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MAGAZINE

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It's Complicated

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Expected Inheritance Claims

For Money or Love? A Holistic Review of the
Legal Landscape for Same Sex Couples After
United States v. Windsor (2013) 570 U.S. 12



The official publication of the Riverside County Bar Association

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Connie Younger

Editor Jacqueline Carey-Wilson
Copy Editor Yoginee Braslaw
Design and Production PIP Printing Riverside
Cover Design PIP Printing Riverside

Officers of the Bar Association

President

Jacqueline Carey-Wilson
(909) 387-4334
jcareywilson@cc.sbcounty.gov

President-Elect

Chad W. Firetag
(951) 955-6000
cwfiretag@co.riveride.ca.us

Vice President

Kira L. Klatchko
(760) 568-2611
kira.klatchko@bbklaw.com

Chief Financial Officer

Jean-Simon Serrano
(951) 682-6400
jserrano@heitingandirwin.com

Secretary

L. Alexandra Fong
(951) 955-6300
LaFong@co.riverside.ca.us

Past President

Christopher B. Harmon
(951) 787-6800
chrisbharmon@me.com

Directors-at-Large

Jack B. Clarke, Jr.
(951) 686-1450
jack.clarke@bbklaw.com

Neil D. Okazaki
(951) 826-5988
nokazaki@riversideca.gov

Diana Renteria
diana@drlawoffice.com

Jeffrey A. Van Wagenen, Jr.
(951) 955-5517
jvanwagenen@rivcoda.org

Executive Director

Charlene Nelson
(951) 682-1015
charlene@riversidecountybar.com

Officers of the Barristers Association

President

Kelly A. Moran
(951) 682-5550
kmoran@tclaw.net

Treasurer

Sara Morgan

Vice President

Reina Canale

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Scott H. Talkov

Secretary

Arlene M. Cordoba

Past President

Amanda E. Schneider

Riverside County Bar Association
4129 Main Street, Suite 100
Riverside, California 92501

Telephone
951-682-1015

Facsimile
951-682-0106

Internet
www.riversidecountybar.com

E-mail
rcba@riversidecountybar.com

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:

To serve our members, our communities, and our legal system.

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

CALENDAR

JUNE

- 12 Dispute Resolution Service, Inc. presents**
“Negotiations with Difficult People & How to Get Past Impasse in Mediation”
Speakers: Honorable Christopher Warner (Ret.) & Master Mediator Timothy Corcoran
5:45 PM to 9:00 PM – RCBA Gabbert Gallery
MCLE – 3 Hr General
Free to DRS Panel Members (Non-DRS Member - \$75)
RSVP required by June 10.
Call 951-682-2132 or email drs@riverside-countybar.com
- 13 General Membership Meeting**
Topic: “The State of the U.S. District Court’s Eastern Division – An Update”
Speaker: The Honorable Virginia A. Phillips
RCBA Gabbert Gallery – Noon
MCLE
- 17 Family Law Section Meeting**
Topic: “Income Available for Support: The Games People Play”
Speaker: Marc P. Kaplan, Esq.
RCBA Gabbert Gallery - Noon
MCLE
- 19 Solo & Small Firm Section Meeting**
Topic: “Being Smart with Social Media – Ethics & Effectiveness When Engaging Online”
Speaker: Joshua M. King, Esq.
RCBA Gabbert Gallery – Noon
MCLE: 1 hour Legal Ethics
- 24 CLE Event**
Civil Procedure Before Trial Series
Topic: “Investigating the Claim (Sub-rosa)”
Speaker: Brett Bittner, CI&S Investigations
Lunch will be provided, courtesy of CI&S to the first 30 people that RSVP by June 20
RCBA Gabbert Gallery – Noon
MCLE
- 27 Bridging the Gap**
San Bernardino County Bar Association
Free program for new admittees
Office of the Public Defender
303 W. 3rd St., San Bernardino
8:30 a.m. to 3:30 p.m.
RSVP by June 24 to (909) 885-1986 or BTG@sbcb.org
- Bowling & Beer**
6:00 p.m. to 8:30 p.m.
AMF Riverside Lanes
10781 Indiana Avenue
Riverside 92503
\$25/person – bowling, beer & food
\$13/person – bowling, soft drinks & food
RSVP & payment by June 18.
rcba@riversidecountybar.com or
(951) 682-1015





President's Message

by Jacqueline Carey-Wilson

A Civil Change . . .

On May 22, the civil bench-bar committee met with the Honorable Sharon Waters, countywide supervising judge of Civil Division of the Riverside Superior Court. This was the second meeting of the committee, which was established to provide an avenue for bar input into court operations, procedures, and policies. The committee also addresses matters of mutual concern. The standing members of the committee area are as follows: the countywide supervising judge of Civil Division; the RCBA civil section chair, which is currently David Cantrell; the RCBA business law section chair, which is currently Stefanie Field; and the RCBA president. The other members of this committee are from diverse areas of practice, experience, and geographical locations in the county, and include, Kevin Abbott, Gregory Bentley, Mike Bidart, Don Cripe, Mark Easter, Mary Gilstrap, James Heiting, David Hubbard, Chris Jensen, Patricia Law, Jonathan Lewis, Mike Marlatt, Kelly Moran, Patricia Munoz-Muro, Brian Percy, and Julie Rosser. The entire civil bench is also invited to participate in the meetings.

At the meeting on May 22, Judge Waters advised the committee that by January 5, 2015, all unlimited civil cases will be assigned by direct calendaring of the case as opposed to the master calendaring system that now operates in the Historic Courthouse for cases filed in the mid-county and western regions. Because the move from master calendar to direct calendar will require staff to touch almost every case currently filed in Historic and Southwest Justice Center, the transition will be done in two phases. The first phase is the elimination of the two Law & Motion departments, Departments 3 and 11. This will take place as of July 3, 2014. Starting July 14, 2014, law and motion matters will be

heard by the department to which the case is currently assigned for case management purposes.

Beginning in January 2015, every unlimited civil case will be assigned to one judge for all law and motion, case management and trial purposes. The unlimited civil trial departments in the Historic Courthouse will be Judge Sharon Waters in Department 1; Judge Gloria Trask in Department 3; Judge Daniel Ottolia in Department 4; Judge Craig Riemer in Department 5; Judge S. Suzanne Sykes in Department 6; Judge John Vineyard in Department 7; and Judge John Molloy in Department 10. All limited civil matters and collection cases in the Western Region will be heard by Commissioner David Gregory in Department 11 and the other miscellaneous civil matters that do not involve prolonged case management responsibilities will be heard by Commissioner Eric Isaac in Department 2. In the Southwest Justice Center, the unlimited civil cases will be heard by Judge Raquel Marquez in Department S303. Limited civil cases will remain with Judge Elaine Kiefer in S101.

There will be no changes in Palm Springs, where unlimited civil cases are already directly assigned to Judge John Evans in Department PS1 and Judge David Chapman in Department PS2 for all purposes and limited civil and other miscellaneous civil matters are assigned to Commissioner Mickie Reed.

The litigants will benefit by having one judge who is familiar with the case and the issues from the beginning and through trial. Less time will be required educating the judge on the issues as the case progresses and judges can more efficiently and effectively manage cases with which they are familiar. According to Judge Waters, "cases will benefit by knowing who the trial judge will be and some cases will resolve sooner."

Another change designed to benefit litigants as well as save time in court will be implementation of tentative rulings in the Historic Courthouse and at Southwest Justice Center. Pursuant to California Rules of Court, Rule 3.1308(a) (1), the civil departments may issue tentative rulings on law and motion matters but except for the civil judges in the desert region, no other civil department has previously issued tentative rulings. Now all of the judges in the civil departments in the Historic Courthouse and at Southwest Justice Center are committed to moving to tentative rulings in these departments as a way to save parties from the costs of unnecessary oral arguments on motions and as a way to more consistently start trials at 9:30 a.m. by reducing the number of matters to be heard on their 8:30 a.m. calendars.

Prior to this change, practitioners must become familiar with Local Rule 3326 regarding tentative rulings in Riverside County. This rule

provides that all noticed motions and demurrers in departments that issue tentative rulings must include information that the court will issue the tentative ruling by 3:00 p.m. the day before the hearing on the motion. The parties will have until 4:00 p.m. to request a hearing on the motion. If no party requests a hearing by 4:00 p.m., the tentative opinion will become the final decision. The notice must also include a website and/or phone number for the parties to obtain the tentative ruling and a phone number to contact the court to request oral argument. If the information regarding contacting the court is not included in the notice, the tentative ruling of the court will not become the final decision in the case. Please be certain to review the Riverside Superior Court's website at www.riverside.courts.ca.gov for updates on these and other changes at the court.

This civil change to the Western Region will hopefully benefit both the court and practitioners.

The RCBA's Adopt-a-School Reading Day was a huge success. On May 30, attorneys and judges participated in reading to students from kindergarten to sixth grade at Fremont Elementary School in downtown Riverside. Twenty-two participants went into the classrooms and read either his/her favorite children's book or a book chosen by the students. RCBA members also donated \$600 to the school's library and many gently used or new books. According to a staff member at Fremont, 89 percent of these children live below the poverty line and this may be the only

time many of these kids see a lawyer or a judge. The students, faculty, and staff at Fremont Elementary school were excited for the visit and grateful to all who participated in the reading day. It is not too late if you would like to donate. The RCBA is still accepting donations for the purchase of books for Fremont Elementary School.

