

RIVERSIDE LAWYER

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MAGAZINE

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Involuntary Intoxication: The Case of the Spiked Punch

***In Vino Veritas*. In Wine Law, Complexity and Paradox**

Great Legs

Intellectual Property Issues of Particular Concern to Wineries (MCLE)

Responding to Alcohol Trademark Cease and Desist Letters



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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 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.

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The 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 the Riverside Lawyer.

The material printed in the 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

May

- 11 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Virginia Blumenthal
Topic: “Prosecutorial Misconduct”
MCLE
Lunch sponsored by Trey Roberts of Breathe Easy Insurance Solutions, will be provided to those that RSVP by May 10.
RSVP to rcba@riversidecountybar.com
- 13 General Membership Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Professor Gabriel “Jack” Chin, UC Davis School of Law, and Attorney Josh Meltzer, Munger Tolles & Olson, LLP
Topic: “The Chinese Exclusion Act of 1882 and Hong Yen Chang’s 125-year Fight for Bar Admission”
MCLE
- 17 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: David Ruegg
Topic: “QDROs – Advanced Topics”
MCLE
- 26 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Topic: Truefiling Training
Provided by Fourth District Court of Appeal, Division Two
MCLE

JUNE

- 2 New Admittee Swearing-In Ceremony**
10:00 a.m.
Riverside Superior Court, Department 1





by Kira L. Klatchko

Several months ago in this column, I discussed a study conducted by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation. The study confirmed that lawyers, not surprisingly, have hazardous rates of alcohol-dependent drinking, anxiety, and depression. In my column, I discussed several common stressors and several ways we might consciously try to make life in the law just a bit easier to cope with. After the column was published, I was pleased to learn that it resonated with many *Riverside Lawyer* readers. But I was also a little saddened by how much it resonated.

I heard from many of you who feel overwhelmed, burned out, and chronically stressed. Many of you told me that you could identify with the problems and situations addressed in the column, from trying to keep up with the myth of the unyielding “superstar” attorney, to trying to cope with toxic colleagues, hostile judges, and your own unrealistic expectations. While I have not developed any magic solutions since my last column, I have developed an appreciation for how much these issues are impacting our community. For that reason, I wanted to revisit them this month.

In my last column, I argued that when the very idea of taking a vacation is itself a major stressor that is probably a sign that we are under too much pressure. Many people told me that taking a vacation would mean more work, that they would not have anyone to cover their caseload, that clients might view them unfavorably, that courts might view them unfavorably, that they would feel guilty about being out of the office, or that they did not like the idea of “sitting around” on vacation. I heard similar comments about taking an afternoon off.

First, I am not advocating that lawyers lounge around all day in lieu of meeting the needs of their clients or fulfilling obligations to courts or employers. I am, however, suggesting that we are being unrealistic about our own ability to continuously perform under crucible-like pressure without taking a break. Some amount of pressure is inevitable and even healthy, but too much pressure is counterproductive. You are likely already aware of that fact and have seen it play out in your own life at some point, but there is a vast amount of data and literature proving that too much pressure, too much work, and too little rest, results in burnout and underperformance.

Take for example a Harvard Business Review article called *Overloaded Circuits: Why Smart People Underperform*, by Edward M. Hallowell. The epigraph for this article sums up the problem: “Modern office life and an increasingly common condition called ‘attention deficit trait’ are turning steady executives into frenzied underachievers.” As the article explains “ADT isn’t an illness or character defect. It’s our brain’s natural response to exploding demands on our time and attention. As data increasingly floods our brains, we lose our ability to solve problems and handle the unknown. Creativity shrivels; mistakes multiply. Some sufferers eventually melt down.” How does the article suggest you go about “vanquish[ing] the ADT demon before it can strike”? Sleep, eat right, exercise, and stay organized. You don’t even have to take a vacation, you just have to take a break long enough to sleep, eat, and walk up the stairs to your office. One expert even posits that a few minutes of meditative breathing every day will drastically reduce your levels of stress and your overall resilience.¹

Second, if a vacation is too overwhelming that does not mean you are destined for a full melt down. But, what available academic research suggests is that we might actually be more productive, more organized, and better able to solve our clients’ problems if we occasionally take off an hour early to go for a run, or meet a friend. That is, taking the occasional break to recharge might be the smarter choice for you and for your practice rather than something you ought to feel guilty about. That you would feel guilty at all is something we, as a profession need to examine. Addressing that guilt means, among other things, looking carefully at the values we are promoting by championing the mythic “superstar” attorney, usually portrayed as someone too committed and tough to need a break, let alone want one. We should have a discussion about the validity and efficacy of these kinds of myths because they may be contributing to depression, anxiety, and alcoholism among nearly a quarter of our colleagues.

