole Practitioner, Riverside

Timothy V. Mahar, Jr. – Sole Practitioner, Riverside

Michael Nunez (S) – Law Student, Corona

(A) – Designates Affiliate Member

Western San Bernardino County Bar Association Seeks Executive Director

Rancho Cucamonga, February 8, 2011 — The Western San Bernardino County Bar Association has begun a search for a new Executive Director to lead its organization. The new Executive Director will report to the bar's 11-member Board of Directors and lead the bar in its public perception, member services, administrative support, board administration and senior management functions. The new Executive Director will succeed Wende Caputo, who is retiring.

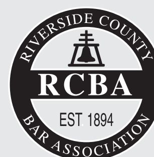
The search seeks a seasoned professional and demonstrated leader with a track record of success, proven accomplishments and performance in managing a public, private or nonprofit enterprise of similar size and complexity. The Executive Director will be expected to provide superior leadership and management in Board Relations, External Relations, Strategic Leadership, Operations Management and Organization. Other qualifications include: Outstanding management and leadership skills and familiarity with the legal profession; Experience managing an organization with an elected board; Familiar with Microsoft Publisher, QuickBooks and Access.

Salary commensurate with experience. Qualified individuals may submit a résumé, including education, positions held, current salary and special qualifications to the Bar Association via fax 909.483.0553 or email to WesternBarAssoc@aol.com. Interviews are scheduled to take place immediately, but the position is open until filled.

ATTENTION RCBA MEMBERS

If you are not getting email updates/notices from the RCBA and would like to be on our mailing list, visit our website at www.riversidecountybar.com to submit your email address.

The website includes bar events calendar, legal research, office tools, and law links. You can register for events, make payments and donations, and much more.



Riverside County LAWYER

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