“One of the greatest gifts adults can give—to their offspring and to their society—is to read to children.” --- Carl Sagan

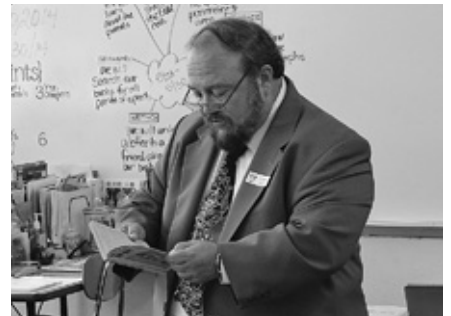
The RCBA wishes to thank the following individuals who read to the students at Fremont Elementary School or donated books or money to purchase books for their library: Presiding Judge Mark Cope, Judge Helios Hernandez, Monica Baltierra, Yoginee Braslaw, Marisol Chianello, Belinda Handy, Chris Harmon, Jody Isenberg, Chris Johnson, Andrew McManus, Chris Marin, Jack Marshall, Kelly Moran, Marie Moreno Myers, Brian Percy, Amie Poole, Theresa Han Savage, Kirsten Shea, Shumika Sookdeo, Matt Strickroth, and Joseph Widman.

The Honorable Virginia Phillips will speak about the state of the Central District at the general membership meeting at noon on Friday, June 13. I hope you will be able to join us for this important topic.

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



Presiding Judge Mark Cope & Student



Judge Helios Hernandez



Marisol Chianello



Matt Strickroth



Chris Harmon



Finley Elizabeth Lewis

The RCBA wishes to congratulate Robyn and Jon Lewis on the birth of their little girl, Finley Elizabeth Lewis, on May 29. Finley weighed 7 pounds, 12 ounces and was 19.5 inches long. Finley was welcomed home by big brothers, Hayden, Noah, and Henry, who will be four in July!

BARRISTERS PRESIDENT'S MESSAGE

by Kelly A. Moran



Recently an article in the *Sacramento Bee* discussed the apathetic nature of voting-eligible Californians in today's modern society. The article stated that "in a chronic phenomenon of under-enfranchisement in the Golden State, there are at least 6.4 million residents who are eligible to vote but were not on the registration rolls as of early April." Additionally, the article provided that California's registration rate is close to last in the United States.

Experts have expressed several reasons for the shortfall, such as Californians moving more often or elections that fail to capture the public's attention. As the *Sacramento Bee* article expressed, registration rates are even lower for Latinos, Asians and young people in California. Less than 57 percent of Latino residents eligible to vote were registered in November 2012, according to census data. Only 58 percent of eligible Asian residents were registered to vote. Additionally, a California Civic Engagement Project at UC Davis found that among those ages 18-23, the rate of registration was only 60 percent.

While voter registration in California may be less-than-ideal, citizen interest in the recent elections in the Inland Empire seems to be at an all-time high. Over two hundred members of the community turned out to witness the District Attorney debate hosted recently by the Riverside County Bar Association, featuring District Attorney Paul Zellerbach, and Deputy District Attorney Mike Hestrin. Additionally, over the past few months local judicial candidate fundraising efforts have attracted judges, attorneys and community members throughout the region.

It is important that we, as young attorneys in this community, become involved in local elections in order to have our voices heard and our interests protected. While increasing voter registration is of course key, I would suggest that increasing voter awareness is just as important. I confess, as a college student in this town, I was definitely not as

involved as I could have been in understanding the local political issues affecting our community. However, as an adult working in Downtown Riverside, I have found that it is not only easy to find the opportunities to listen to candidates speak publicly on critical issues, but the candidates themselves do an excellent job of becoming accessible to the general public.

I encourage you to become involved in local politics and would suggest that the easiest way to start is by becoming active in the Riverside County Bar Association. The RCBA provides wonderful opportunities for you to meet local politicians, judges, elected officials, and Bar Association board members on a regular basis. Whether your interest is limited to just learning more about the issues facing our community, or your involvement sparks a desire to run for office yourself, the benefits of RCBA participation are numerous.

On a similar note, I welcome you all to become involved in the upcoming Barristers election during our final meeting of the year on June 12, 2014. The Barristers Board this year has been amazing but the success of this organization can only be assured by the continued participation of our members. Please come out on June 12, 2014 to our final event of the year, sponsored by Mike Weller of Weller Realty Group, and have your voice heard in deciding who will be your 2014-2015 Barristers Board. As always, additional information concerning this and our organization as a whole can be found on our website (www.riversidebarristers.org) or by adding us on Facebook ("Riverside County Barristers Association").

Kelly Moran, the 2013-2014 President of Barristers, is an associate at Thompson & Colegate, where she practices in the areas of public agency representation, personal injury defense, and probate litigation.



RELATIONSHIP STATUS? IT'S COMPLICATED

by Christopher Marin

June 26, 2013, is a day that will live in infamy for LGBT Civil Rights advocates. The Supreme Court of the United States handed down two landmark decisions impacting LGBT civil equality. The first, *U.S. v. Windsor* (2013) 570 U.S. 12, struck down Section 3 of the Defense of Marriage Act (DOMA), which prohibited the federal government from recognizing same-sex marriages, even if they are otherwise legally valid. The second, *Hollingsworth v. Perry* (2013) 570 U.S. 183, although just addressing the issue of Article III standing in federal courts, effectively brought marriage equality to California, the most populous state in the Union. Currently, roughly 38%¹ of U.S. residents live in states where they can marry someone of the same gender.²

That 38/62 split only begins to hint at the strange legal patchwork of differing state and federal relationship statuses that same-sex couples still have to deal with. The relationship status in any jurisdiction may depend on one of many different factors, including where the couple resides, where they were married, where they divorce or separate, or whether they were actually married or “married” by another type of civil commitment ceremony.

Federal Recognition and Benefits

Up until the *Windsor* decision, the Federal government faced conflicting state marriage laws primarily dealing with age of consent or consanguinity (blood relation) of the spouses. Because those conflicts were not as contentious, and because almost any out-of-state marriage was recognized by states, federal agencies developed two different rules regarding who qualified as “married” in order to receive benefits attached to marital status. Regardless of the rule, all agencies required the relationship status to be “married” before the benefits apply; domestic partnerships and civil unions are not eligible. Some agencies, like the IRS or Social Security, had a “state of domicile” rule, where the benefits are available to a spouse only if the marriage would be legally recognized in the state they were currently residing in. Other agencies, like

Immigration, had a “location of celebration” rule, where the benefits are available to a spouse if the marriage was legally valid at the time and place it occurred.

Windsor brought attention to that inconsistency and the unfairness it creates for many same-sex married couples. To remedy that unfairness, the Obama administration has called for the Department of Justice to review federal regulations that address the recognition of marriage for benefits and has adopted specific regulations allowing Location of Celebration recognition for same-sex married couples. Same-sex married couples in the 62% crowd can now access most federal marriage benefits so long as they were married in a state that authorizes same-sex marriage.

California Couples

Shortly after *Hollingsworth v. Perry, supra*, 570 U.S. 183, was handed down by the Supreme Court, the Ninth Circuit vacated their ruling and lifted the stay of enforcement of the District Court’s ruling striking down Proposition 8. Shortly after that, county clerks across California were advised that they should issue marriage licenses to qualified same-sex couples upon request.³ The proponents of Proposition 8 made a few last ditch attempts to undo the Supreme Court’s ruling, but were unsuccessful, and now marriage equality is the law of the land in California.

However, if one were to survey same-sex couples in California, one would find variation beyond “Single, Married, Divorced/Widowed”. Many of the now married same-sex couples, myself included, had been in domestic partnerships before getting married, got married, and now are both married and in a domestic partnership.⁴ That means, unless the Family Code is amended otherwise, these couples that wish to go their separate ways have to dissolve both the marriage and the domestic partnership.

3 To nobody’s surprise, these rulings did not affect how county clerks treated heterosexual couples applying for marriage licenses.

4 Technically, per Cal. Fam. Code § 301, to get married one only has to be 18 or older and unmarried or not otherwise disqualified. However, county clerks are only issuing marriage licenses to same-sex couples who are in a domestic partnership with the person they are applying to marry, not to people where one is in a domestic partnership with someone other than the prospective spouse. Thank goodness for that.

1 <http://www.census.gov/popest/data/state/totals/2013/index.html>, retrieved April 22, 2014.

2 As of June 1, 2014, marriage equality states include Massachusetts, California, Connecticut, Iowa, Vermont, New Hampshire, New York, Washington, Maine, Maryland, Rhode Island, Delaware, Minnesota, New Jersey, Hawaii, Illinois, and New Mexico, as well as the District of Columbia.