Also, some of these highly stressed people may have a negative impact on their coworkers. These are the toxic people I referenced in my last column. Unlike many of you, I do not consider “toxic” to be synonymous with “lawyer.” I was referring to people who have poisonous effects on the people around them, or who promote practices that create an abusive or demoralizing work environment.

Some toxic people are, putting it mildly, incorrigible jerks. I am sure you have a long list of people fitting this description. This may be your mercurial colleague prone to loudly berating staff in your office over some trivial offense. It may be opposing counsel who threatens to report you to the State Bar because they don’t like your discovery responses. It may be a judge who enjoys humiliating lawyers. If you cross paths with these sorts of people on a regular basis I understand why you are stressed

¹ See *Full Catastrophe Living*, by Jon Kabat-Zinn.

and depressed. The obvious solution is to avoid jerks. But as many of you have pointed out, avoidance is not always possible. If you are stuck with one of these people, however, there are many great resources for lawyers. The RCBA, Inns of Court, the Other Bar, and a variety of support groups can provide a good outlet to vent and work out healthy coping or exit strategies. Having workplace policies designed to discourage or eliminate this kind of behavior is also helpful and, as I noted in my last column, can be beneficial for your bottom line.

But some toxic people are unwittingly destructive. These are the people who may be causing you a tremendous amount of stress without comprehending how their actions are impacting you. For example, this person may be a client that constantly sets unrealistic, unreasonable, and unobtainable goals. This person might be a colleague who does every project at the last minute and leaves you 30 minutes to review, finalize, and file a 100 page brief. It might be a boss who responds to your legitimate concerns about being overworked with little more than an apocryphal story about the time they worked 10 million hours in a year and did so without complaining and while trudging through a blizzard with no shoes. Most of these people are not people we want to avoid outright. These are the people who might benefit from a more robust discussion about the inverse relationship between long-term exposure to high stress and overall

productivity. A good way to start a discussion is by reference to the significant amount of empirical evidence showing that most people, and most companies, perform better when motivated by positivity, when they work in connective relationships, and when they are not overloaded. For a small sampling of this evidence, see *Positivity*, by Barbara L. Frederickson; *The Allure of Toxic Leaders*, by Jean Lipman-Blumen; *Connective Leadership*, by Jean Lipman-Blumen; and *The Developing Mind: How Relationships and the Brain Interact to Shape Who We Are*, by Daniel J. Siegel.

This evidence is frequently discussed in the corporate world by companies constantly seeking to compete for talent and clients, but it has yet to be embraced by the legal community. I see no reason why that should be the case. I continue to hope that we, as a profession, will examine the evidence, embrace it, and collectively find a way to address our problems. If you want to continue this discussion, or suggest a way that the RCBA can help, please reach out to me or post on the discussion forum on the RCBA website.

Kira Klatchko is a certified appellate law specialist and co-contributing editor of Matthew Bender Practice Guide: California Civil Appeals and Writs. She is also a vice chair of the appellate practice at Lewis Brisbois Bisgaard & Smith, where she is a partner.



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BARRISTERS PRESIDENT'S MESSAGE

by Christopher Marin



EFFIE WE'VE ALL GOT PAIN

-Ensemble in "I Am Telling You" from *Dreamgirls* (1982)

Just about every RCBA attorney — Barrister or not — I have come across in the last month has had nothing but kind and supportive things to say about last month's message where I essentially "came out of the closet" regarding my depression. I bring this up because 1) it feels good to know that people actually

read this message; 2) it demonstrates just how collegial and supportive Riverside attorneys are of one another; and 3) during my darkest times it was hard to reach out for help because I was afraid it would be interpreted as whining (much like the response Effie got in *Dreamgirls* before she was kicked out of the group).

My original intention with last month's message is that it would serve as a letter of resignation from my solo practice because sole practitioners do not really get a chance to write such a letter to their colleagues. This month, though, my takeaway is this: The responses I got from my colleagues were expressions of admiration for the courage to admit and reflect upon my struggles; at no point did I ever feel that anyone was offering me their pity or looking down on me as weak. Certainly, nobody told me to "Suck it up and deal with it." So to you, gentle reader, I can assure you that if you reach out for help, then you will find help long before you find someone who will judge you.

That said, though, the world keeps spinning despite our troubles, so it is important to reach out before your struggles overwhelm you and affect your ability to zealously and effectively represent your cli-

ents. The State Bar does offer the Lawyer Assistance Program (LAP) for attorneys struggling with mental health or substance abuse issues, but it is better to contact them before you endanger your career rather than after you receive notice of an investigation from the Office of the Chief Trial Counsel. I would also recommend you contact LAP before attempting to address your pain through suicide, self-harm or self-medication.