Unfortunately, *Windsor* did not strike down the section of the Defense of Marriage Act that allows states to refuse to recognize same-sex marriages, and many states still do. Fortunately, same-sex couples do not have to meet California's jurisdictional residency requirements if their marriage and/or domestic partnership was performed in California and same-sex divorce is not an option in their home state.

Additionally, some same-sex couples in domestic partnerships have consciously decided to forgo or further delay marriage. These couples have community property protections under California law, but are not considered married for federal purposes.⁵ Domestic partnerships

⁵ Since California is a community property state, these couples are allowed to split the combined annual incomes of the partnership for federal tax purposes, even though they cannot file jointly.

may go away as an option for gay couples in the future, or it may expand to all couples, but the status will likely remain on the books as an option for individuals over 62 who want community property protections without affecting Social Security benefits.⁶

And some gay individuals are perfectly happy holding onto the "confirmed bachelor/ette" title they have held for most of their adult lives. The gay rights movement has been credited for bringing about a paradigm shift regarding the necessity or desirability of marriage because the previous exclusion established marriage as a heteronormative and/or anti-feminist institution. But thanks to *Windsor* and *Hollingsworth*, gay people can weigh all of these options

⁶ Cal. Fam. Code § 297(b)(4)(B)

in the same way as their heterosexual counterparts.

Christopher Marin, a member of the bar publications committee, is a sole practitioner based in Riverside with a focus on family law. He is also a Member-at-Large for the RCBA Barristers 2013-14 Board of Directors. He married his husband, William, on August 2, 2013. He can be reached at christopher@riversidefamilylaw.com.



IT'S TIME FOR CHANGE: THE EMPLOYMENT NON-DISCRIMINATION ACT

by Ariadna C. Tajoya

It is time for a change to take place on a federal level and the latest version of the Employment Non-Discrimination Act (“ENDA”)¹ seeks to do just that: to prevent the erroneous stereotyping of sexual orientation and gender preferences.

If I got paid for each time in my life where I have had to indicate my sex and/or my gender while filing out job application forms, surveys, loan applications, student applications, and so forth, I would have probably accumulated several extra hundred dollars in my pocket by now. It appears that even now in the 21st century, there is still a great need in society to classify human beings into different kinds. Why do we as a society feel the need to classify people by skin color, ethnicity, race, income, sex, gender and others? Is it not obvious what “kind” we are by just looking at us? The reality is that classifying people is not as easy as it would appear. Human beings have become more and more complex. Some aspects that have contributed to the current complexity of the human beings are immigration, the mix between people of different races and ethnicities, sexual orientation, and the concept of gender, among others.

All these changes and classifications create different challenges because changes have to be made so that society as a whole can adapt to them, and unfortunately, society does not typically evolve as fast as its individuals. One of the main challenges of our 21st Century society is the recognition of the rights and equality of the Lesbian, Gay, Bisexual and Transgender (“LGBT”) community, which according to a special Gallup report published in 2012, is approximately 3.4% of the United States adult population. Whether being homosexual is a matter of choice or a matter of nature is irrelevant.

¹ NDA is S.815 - Employment Non-Discrimination Act of 2013, 113th Congress (2013-2014), available at <http://beta.congress.gov/bill/113th-congress/senate-bill/815>. It is designed to provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity, affording to all Americans basic employment protection from discrimination based on irrational prejudice. The bill explicitly prohibits preferential treatment and quotas and does not permit disparate impact suits. In addition, it exempts small businesses, religious organizations and the military.

In any case, our society should treat every individual with equality. However, there is a clear disparity in the way individuals are treated in our society, and it would appear that everybody has the same duties but not everybody has the same rights.

One of the main problems that the LGBT community faces nowadays is discrimination in the workplace. People are discriminated against because of their sexual orientation, or because their appearance does not stereotypically conform to the traditional appearance and/or demeanor of the sex they were born with. One might think that discrimination based on gender is banned per the Civil Rights Act of 1964; however, the intent of that legislation was to prohibit discrimination against women for being women or against men for being men. In other words, refusing to hire a woman based on the fact that she is not a man is not a valid reason not to hire her; it is unlawful and discriminatory. Hence, the Civil Rights Act of 1964 does not protect the members of the LGBT community in its entirety, because it only protects them against discrimination based on sex, but not against discrimination against *gender*.

The concept of gender does not only refer to the sexual organ a person is born with. It is a deeper concept that involves certain demeanor, attire, behavior, mannerisms, and overall lifestyle. For example, a straight woman typically has the same gender as her sex, this means that a person who was born a female, behaves accordingly to the parameters established by society for females. However, there are homosexual women that also behave femininely according to what society dictates is feminine, and there are transgender women that choose to behave in a masculine way, per the parameters that the society established for men, i.e. wear men clothes, and have masculine mannerisms and demeanor.

It is my belief that this last “category” represents the greatest challenge for employers in particular. Some employers would demand that his/her employees comply with certain requirements as to personal appearance and demeanor in order to maintain the image and reputation of the company. Others employers would

consider a transgender employee to be detrimental to a company's image and reputation, because he/she may consider that being homosexual and/or transgender is not a morally acceptable behavior, or may think that the way an individual express his/her sexual orientation may be disturbing for other people in the work place. These type of ideas may lead an employer to allow or to commit discriminative actions against a homosexual and/or transgender employee.

Many states such as California have already adopted non-discrimination laws that prohibit discrimination based on sex, sexual orientation, gender, and gender-nonconformity. However, the ENDA that passed in the Senate in 2013 intends to protect members of the LGBT community against discrimination based on gender at a federal level, since the Civil Rights Act of 1964 includes only a narrow concept of discrimination based on sex and reduces it to the biological condition a person is born with.

Furthermore, the ENDA would also provide parameters for the employers as to what constitutes discriminative actions and behaviors against an LGBT employee. It will also allow LGBT plaintiffs to recover from employers that discriminate against them for not conforming to employer's perception of the employee's gender's stereotypes; and lastly, it would, in a way, positively redefine societal concept of masculinity and femininity.

Ariadna C. Tajoya is the founder of the Law Office of Ariadna C. Tajoya, located in Whittier, CA. She practices immigration and family law for families and individuals. She is an active member of the Los Angeles County Bar Association, American Immigration Lawyers Association and supports LBGT families and Immigration issues. She may be reached at tajoyalaw@gmail.com.



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THE COURTS' RUSH TO THE ALTAR: AN UPDATE ON MARRIAGE EQUALITY

by Heber J. Moran

Updates on the progression of marriage equality are occurring on a daily basis. There is little historical comparison to the rapid advancement of marriage equality in our nation's state legislatures and state and federal courts. A growing judicial consensus is forming that denying the fundamental right of marriage to same-sex couples harms the children raised by these couples, derives from animus, advances no legitimate state interest and demeans the dignity of gays and lesbians.

This change was accelerated by the U.S. Supreme Court decision in *United States v. Windsor* (2013) 570 U.S. 12, which overturned Section 3 of the Defense of Marriage Act (DOMA). The *Windsor* decision did not address whether gays and lesbians are entitled to the fundamental right to marriage, but held that the federal government is required to recognize all state-sanctioned marriages. However, the majority also reasoned that the impetus for DOMA was a congressional desire to disparage and injure an unpopular group, that a stigma is imposed on these couples and that children raised by these couples are harmed when they receive the message that their families are inferior. With this new precedent, lawyers have filed suits in state and federal courts. The following is a rundown on the progress.

States Recognizing the Right to Marry (19), plus Washington, D.C.

1. **Massachusetts (2004), Connecticut (2008), Iowa (2009), New Mexico (2013), New Jersey (2013):** Recognition ordered by their respective Supreme Court.

2. **California (2013):** In 2008, a California Supreme Court decision held a state statute, Proposition 22, unconstitutional. Prop. 22 had defined marriage as a union between a man and a woman and had passed by popular vote. This paved the way for California to begin extending marriage rights to same-sex couples. However, Proposition 8, an amendment to the state constitution passed by voters after the 2008 court decision, again limited marriage to between a man and a woman. In 2010, a federal lawsuit was filed. In

Hollingsworth v. Perry (2013) 570 U.S. 183, a district court judge declared Prop. 8 an unconstitutional infringement of equal protection and due process. State officials refused to appeal this decision, so the proposition's original proponents intervened to appeal. The U.S. Supreme Court's dismissed the appeal on the basis that the proposition's proponents lacked standing, and marriage equality was restored in 2013 on this procedural ground.

3. **Vermont (2009), New Hampshire (2009), Washington, D.C. (2010), New York (2011), Rhode Island (2013), Hawaii (2013), Delaware (2013), Minnesota (2013) and Illinois (2014):** Recognition ordered through legislation.

4. **Maine, Maryland and Washington (2012):** Recognition achieved by popular vote.

5. **Oregon and Pennsylvania (2014):** Recognition ordered by federal district court judges. State officials chose not to appeal the decisions.

States with Pending Litigation Now on Appeal (12)

1. **Utah, Virginia, Texas, Oklahoma, Michigan, and Idaho:** The federal district court judges in these states held that the denial of marriage to same-sex couples is unconstitutional. A 3-judge panel of the 10th Circuit Court of Appeals heard oral argument in the Utah case, and the same panel heard oral argument in the Oklahoma case. The 4th Circuit Court of Appeals has also heard oral argument in the Virginia case. Officials in Texas, Ohio, Michigan and Idaho have appealed the rulings overturning the bans in their states, but no oral argument has yet been set.

2. **Kentucky, Ohio, Indiana and Tennessee:** Federal district court judges here issued rulings overturning the parts of state bans that restricted the recognition of out-of-state marriages. Officials in all three states have stated they will appeal the rulings.

3. **Nevada:** Nevada is the only state where a federal district court judge upheld a state's denial of marriage. However, the 9th Circuit Court of Appeals, in an unrelated ruling, classified sexual orientation as a quasi-suspect class, and Nevada's state officials chose to no longer defend the ban on appeal. An anti-equality organization has pledged to attempt to intervene to defend the ban on appeal.

4. **Arkansas:** A state circuit court judge issued a ruling overturning a state statute and constitutional amendment that prohibited marriage and marriage-like legal status like domestic partnerships. The Arkansas Supreme Court has stayed the ruling as the State prepares its appeal.

States with Pending Litigation (18) and Puerto Rico

1. **Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, North Carolina, Colorado, Kansas, Missouri, Nebraska, South Dakota, Puerto Rico, West Virginia, Wisconsin, Wyoming, Alaska, Montana and South Carolina:** Federal or state litigation is pending in lower courts, but no hearings are set.

States with no pending litigation (1)

1. **North Dakota:** North Dakota is the only remaining state that denies the right of marriage, but has no pending state or federal litigation. However, a lawsuit is in the planning stages and is expected to be filed sometime this summer.

The rapid change in LGBT rights is undeniable. As recently as 1973, just 14 years before my birth, the American Psychiatric Association declassified homosexuality as a mental disorder. Even more recently in 1985, just 2 years before my birth, West Hollywood became the first municipality to enact a domestic partner-

ship registry. However, hate crimes, HIV/AIDS, police harassment, cruel stereotypes, and homelessness due to parental abandonment, job loss and suicides persist as pressing issues for the community yearning for attention, but are often overshadowed by the romanticism of marriage.

The importance of this advancement is not to be lost. It is so seemingly un-American to be unable to stand before friends and family and commit to the person you love with the same dignity afforded your co-workers, neighbors, and even prison inmates because of a characteristic unrelated to the content of your character. An evolving America is coming to terms with the injustice of indignity. My father, a devout Catholic and immigrant from El Salvador, articulates it the best: he cannot conceive that the land that made his most unimaginable dreams possible would let him celebrate his daughter's wedding but not his son's.

Heber J. Moran is a founding partner at the law firm of Moran and Moran, LLP in Upland, Calif. His practice areas include dissolutions, child custody and visitation, child support, spousal support and premarital agreements. He is an active member of the Los Angeles Gay and Lesbian Bar Association and the Riverside County Bar Association and can be reached at www.facebook.com/moranmoranllp.



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CALIFORNIA JOINS THE MAJORITY OF STATES IN PERMITTING INTENTIONAL INTERFERENCE WITH EXPECTED INHERITANCE CLAIMS

by Stefanie G. Field and David Werner

Historically, surviving partners in same-sex couples and unmarried couples, regardless of the duration of the relationship, have found themselves left out in the cold where the deceased partner passes without an appropriate estate plan in place. While the decedent may have manifested every intention to bequeath assets to a non-family member, for a variety of reasons that intent may not come to pass, particularly where a third party engages in activity that results in the decedent's intent being thwarted.

What happens when estate planning is impacted by the interference of a third party? For an heir under the Probate Code, remedies are available in the probate system, but those remedies are not open to surviving partners because, absent a will or trust naming them as a beneficiary, they have no inheritance rights. Some states, however, permit claims against the third party for intentional interference with expected inheritance ("IIEI"). Up until 2012, California was not one of them, leaving partners with no remedy.

This thinking changed with the court's decision in *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039. This was the first court in California to recognize IIEI as a cause of action in California, in a case involving same-sex partners. The case resulted from the failure of last-minute estate planning, allegedly as a result of false promises made by an estranged sister to the decedent's long-term partner.

Brent Beckwith had been in a 10-year relationship with his life partner, Marc Christian MacGinnis. Although MacGinnis had prepared a will in which he split his estate between Beckwith and his estranged sister, Susan Dahl, he failed to print and execute it before becoming ill and being admitted to the hospital. After being admitted to the hospital, MacGinnis asked Beckwith to locate the will and bring it to him at the hospital where he had been admitted, so he could sign it before he had lung surgery. Beckwith was unable to locate the will, and Mr. MacGinnis asked Mr. Beckwith to create a new will for his signature.

Beckwith prepared a will as requested, but made the mistake of letting Dahl know about the will before giving it to MacGinnis to review and execute. Dahl con-

vinced Beckwith not to provide the will to MacGinnis and to instead let an attorney that she knew draft a trust that would divide MacGinnis' assets equally between her and Beckwith. Dahl did not have the trust drafted or executed prior to MacGinnis having surgery. MacGinnis never regained consciousness after the surgery and died intestate.

After MacGinnis' death, Dahl filed a petition in the probate court to become the executor of the estate of her brother and, as his only surviving relative, was awarded MacGinnis' entire estate. Beckwith attempted to challenge the award, but his challenge failed because he lacked standing. Beckwith then filed a civil action against Dahl, alleging IIEI, deceit by false promise, and negligence. After the trial court sustained the demurrer to all three causes of action, without leave to amend, Beckwith appealed.

The Court of Appeal reversed, stating "it is time to officially recognize this tort claim." As adopted, IIEI provides a remedy for those who are harmed but lack standing to pursue a claim in probate. The basic elements that must be pled and proven to prevail on a tort claim of IIEI are: "(1) an expectation of receiving an inheritance; (2) intentional interference with that expectancy by a third party; (3) the interference was independently wrongful or tortious; (4) there was a reasonable certainty that, but for the interference, the plaintiff would have received the inheritance; and (5) damages." (*Id.* at 1050, citation omitted). In addition, the plaintiff cannot have a remedy available in probate. (*Id.* at 1052-1053, 1058.)

While California now permits an IIEI claim, its availability is limited. For the disappointed beneficiary who lacks standing to maintain a claim in probate, however, there is at least now a potential remedy available.

Stefanie G. Field, a member of the Bar Publications Committee, is a Senior Counsel with the law firm of Gresham Savage Nolan & Tilden.

David Werner is a senior counsel with the law firm of Gresham Savage Nolan & Tilden.



PAST PRESIDENTS' ANNUAL DINNER



(front row, left to right) - Robyn Lewis – 2011, Charlene Nelson – RCBA Executive Director, Michael Clepper – 1983, Art Littleworth – 1971, Justice James Ward (Ret.) – 1973, Justice Bart Gaut (Ret.) – 1979, Diane Roth – 1998; (middle row, left to right) Theresa Han Savage – 2005, Jacqueline Carey-Wilson – 2013, Sandra Leer – 1991; (last row, left to right) Jim Heiting – 1996, David Moore – 1984, Judge Craig Riemer – 2000, Dan Buchanan – 2001, Dan Hantman – 2007, Judge John Vineyard – 1999, Judge Steve Cunnison (Ret.) – 1981, Richard Swan – 1977, Harry Histen – 2009, Steve Harmon – 1995, Chris Harmon – 2012, Judge Dallas Holmes(Ret.) – 1982.

The past presidents of RCBA spanning 43 years of bar leadership, together with current president Jacqueline Carey-Wilson, Executive Director Charlene Nelson, and guest Assistant Presiding Judge Harold Hopp, met for their annual dinner on May 14. Participants spent the evening renewing acquaintances, catching up on news, and discussing the state of law practice and the courts.

photos courtesy of Jacqueline Carey-Wilson



Justice James Ward (Ret.) and Judge Steve Cunnison (Ret.)



Art & Peggy Littleworth



Theresa Han Savage and Jacqueline Carey-Wilson

FOR MONEY OR LOVE? A HOLISTIC REVIEW OF THE LEGAL LANDSCAPE FOR SAME SEX COUPLES AFTER *UNITED STATES V. WINDSOR* (2013) 570 U.S. 12

by Orlando Gotay

“Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans’ benefits.” *Windsor*, 570 U.S. 12 at page 22.

As a tax lawyer, and a gay one at that, I have been peppered with the question “Should we get married?” by same sex couples. I always reply with an “it depends.”

Love and affinity considerations are one factor; equality of rights with our heterosexual brethren is another. That said, marriage deserves most careful consideration. People should not solely decide to marry, or not marry, for financial reasons. I tell my friends, and my clients, that there will be more room for love if financial impacts are examined and understood.

This article is written for the non-tax practitioner, who may not even deal often with same-sex couples in contemplation of marriage. Perhaps they are not even clients, but friends of the family. *Windsor* and its progeny are bringing about significant change. This article only hopes to highlight some areas ripe for investigation.