Our April event was another success. Thanks to our attendees (and one attendee in particular) we were able to raise \$167 for the RCB Foundation General Fund. We currently do not have an MCLE event scheduled for May, but our "First Friday" social gathering last month got such a positive response that we will probably make that a regular occurrence. Thank you to Erica Alfaro for putting the event together. I am sure she would welcome your suggestions for future social activities. As always, look to our Facebook feed for all of the latest information regarding all of our upcoming activities.

For June, though, we are having our annual officer elections for the 2016-2017 program year. The elections committee is still finalizing the list of candidates, which should be available here next month and on our Facebook feed. If you are interested in running for a board position (and after our April MCLE event, I suspect that more of you are) then please contact Secretary Erica Alfaro, Immediate Past President Scott Talkov, or me to make sure you are included on the ballot.

Christopher Marin, a member of the Bar Publications Committee, is a sole practitioner based in Riverside. He can be reached at christopher@riversidecafamilylaw.com. Scott Talkov can be reached at stalkov@rhlaw.com. Erica Alfaro can be reached at emalfaro@scif.com.



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A DAY OF WINE TASTING IN TEMECULA

by Julianna Crawford

Old Town Temecula is an absolute delight. It has been around since 1882 and has retained many of its historical features. According to the city's website, the name Temecula comes from the Luiseño Indian word "Temecunga"—"temet" meaning "sun" and "-ngna" which means "place of." The Spanish interpreted and spelled the word as "Temecula." This name origin is fitting because the Temecula Valley feels very much like a "place of the sun."

As I was driving into Old Town Temecula, I felt as though I was being transported back in time. It felt as if I was back in the Gold Rush Era when locals travelled around on their horses and horse-drawn carriages, frequenting local watering holes and engaging in a small, tight knit community life. There is a quaintness provided by the city, knowing that these are 'salt of the earth' people, with as much respect for their own past and traditions as they have for the future. My wine tasting partner (my husband) and I began our tour on Old Town Front Street and found our way to Main Street, when we noticed the City Hall building, a beautiful and elegant building that resembles one of the old Missions. The building had a water feature in front of it which had been drained due to the drought. This was bittersweet because I wish I could have seen the water feature running, but I am very pleased that the City of Temecula is taking measures to responsibly reduce its water usage and to be a role model for its citizens.

Until I accepted this assignment and performed some research, I was not aware that Temecula had an Old Town and I was not sure what to expect. My previous visits to Temecula Valley have been restricted to a couple of the wineries in wine country. During one of my previous trips we went horseback riding and toured some of the vineyards. At the end of that tour we stopped at the Wilson Creek vineyard for wine tasting and to purchase their famous Almond Champagne – my personal favorite. During this trip we ventured further, into the heart of Temecula, to experience all that it had to offer.

Wine tasting in Temecula was a similar experience to wine tasting in other wine countries in California, such as the Santa Ynez Valley, Carmel, or Napa. The wineries' professionals, as well as the locals, were very knowledgeable of the wines, grapes and vineyards down to local knowledge of soils and water levels, and which wines and vintages tasted best.

One of our tasting adventures was at the Lorimar Winery tasting room, located in the center of Old Town. Sitting in a room surrounded by local culture and local people, we immediately became immersed in the atmosphere that must make Temecula such a wonderful place to experience. We looked at local artists' artwork hanging all around the winery tasting room. The wonderful wine sommelier discussed the art with us and provided great context about the artists and what each of the images was meant to show. It became a wine and art show presentation before too long. We also noticed that many of the wineries in Temecula offered live music from local artists and cover bands on weekend evenings. While we were not present long enough to take advantage and enjoy the live music, there was a sense that this atmosphere would be very homely, allowing one to enjoy some fantastic wine, while also enjoying local artists doing what they do best.

After experiencing wine tasting at a couple of the wineries, we proceeded back to Old Town Front Street where we walked up and down, taking in whatever local culture we could. We were also able to stop at the local art shops and a local olive oil shop, where we sampled some fine olive oils and vinegars. It felt very similar to the Santa Ynez Valley and Carmel, where wine tasting was always paired with olive oil tasting. Like most wine country towns, Old Town Temecula is filled with multiple specialty stores, unique art galleries, and a myriad of antique stores.