Couples in same-sex marriages are beginning to learn the complex attributes, responsibilities, and consequences of entering into marriage. And there is far more than saying “I do.” The patchwork of uneven implementation of *Windsor* is causing murky waters that will last for some time. Even assuming the best, current guidance, same-sex couples have to carefully evaluate their particular situations to prevent suboptimal, unforeseen consequences following marriage -- beyond traditional ones.

The uneven way rights of same-sex couples have evolved reminds me of a British car I once owned. Triumph TR-7s were pretty cars, but none were identical. Parts were pulled ad hoc from bins and automobiles constructed with what was available at the time. To get the right replacement parts, I needed the car’s VIN number. I eventually memorized it.

A similar thing has happened to same-sex couples as their bundle of rights continues to evolve. None are identical, even in the same state. Every case needs to be thoroughly examined, individually.

In California, same-sex couples that entered into Registered Domestic Partnerships (RDPs) from 2001 were provided limited rights. In 2007, California deemed earned income from RDPs to be community property. No federal recognition then, but there were valid same sex marriages in several states — including California’s — between June and November 2008. After California’s Proposition 8, those marriages remained valid, but no new ones were permitted until *Hollingsworth v. Perry*.

In a pre-*Windsor* era, each RDP has to include in his or her federal income tax return, one half of the couple’s items of income, expense, credits and payments, only to recombine them in a joint state income tax return. This caused significant federal tax administration difficulties, as third party reporting figures frequently did not match.

In 2013, *Windsor* brought about federal recognition of same sex marriages and *Hollingsworth v. Perry* resuming same-sex marriages in California.

Readers may know *Windsor* declared unconstitutional section 3 of the Defense of Marriage Act (DOMA). Section 3 had amended the federal “Dictionary Act,” defining the word “marriage” in a way that prevented same-sex marriages from being considered “marriages” under federal law.

After *Windsor*, federal statutes whose interpretation hinged on the “old” definition of marriage gave way to the recognition of valid, same-sex marriages.

Federal income tax: pay more, or less?

Married couples filing joint tax returns combine their income as they travel through income brackets that are taxed at progressively higher rates. The ordinary income of spouse No. 2 begins to be taxed where the last dollar from spouse No. 1 was taxed. This is called progressive, marginal taxation.

The income of spouse No 2 will be taxed at a higher rate than if the same income been taxed at lower rates of a single individual traveling up the “ladder” on its own.

Tax results will vary, depending on the respective income of spouses, when dependents are present, or other substantial differences in income, present or future. I always advise to run the numbers, and the different scenarios, especially if retirement is in the near horizon for

one or both. This is also critical where the new spouse is a non-resident alien, contemplating immigrating to the United States.

Prospective spouses should consider the effect of new 2013, Affordable Care Act taxes such as the Net Investment Income Tax (NIIT) and the Additional Medicare Tax. The 3.8 percent NIIT applies to individuals, estates and trusts that have certain investment income above certain threshold amounts. Married Filing Joint threshold is \$250,000.

The 0.9 percent Additional Medicare Tax applies to an individual's wages, and self-employment (and some retirement) income that exceed a threshold amount based on the individual's filing status. The threshold amounts are \$250,000 for married taxpayers who file jointly.

I bring these two examples because it is easy for a same-sex couple to inadvertently reach these thresholds. IRA distributions of one spouse may inadvertently put the married couple, past the threshold where these taxes apply.

Retirement plans: The IRS has issued guidance to plan administrators. Qualified plans must conform to the *Windsor* decision retroactive to June 26, 2013. This includes plan participation rules, administration of plan benefits, and other matters. This is critical for those who were married and entitled to benefits as a surviving spouse, and for current plan participants to update beneficiary designations.

In for the penny, in for the pound: Just like their counterparts, spouses in same-sex marriages are subject to provisions for "innocent spouse" relief. People often bring old debts to marriage, some known about and some unknown. Pre-marital agreements carefully outlining specific allocations of what does and does not constitute community property may be helpful in determining assets available to pay pre-existing debts, and of course, post marriage allocations of items of income, expense, and tax debts.

Estate and Gift Taxes: Since 2013, the first to die can transfer to the surviving spouse his or her unused portion of the "exclusion amount" (now valued at \$5,340,000) to pay for the survivor's own estate or gift taxes. Portability can significantly reduce an estate and gift tax bill. Portability must be claimed timely and in the right way, or is lost forever.

Windsor was a federal estate tax case. At issue was the IRS denial of the "unlimited marital deduction" for property transferred by the decedent to the survivor. The denial deduction brought about a \$363,000 tax bill to Windsor's estate. That deduction is now also available to same sex couples.

Double the fun: The annual exclusion from gift tax. Individuals are entitled to make annual gifts of up to

\$14,000 to a single recipient, without incurring federal gift tax liability. Married couples can make a gift of up to double the amount to the same individual without paying gift tax. In 2014, a married couple could gift \$28,000 to an individual on December 31 from the same community assets and another \$28,000 the next day, January 1, without incurring gift tax liability.

State Income Tax: The state tax landscape for same-sex couples remains one of the most quickly evolving areas of tax law. Some states recognize a valid out of state marriage and allow same-sex couples the privilege of married filing joint status, but others will not. States not recognizing same-sex marriages are responding to *Windsor* by either requiring "pro-forma" single federal returns to calculate individual state tax for each of the spouses. Others use allocation worksheets, special schedules and prorations based on Adjusted Gross Income. State conformity with federal tax law induces additional complications that should be evaluated individually.

Immigration and the same-sex couple: *Windsor* is already making a significant impact on another area: immigration. For the first time ever, K-1 "fiancée" non-immigrant visas; K-3 "spouse" visas; K-2 children visas, Conditional Relative "CR" and Immediate Relative "IR" visas are available, to fiancées, spouses or "immediate relatives" of US citizens. Those visas permit later adjustment to permanent resident status and an eventual path to U.S. citizenship. Of course, permanent resident status and citizenship for alien individuals bring their own array of tax consequences.

Windsor cuts across many lines of our practice. Tax, estate planning, family law, and immigration are but a few critical areas that may be relevant to a couple contemplating marriage. As the Court aptly pointed out, Social Security and veterans benefits are others.

Practitioners are well advised to invite the prospective couple to a holistic, strategic assessment, to enable them to reach the best decision, for the right reasons.

Orlando Gotay is a tax attorney in solo practice in Palm Springs, JD/LL.M (Tax), Golden Gate University. A U.S. Naval Academy graduate and former Naval Officer, he was a political appointee of president Obama's first administration as the 17th Deputy Maritime Administrator of the United States. Mr. Gotay, a speech writer, also has significant state legislative and local government experience in his native San Juan, PR. Recently, he helped persuade the Mount San Jacinto Winter Park Authority to delay implementation of a paid parking plan at the Palm Springs Tramway. (Please see Mr. Gotay's profile on page 24.)



LAUNCH OF THE RCBA-RIVERSIDE SUPERIOR COURT NEW ATTORNEY ACADEMY

by Robyn A. Lewis

The Riverside County Bar Association and the Riverside Superior Court are pleased to announce the launch of a new training program for new attorneys, which will be known as the New Attorney Academy.

The purpose of the New Attorney Academy (“the Academy”) is to provide professional guidance and counsel to assist newly admitted attorneys in acquiring the practical skills, judgment and professional values necessary to practice law in a highly competent manner and to encourage sensitivity to ethical and professional values that represent the traditions and standards of the Inland Empire legal community.

Specifically, the Academy will be made up of a series of classes, which will take place once a month. The curriculum will be taught by judges and noted attorneys in the community. Topics to be taught will include, but are not limited to, an introduction to the legal community, a practical and intensive primer on depositions and discovery, an introduction to practicing in court (court appearances, legal writing and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in Alternative Dispute Resolution, relations with other attorneys, case management, etc.) and an introduction to law practice management. The emphasis of these classes will be for a civil practitioner although anyone who has an interest in participating in the program is invited to apply.

At every session, the class will attend the monthly RCBA General Membership meeting for that month so as to promote membership in that organization and to allow for class members to participate in their legal community. The only cost for attending the Academy will be for the lunches provided at the RCBA General Membership meetings.

For the initiating class, admittance to the Academy will be premised upon the following requirements:


1. Admittance limited to attorneys in practice 5 years or less
2. Admittance limited to RCBA members (applicants can join RCBA if they wish to participate in the Academy for a limited cost)
 - \$25.00 first year of admittance
 - \$120.00 less than 5 years (private)
 - \$95.00 less than 5 years (gov’t)

If you are interested in attending the Academy and do not meet the criterium of the limited years of practice, we still urge you to apply as there may be additional availability for those attorneys who have been practicing longer to attend the program.

Once the attendees of the Academy graduate from the program, there will be several brown bag lunches organized throughout the remainder of the year. Those brown bag lunches will serve as an opportunity for graduates to continue to connect with judges and seasoned attorneys and to ask follow up questions or to discuss issues that they may come across in their practice.

If you are interested in applying for the program, please contact Charlene Nelson at the Riverside County Bar Association at 951.682.1015 or Robyn Lewis at rlewislaw@yahoo.com for further information.

Robyn Lewis is with the firm of J. Lewis & Associates, APLC. She is a past-president of the Riverside County Bar Association.



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DESERT AIDS PROJECT TREATS AND SUPPORTS THE WHOLE PERSON...ALL UNDER ONE ROOF

by Barry L. Dayton

Off the front page of newspapers, but part of the daily life of more than one million Americans living with the illness,¹ HIV continues to make varied demands on communities for medical care and related support services. And after 30 years since its founding, Desert AIDS Project continues to fulfill its mission of “enhancing health and well-being” by delivering essential services to Palm Springs and the greater Coachella Valley, an area with an HIV/AIDS prevalence rate twice the national average.

Desert AIDS Project – or D.A.P. – provides comprehensive services to people living with HIV/AIDS in the desert community. It makes available free, confidential HIV testing, counseling, home health services, legal assistance, and assistance with housing, medications, food, and re-employment. D.A.P. also provides prevention and education services to groups throughout the Coachella Valley, as a lead partner in the recently launched Get Tested Coachella Valley.

Through its long-term partnering with the City of Palm Springs, D.A.P. has obtained Community Development Block Grant funding for a number of years, helping to develop and improve its campus at 1695 N. Sunrise Way. While D.A.P. also receives funding from the federal Ryan White HIV/AIDS Program, its diversified revenue streams includes grants and contracts from public and private funders; fees for services from private insurance, Medicare, and MediCal; fundraising events throughout the year; its chain of four Revivals stores; and individual contributions and bequests through estate plans. All of this makes it possible for D.A.P. to continually improve its in-house facilities that include a lab for blood work, a pharmacy whose staff specializes in HIV medication therapies, and the Client Community Center. This community center allows D.A.P. to combat HIV stigma and isolation through skills-for-living and back-to-work training, and other educational and social activities. And by bringing the services under one roof, case managers help to tie together this holistic care model for the more than 2,200 clients of D.A.P. As one of its housing options, the Desert AIDS Project campus even includes an 81-unit apartment complex for low-income clients.

1 According to the Centers for Disease Control and Prevent, 1,144,500 persons aged 13 years and older are living with HIV infection, with approximately 50,000 new cases being diagnosed each year. See <http://www.cdc.gov/hiv/statistics/basics/ata glance.html>.

More recently, the agency has expanded on its mission. It has doubled the size of its HIV-specialty dental clinic – the first in Riverside County – through a generous donation by Georgia and Jerry Fogelson. And through the Annette Bloch Cancer Care Center, created with a million dollar gift in 2012 by its namesake, D.A.P. provides regular screenings for some kinds of cancers often associated with HIV. On the near-horizon, D.A.P. plans to open a full STD clinic, and undertake clinical trials and research.

In August 2013, About.com, a top 40 U.S. website, included Desert AIDS Project in its list of “Top 20 HIV/AIDS Charities.”² D.A.P. was selected as one of only a small handful of HIV/AIDS charities that met a set of standards, including:

- spending at least 75% of their cash budget on bona fide programs,
- raising \$100 from every \$15 spent fundraising, and
- operating with complete financial transparency.³

On August 22, 2013, the day Desert AIDS Project began its 30th year of service, CEO David Brinkman said “While we are immensely proud to be recognized in this way, we know that it really does take a global village, with each community in each country fighting the continuing spread of HIV while caring and advocating for those who are already infected. The spirit of those volunteer warriors who started D.A.P. back in 1984 lives on today and we shall continue to honor their commitment every day we serve the community.”

D.A.P. is also leading the nation’s first region-wide HIV testing effort

Desert Regional Medical Center (DRMC) is the Lead Sponsor of Get Tested Coachella Valley, the nation’s first region-wide campaign that seeks to dramatically reduce the spread of HIV by making HIV testing standard and routine medical practice, while ensuring linkage to care for those who test positive. DRMC is “walking the talk” by making a gift of \$1.5 million to the multi-year initiative.

In a recent study, it was shown that people on effective HIV medications became 96% less infectious – providing

2 <http://aids.about.com/od/advocatelinks/a/Top-20-Hiv-Aids-Charities.htm>.

3 The “Top 20” list was assembled for About.com by Dennis Sifris, MD and James Myre. Dr. Sifris is an HIV specialist and Chief Medical Officer of LifeSense Disease Management, an HIV-managed care company based in South Africa, and Mr. Myhre is an American journalist and HIV educator.

scientific evidence that testing, plus treatment, results in HIV prevention. With the help of “champions” like Carolyn Caldwell, CEO of DRMC – and a D.A.P. board member – along with board chair Barbara Keller and U.S. Rep. Raul Ruiz, MD – the campaign not only expects to help eradicate HIV stigma and prevent new infections but will also help to save the Coachella

Valley an estimated \$380 million to \$1 billion in health care costs.

**D.A.P. continues to deliver
Care • Prevention • Advocacy
until we no longer have to say
“AIDS is not over”**

Barry Dayton is the Director of Marketing & Communications for the Desert AIDS Project.



President Clinton praises Get Tested Coachella Valley, the nation's first region-wide HIV prevention campaign, on a visit to Desert AIDS Project on January 27, 2014.

6TH ANNUAL CELEBRATION OF EQUAL ACCESS TO JUSTICE WINE, BEER AND CULINARY TASTING BENEFIT

by Jennifer Jilk

Thank you to the many supporters and friends who attended the 6th Annual Celebration of Equal Access to Justice Wine, Beer and Culinary Tasting Benefit on April 10th co-hosted by Inland Counties Legal Services (ICLS) and Riverside Legal Aid (RLA, previously doing business as Public Service Law Corporation of the Riverside County Bar Association) at the Grier Pavilion at Riverside City Hall. Together we heard inspirational stories from Mayor Rusty Bailey, Judge Richard T. Fields and a former legal services client. Volunteer attorneys from ICLS and RLA were honored that evening with Outstanding Service Awards for their volunteer efforts.

The benefit raised much needed funds for ICLS and RLA to be able to provide free quality civil legal services to low-income, disabled, disadvantaged and elderly persons in Riverside and San Bernardino Counties. In 2013, ICLS closed 6,692 cases, providing legal advice, limited pro se assistance as well as aggressive legal advocacy in litigation and administrative law cases. RLA's volunteer attorney program served more than 2,400 clients in 2013.



Judge Richard T. Fields



Mayor Rusty Bailey

ICLS and the RLA would like to thank those who made the event so successful.

Wine, Beer and Culinary Vendors

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The Fair Housing Council of Riverside County • Thompson & Colegate
UC Riverside Extension- Law Programs

Music was provided by Dwayna Green-Wade and Napoleon Wade.



PROFILE OF A DRS MEDIATOR: LUIS E. LOPEZ

by Krista Goodman

Editor's Note: We at DRS want the members of the RCBA to know the mediators on our panel who dedicate their time and services to help us run our programs for the benefit of the public of Riverside County. We hope you enjoy the opportunity to read more about this mediator's personal and professional history. We are truly grateful to have Luis E. Lopez and his expertise on our panel.



Luis E. Lopez

For Riverside attorney Luis E. Lopez, there is no greater personal reward in his professional work than being able to use his legal expertise to truly help people. This wholehearted passion is what fuels his involvement in the Riverside Family Law Court's Voluntary Settlement Conference program on the first and third Fridays of every month.

On these Fridays, approximately 10 cases are selected to participate in the VSC program. The parties have the opportunity to resolve their issues, fill out their paperwork and settle their cases within a day. RCBA Dispute Resolution Service, Inc. works in conjunction with the Court to coordinate the assignment of a mediator to each case on the day of the hearing.

"It helps people get matters resolved and it gives them a person they can talk to and help them understand what the divorce terms and requirements are," Lopez said.

Lopez explained that many family law cases linger in the court system for years simply because the paperwork is not filled out correctly or one of the parties is not served properly.

On a recent Friday, Lopez mediated and settled two cases. One was resolved in a matter of 15 minutes — all the parties needed was some guidance on how to fill out the paperwork. The parties involved in the second case had not spoken in at least two years. "They didn't communicate with each other. I think it was because they were afraid of what to say and what not to say," Lopez deduced.

"This couple might not remain in contact afterwards but at least they walked out with a judgment and they're going to respect each other because they now understand that neither one was causing the delays." He added, "The husband, who had a lawyer, saved thousands in attorney's fees because now they won't have to go trial."

The time and legal expertise volunteered by mediators like Lopez in the VSC program has helped to resolve hundreds of similar cases. He has been involved with it since it started in November 2010.

"I've actually had folks who haven't spoken to each other in a long time go out and have lunch together after they receive their judgment," Lopez said. "You can't beat that."

Lopez operates a practice in Riverside with an associate and a small staff, focusing mostly on family law matters, with some consumer bankruptcy law and other legal services provided to small family-owned businesses.

Earlier in his career, he was a founding partner in a larger firm. He described it as a booming practice, but he had less time to work with his clients on a personal basis. "As a founding partner I was focusing more on managing and making sure we could cover our expenses than on what I wanted to do," he reflected.

"In 2010, I went back to what I always thought I should do, which was have a small law firm and represent people that need my services on a personal basis."