On the way out of town, we drove by wine country and visited a couple of the vineyards. Many of them offer wine tasting and accommodate picnics as well as other events. After a day of touring Temecula, visiting wineries, and wine tasting, I have a new appreciation for this gem of a city, hidden in the Southern California Valley between Riverside and San Diego. Temecula is an absolutely wonderful location for delicious wines, local art and culture, a family picnic, horseback riding or just a scenic drive in a "place in the sun." Take the time, enjoy a drive, and learn to love what Temecula has to offer.

Julianna Crawford is a Workers' Compensation attorney and a member of the Bar Publications Committee. She can be reached at juliannacrawford@outlook.com.



INVOLUNTARY INTOXICATION: THE CASE OF THE SPIKED PUNCH

by Juanita E. Mantz

As a baby deputy public defender (mind you, not a baby lawyer; I had worked at large law firms for seven years prior) back in 2009, I handled many driving under the influence (“DUI”) cases under Penal Code section 23152, subdivisions (a) and (b).

People often told me that after a while every DUI is the same. If you have tried one DUI, you have tried them all, is what I heard time and time again. That was not the case in my situation.

Of course, I handled run-of-the-mill DUIs. My first was a guy with a .10, where I argued rising and the client was acquitted (mostly due to an incompetent officer). I also tried a Xanax DUI where my client was found guilty as well as a marijuana DUI where my client was acquitted. Soon thereafter, I tried a UC Riverside DUI with campus police where I argued necessity and my client was found guilty. Toward the end of my tenure in misdemeanor trials, I even tried a misdemeanor marijuana DUI/manslaughter. In that case, the jury based the not guilty verdict on the fact that the District Attorney could not prove impairment and luckily, we had a bus video (a bus was at the corner pulled over) that showed my client could not do anything when the decedent pulled out into incoming traffic right in front of his vehicle.

But, my favorite case and acquittal involved a funeral my client attended with family drama, strawberry red punch, and an involuntary intoxication defense.

The defense of involuntary intoxication is a tricky one. Voluntary intoxication is specifically excluded as a defense to a DUI as it is a general intent crime.¹

Involuntary intoxication, however, is allowed as a defense and California Jury Instruction No. 3427 (CALCRIM No. 3427) reads as follows,

“A person is *involuntarily intoxicated* if he or she unknowingly ingested some intoxicating liquor, drug, or other substance, or if

his or her intoxication is caused by the force, duress, fraud, or trickery of someone else, for whatever purpose [without any fault on the part of the intoxicated person].”

As the statute makes clear, an involuntary intoxication is only allowed when the defendant has no fault in the matter.

Cases have held, however, that persons tricked into taking an **intoxicating** substance are entitled to the defense and the general rule is that intoxication resulting from trickery is not “voluntary.”² In *People v. Scott*, a defendant who was at a funeral with his brother drank punch which he believed to be untainted.³ The defendant later realized this punch had been “laced” with a hallucinogen.⁴ The appellate court held that his drinking the **intoxicating** punch was the result of trickery and mistake and, therefore, his **intoxication** was not voluntary.⁵

It is important to note that courts do not allow the instruction/defense of involuntary intoxication if someone knowingly takes a drug laced with another drug. For example, in *People v. Velez*,⁶ the appellate court recognized the *Scott* rule but found the situation distinguishable by holding that the client had become intoxicated voluntarily, not involuntarily. In that case, the defendant had smoked a marijuana cigarette, which he did not know was “laced” with PCP.⁷ The court held the *Scott* rule to be inapplicable because of common knowledge that “marijuana is frequently contaminated with PCP or other psychoactive drugs...”⁸ The court ultimately held that because defendant “was voluntarily intoxicated as a matter of law, he was not entitled to instructions.”⁹

2 See *People v. Scott* (1983) 146 Cal.App.3d 823 (*Scott*).

3 *Id.* at p. 826.

4 *Id.* at p. 830.

5 *Id.* at p. 833.

6 *People v. Velez* (1985) 175 Cal.App.3d 785, 795-796.

7 *Id.* at p. 789.

8 *Id.* at p. 794.

9 *Id.* at pp. 795-796.

1 See Penal Code section 29.4 [formerly Penal Code section 22]; See also *People v. Mathson* (2012) 210 Cal.App. 4th 1297, 1311 [holding that voluntary intoxication is not a defense to a DUI].

Even as a relatively new criminal defense attorney, I knew we faced an uphill battle on this defense. My client (who was blond-haired and blue-eyed with an English lilt) testified that an unknown someone at the funeral had likely spiked her punch. Particularly persuasive was her testimony that, at the time, there was much family drama over a child custody dispute and that she noticed the punch tasted “funny.” The court also included a specifically crafted jury instruction including language from the decision in *Scott*.