Before the VSC program started, Lopez provided a free legal clinic in San Bernardino for over a decade. "Every Wednesday I would go to San Bernardino and people would come into this little office," he remembered, "if there was a group and they were all there for family law matters, I would have a lecture about family law." It became so busy that the clinic was later held twice a week and by appointment-only. There were parties that came from as far as Las Vegas, Utah and Arizona for legal aid.

By 2007, there were fewer people that needed assistance. When the clinic was discontinued the director moved on to work for Lopez full-time at his practice.

Today, Lopez is a founding committee member of an initiative called Project Graduate, a coalition between the Riverside Juvenile Court, Riverside County Child Protective Services and the Riverside County Bar Association (RCBA). Project Graduate was founded to give young adults in the foster care system an extra boost toward high school graduation. More than mentors, members of the committee volunteer their time as educational representatives who work on behalf of the students.

"There is specific law that allows the Court to legally appoint advocates for educational purposes. Those of us

who are educational representatives have a court order that allows us to help these students get any assistance they need to graduate,” Lopez said.

Educational representatives meet with the student and ensure that all of that student’s needs are met by the school. For example, if the student is in need of tutoring, the education representative may legally demand that the school provide tutoring to help that student successfully graduate.

As a part of Project Graduate, students also earn points for their involvement in school and/or extracurricular activities. The points are awarded as a gift, such as a notebook computer, at graduation.

Lopez’s own education had a profound impact on him, personally and professionally. He completed his undergraduate degree in political science from California State University, Fullerton, where he first met current RCBA President Jacqueline Carey-Wilson. He was actively involved in school politics, including serving as the chief justice of the student court, where he presided over student issues of educational and professional misconduct. He also helped conduct legal research to back a highly publicized motion to bar former Ku Klux Klan member Tom Metzger from filming a prejudiced cable show on university property.

After his time as CSUF, Lopez went on to pursue his law degree at the McGeorge School of Law in Sacramento.

“I loved it — the school, the professors, the challenge and the comradery. There were very few people that loved law school more than I did,” Lopez said. “I remember thinking, ‘This is what I want to do. This is what I was meant to do.’”

Traveling is one of his great interests outside of his professional life. Although he was born and raised in Mexico, he explained that every trip back home is still a new and interesting experience. He has visited several major U.S. cities and India.

“You don’t get to see the beauty of other people’s cultures until you go there,” Lopez said. “Every country has an incredible history. I love to learn about that.”

He and his wife recently returned from their first trip to Paris. Their mutual aspi-

ration was to learn about the history and culture of France in person rather than through a book.

To reach the Law Offices of Luis E. Lopez, call (951) 367-0834. To find out more information about Project Graduate visit riversidecountybar.com/member-resources/project-graduate. For more information about RCBA Dispute Resolution Service, Inc., visit rcbadrs.org or call (951) 682-2132.

Krista Goodman is the public relations coordinator for RCBA Dispute Resolution Service, Inc. She recently graduated with a Master of Arts in Strategic Public Relations from the University of Southern California.



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OPPOSING COUNSEL: ORLANDO GOTAY

by Christopher Marin

Breaking Down Closet Doors

Considering the impact that Orlando Gotay has had on the legal community in Riverside, it would be surprising to learn that he just moved out to the area from Washington, D.C. this last summer. However, working to make your community better was one lesson that he picked up from his service in the U.S. Navy. “Hit the decks running,” was their motto, according to Orlando. And over a legal career that is now going on 20 years, Orlando has hit a lot of decks. Most of that has been recounted by Orlando himself in the September 2013 edition of *Riverside Lawyer*. The title of that piece – “A Non-Traditional Tax Lawyer’s Career: Ships, Bicycles, and Politics – Speech Writer, City Official, State Capitol Advisor, Senior Federal Executive” – should give you some idea of the broad scope of his career to date.

Even as a tax lawyer, Orlando is able to think big and outside the box. Just this April, he enabled Riverside Legal Aid to host a low-income tax litigation clinic by joining forces with an IRS-funded program in Orange County, because the Inland Empire was designated as one of four underserved “impact zones” across the nation requiring assistance to handle tax controversies for low-income taxpayers. In addition to staffing the clinic, Orlando even took on some of the cases *pro bono* for direct representation. According to Riverside Legal Aid Executive Director Diane Roth, “I’m so glad Orlando found us. The words ‘it can’t be done’ are not in his vocabulary; he jumps right in and finds a way to do it. I think his experience in politics probably serves him well in that regard. Besides being smart, interesting and energetic, he can’t be intimidated. He’s also generous and has a fascinating life story; he really lights up a room when he walks in.”

The Backstory

We already know about Orlando’s fascinating career in law and politics, but it might not have ever happened if his career trajectory had not been altered due to his sexual orientation. Orlando was born and raised in Puerto Rico, where he was an accomplished student (he still speaks four languages fluently – Spanish, French, Italian and English). He first came stateside in 1982 when he sought to enroll in the U.S. Naval Academy. He spent one year in Navy Prep



Orlando Gotay



School and four years as a Midshipman, graduating the Academy in 1987. After graduation he spent one year in officer training and then was deployed as the Main Machinery Officer to the flagship USS *Belknap* in Gaeta, Italy.

While on tour in Italy, Orlando tried to lead a quiet, unassuming life of a closeted gay man in the Navy. This was in the days before the Don’t Ask, Don’t Tell (DADT) policy, where asking or telling could cost an officer his military career. In 1989, the Navy’s suspicions were aroused and a formal inquiry into Orlando’s then-hidden sexual orientation ensued. It was a “horrific affair” for Orlando, marked with despair and loneliness – people facing such accusations would have a hard time keeping friends, lest the friend be painted with the same brush. With the help of his JAG attorney (who he later discovered to also be gay), the Navy did not discharge Orlando. Rather, he was asked to resign his commission.

Orlando took an honorable discharge and moved to San Francisco. However, the Navy soon came after him to recoup the cost of sending him through the Academy and not fulfilling his five-year commitment. Orlando likened it to “burning down a house and then billing the owner for the gasoline.” Orlando fought back, on his own at first, and then with help from the ACLU once his case gained a high media profile.¹ Ultimately, the Navy decided to back down and the case was dismissed.

It was a real act of courage to stand up for your own dignity as a gay man back then. Keep in mind that the public perception of homosexuality in 1990 was far less accepting than today. Back then, gay people were usually associated with the growing AIDS epidemic and still mislabeled as “pedophiles” or “perverts.” Orlando’s courage in standing up against an injustice perpetuated by a country he had dedicated himself to serve, then, made the world a better place for LGBT Americans (although Orlando pointed out that, initially, he was just trying to save his own skin). This story was later documented in the book *Conduct Unbecoming* by Randy Shilts.

After Orlando’s public ordeal with the Navy, DADT became law in 1993. LGBT discharges were still ris-

¹ See “Gay Annapolis Graduate in Tuition Dispute”, *The New York Times*, September 25, 1990.

ing, though. Because many of these discharged servicemembers were facing the same injustice as Orlando, the non-profit Servicemembers Legal Defense Network was formed. And in a bittersweet example of history coming around full circle, Orlando was able to personally witness President Obama signing the Don't Ask Don't Tell Repeal Act of 2010.

Present Day

To this day, Orlando is still committed to leaving things better than he found them. As a citizen-activist in Palm Springs, he shone a light on the political missteps of the Palm Springs Aerial Tramway Committee's functional disregard of open-meeting laws and public input. He also has committed energy to LGBT equality in his native Puerto Rico, pushing for parity in Domestic Violence laws as they relate to same-sex couples and enacting employment non-discrimination laws to protect LGBT workers. He has also helped draft model statutes on behalf of national advocacy groups to improve existing state laws on the criminalization of HIV transmission.

When he is not fighting government injustice in the tax or political arena, Orlando enjoys cycling and travel. He says he is still choosing his battles, though. And for a man who has shown he can "hit the deck running" to make the world better, his activism against injustice has also shown that he can deck 'em 'til they run.

Christopher Marin's mini-biography can be found with his article, "Relationship Status? It's Complicated" in this issue on page 8.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2014.

Emily J. Adams – Attorney Learn, Temecula

Joseph S. Biderman – Judicate West, Los Angeles

James Daloisio – Sole Practitioner, Jurupa Valley

Jonathan C. Fuller – Law Office of Kyle A. Patrick, Riverside

Uliana A. Kozeychuk – Lobb & Cliff LLP, Murrieta

Patricia Lee-Gulley – Gordon & Rees LLP, Irvine

Denise M. Motroni – Law Offices of Denise Motroni, Corona

Christopher P. Romero – Smith Law Offices APC, Riverside

Scott J. Sheldon – Law Office of Scott Sheldon, Pasadena



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.



FAREWELL TO PROFESSOR JAMES E. HOGAN

MAY 26, 1930 – DECEMBER 31, 2013

by Jamie Alexis Newbold (with Hirbod Rashidi)

When the Court of Appeal in *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775, cited to Hogan & Weber's "California Civil Discovery" in its opinion filed on January 31, 2014, it was probably unaware that renowned professor and author of the California Civil Discovery Act of 1986, James E. Hogan, had passed away exactly one month earlier on New Year's Eve. In fact, Professor Hogan's treatise on civil discovery has been relied upon and cited to in over 38 California appellate opinions—at least four of which are California Supreme Court opinions.

As "1Ls" in law school, Professor Hogan captivated our attention with what some may have thought would be one of the driest of classes — Civil Procedure. Professor Hogan's wit and humor provided much relief during the stresses of a first year law student's journey, opening our minds to absorb the stringent rules and the back-bone of our legal civility. His anecdotes and analogies prompted our attention to certain code sections and case law, providing us with future stories to relay to others, like his "Red Hot Poker Doctrine." While other professor's talked about "un-ringing the bell" (having the court strike material already heard/seen by the jury), our professor described it differently. Paraphrasing him, he describes an event when during trial one of the attorneys walks to each member of the jury, ramming them in the behind, with a red hot poker. Over the other attorney's objection, the judge orders the red hot poker removed with instructions that the jury heed no attention to the stunt. While the jury has been instructed to remove the poker, for the rest of the trial "the jury is going to know a red hot poker has been there." This is just one example of his wit and sense of humor. How many other people can say they actually looked forward to their Civil Procedure class?

Professor Hogan was clearly dedicated to educating students and was an understated and humble contributor to our legal world. During the year he taught us Civil Procedure at Southwestern University School of Law, he also taught at McGeorge School of Law. He flew from Northern California to Southern California every week without fail. Most notably, Professor Hogan was a founding member of the King Hall faculty at UC Davis School of Law in 1967. For more than 35 years, Professor Hogan taught classes in Civil Procedure, Evidence, Products Liability, Criminal Law, Trial Practice, and Remedies.



Professor James E. Hogan

His impact and recognition permeated our legal experience and lives. In fact, our first year of summer law clerk positions, at the Orange County Superior Court's Law & Motion department, was awarded to us mostly because of how impressed they were that Professor Hogan was our Civil Procedure instructor. (They used his treatise on California discovery regularly!)

On a daily basis, in our practice and academic endeavors, we find ourselves talking and writing using some of his phrases. To this date we use his "triangle" to teach staff and students

about jurisdiction (each side of the triangle represents the preliminary consideration in every civil action: subject matter jurisdiction, personal jurisdiction, and notice). We continually parrot "Hoganisms" such as "jurisdictional straightjacket" to help describe personal jurisdiction's involvement vis-à-vis "minimum contacts."

In life we are all (hopefully) affected by at least one individual that has made us a better person, attorney, instructor, writer, etc. For us that was all rolled into one: Professor James E. Hogan.

Our belated deepest condolences to our professor's family, friends, colleagues, and students (the latter is in the tens of thousands and growing).

Jamie Alexis Newbold is a Senior Staff Attorney in the civil division of the Superior Court of California, Solano County (she previously served Riverside County Superior Court as judicial staff attorney). She is also on the board of directors for Sonoma County Women in Law. Hirbod Rashidi is an attorney for Riverside County and Instructor, through extension, at UC Riverside. Views expressed do not necessarily represent the views of their employers.



Aside from his legal scholarship, Professor Hogan was an avid fan of horse racing. One year, as a university fundraiser, Hogan donated his time and tickets to Santa Anita Park for a day at the races with him (I was fortunate to attend). Hogan's knowledge and advice on horse picks and "handicapping" far surpassed any racing sheets available. Recognizing the professor's racing passion, I gifted a personally autographed book to Professor Hogan made out by jockey Chris McCarron; no undue influence was present when the gift was tendered as the first year of law school had already been completed.

Jamie Alexis Newbold

OUR COMMUNITY MADE THE PROJECT GRADUATE HONOR ROLL!

by Robert L. Rancourt, Jr.

We have heard it time and time again: You know, the negative perceptions about the legal profession. A 1999 National Center for State Courts study found that about 77% of Americans have some, only a little, or no trust or confidence at all in the courts of their communities. A 2002 American Bar Association study concluded that 69 to 73% of the public believes lawyers are greedy and manipulative.

We know better. And on May 1, our community proved otherwise. At “An Evening in Support of Foster Youth Success,” members of our community donated more than \$5,000 to Project Graduate, the nonprofit community service program of the bar association that, in conjunction with the court and county, works with local foster youth to try to mitigate the fact that almost half of the county’s foster youth do not graduate from high school. By pairing the youths with educational representatives and mentors, the youths are provided with the extra support, advocacy, and concern needed to help them achieve their educational and life goals. Exceeding the program’s fundraising goal for the event by more than 25%, our community made the Project Graduate honor roll!

May 1, 2014, Project Graduate Honor Roll

Valedictorians

Hon. Roger A. and Peggy Luebs
Holstein, Taylor and Unitt
Law Office of Luis Lopez
University of La Verne College of Law

Salutatorians

Paul Grech
Loretta Holstein
Inland Counties Legal Services
International Brotherhood of Electrical Workers Local 440
Riverside County Attorneys Association

Honors

Hon. Becky L. Dugan
Hon. Jacqueline C. Jackson
Hon. John M. Monterosso
Hon. Matthew C. Perantoni
Hon. William “Rusty” Bailey
Hon. Sergio Diaz
Hon. Ronald Loveridge
Anonymous
Linda Bartman
Vicki Broach
Marisol Chianello
Jane Carney

Gerald and Lori Fineman
Jean Hall
Lexis/Nexis
Maureen Lyons
Nathan Perea
Peter E. Racobs
Security Bank of California
Chio Saephanh
Kirsten Shea
Carmela Simoncini
Doug Smith
Brian and Jacquelyn Unitt
Pamela Walls
Janice and Courtney Walth
Ward & Ward
Watermaster Support Services
Gabrielle Watson

Executing such a worthy cause of ensuring that foster youth graduate from high school requires resources. As these at-risk kids in the program succeed, they are rewarded with things to help them: Backpacks, clothing, computers, school supplies, and gift cards.

That’s where the call for help goes out. And our community—especially the legal community—resoundingly answered that call.

In the weeks and days preceding the event, people gave and gave. A Riverside fixture reserved its banquet hall and substantially reduced its fees to host the event. Zacatecas Café, serving the area for more than 50 years, provided the venue, parking, facilities, services, and refreshments. Generous patrons gave art, services, and items for the silent auction. Steering Committee members and volunteer law firm staffers planned, organized, and administered the event.

Then, on the day of the event, it got even better. People who could not attend submitted donations through colleagues and friends who would be attending. Members of the bench and bar, their loved ones, friends, and colleagues, local dignitaries and officials, and lay members of the community mingled, met one another, and outbid one another for the silent auction prizes. Project Graduate representatives spread the word about the program and its impact on the community. One Project Graduate alum even landed a job interview with an attendee!

Perhaps the highlight though was when current and past student participants spoke and inspired the audience. Some talked about their difficult experiences as foster children as unimportant stuff of the past. Some explained the positive effects of having someone who listens to them about their

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At the fundraiser are the Honorable Jacqueline C. Jackson, Project Graduate Presiding Judge, with Project Graduate participant Doc H. and her educational representatives and mentors, Deputy Public Defender Belinda A. Handy and attorney Shumika T.R. Sookdeo.



Project Graduate alum Juan M. with his educational representative and mentor, the author, the night of his 2013 high school graduation.

education and who cares enough to be involved in helping them reach their goals. As they beamed about the positive influence the program and its members have had upon their lives, some hearts were tugged while others were completely stolen.

In the debriefings, one child's name kept getting discussed: alum Juan M. He told how he participated in the program during his junior and senior years in high school and graduated last year. He described how he is now attending a technical college with future plans to enroll in the Marine Corps. He explained how his younger brother heard of Juan's positive experience and subsequently signed up for the program. He was confident, well-spoken, and sincere. He may have stolen the show.

So, the next time you hear the familiar negative refrains and banter about our profession, remember how giving this legal community is. We bring honor to the profession. Indeed, we just made the honor roll!

Bob Rancourt is a Deputy Public Defender with the Law Offices of the Public Defender, County of Riverside. He has been involved with Project Graduate as a Steering Committee member and educational representative and mentor since the program's inception in 2011.



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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.

Notice from the Riverside County Superior Court

May 19, 2014 – The Presiding Judges of the Juvenile Courts for the counties of Los Angeles, San Diego, San Bernardino, Riverside, Imperial and Orange, have developed a protocol for the transfer of juvenile dependency and delinquency cases from one county to another in Southern California.

Forty-five days from the sending of this notice, the Superior Courts in the above reference counties intend to adopt the Southern California Intercounty Transfer Protocol, for each county. The adoption of the Southern California Intercounty Transfer Protocol shall be as a pilot project, for six months, commencing on August 4, 2014.

All interested persons, agencies and organizations are invited to comment on the proposed protocol prior to the expiration of the forty-five day period.

For more information please visit the Court's website at <http://www.riverside.courts.ca.gov>, go to Divisions / Juvenile / then click on the Intercounty Transfer Protocol link or you can go directly to the page at <http://riverside.courts.ca.gov/juvenile/intercountytransfer.shtml>



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