And, ultimately, to my surprise, after a short adjournment, the Palm Springs jury acquitted my client on all counts.

Juanita E. Mantz is a Deputy Public Defender in Riverside County where she handles incompetency proceedings under Penal Code section 1368. She is also on the publications committee and copy edits for The Riverside Lawyer. In her free time, Juanita loves writing creative non-fiction and you can read her blog at <http://www.lifeofjemcom-jemmantz.blogspot.com/>.



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Hon. Joseph R. Brisco (Ret.)



Judge Brisco served as Supervising Judge of the Civil Departments and Presiding Judge of the Appellate Division during 21 years on the San Bernardino County Superior Court. He presided most recently over the mandatory settlement conference department. He handled hundreds

of jury trials, bench trials and settlement conferences on the bench and during 14 years as a civil litigator in San Diego. Regarded as a prompt and thoroughly prepared neutral who is firm but fair with all sides to a dispute, Judge Brisco is available as a mediator and arbitrator in cases involving **business/commercial, employment, personal injury/tort, professional liability** and **real property** matters.

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Justice King has four decades of legal experience, including 20 years on the bench, most recently as an associate justice for the California Court of Appeal, Fourth District, Division Two. He spent eight years on the San Bernardino County Superior Court handling long cause

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IN VINO VERITAS.

IN WINE LAW, COMPLEXITY AND PARADOX

by Jessica Graham

The truth, they say, is in the wine. But in wine law, paradox and complexity often abound. To find these complexities, we need only look back.

Early Jamestown settlers wrote to England about the size and abundance of the wild Virginia grapes, extolling the “great store of Vines in bignesse of a man’s thigh.”¹

Where there is a New World, there are new laws. A 1611 Virginia code forbade the robbing of vineyards or gathering of grapes upon “pain of death.”² In 1619, the planting of grapes was compulsory; each householder was required to annually plant and maintain ten vines.³

The tradition of winegrowing in Virginia continued with both George Washington and Thomas Jefferson, like others, growing wine on their estates. As expansion westward occurred, vineyards sprung up throughout the country. California boasted of wineries in Los Angeles and Northern California.

The Temperance Movement

With the growth of society came an increase in drink and societal woes. By the time Prohibition became a national issue, it had long been a local one. Many cities and states had passed their own “dry” laws.

Prohibition

On January 16, 1919, the Eighteenth Amendment of the Constitution was ratified. It banned the making, transporting, and selling of “intoxicating liquors.” It was the first amendment to include a time delay. Prohibition was to take effect one year later.

Because of the delay in implementation, many believed that Prohibition would never actually take effect. They thought that the end of the war as well as an appeal to the U.S. Supreme Court would forestall it. They were wrong on both accounts. As the deadline approached, sales of alcohol skyrocketed, leading many in the industry who mistakenly expected Prohibition to be short-lived, to see the ban as a boon.

1 Pinney, Thomas. *A History of Wine in America: From the Beginnings to Prohibition*. Berkeley: University of California Press, c1989 p.13 available at <https://books.google.com/books?isbn=0520062248>

2 *Id.* at p. 15.

3 *Id.*

Prohibition took effect at 12:01 AM on January 17, 1920. Sellers were warned to stop sales half an hour before the deadline to comply with the law.⁴

The Eighteenth Amendment stated that enforcement of Prohibition was left up to Congress and the states by “concurrent power.” Consequently, Congress passed the National Prohibition Act, more commonly known as the Volstead Act (named for its sponsor, Congressman Andrew Volstead, a lawyer). The Volstead Act initially gave enforcement power to the unequipped Bureau of Internal Revenue.

Because alcohol was banned for “for beverage purposes,” Prohibition laws were rife with exemptions and loopholes. Doctors were provided prescription pads which allowed them to write a set number of scripts for medicinal alcohol. However, the same law permitted them to use their own prescription pads in cases of “life, death or extraordinary suffering.”⁵ Pharmacists were also allowed to prescribe alcohol. Sacramental wine was exempted during Prohibition, although the sampling of it pre-sale was illegal. Churches saw an uptick in the number of congregants and cities saw an increase in the numbers of self-professed rabbis. Alcohol was also permitted for cosmetic purposes, including hair tonics and elixirs.

During Prohibition the sale and shipment of dried or fresh grapes was legal. However, both consumers who used the grapes for illegal purposes and shippers who had knowledge of the same could be liable for conspiracy. To avoid criminal liability, shippers sold their grapes to auction houses or other third parties, giving them no knowledge of the end consumer or his nefarious purposes.⁶

But perhaps the most bizarre exemption was that each household was permitted to make 200 gallons of wine (roughly 1000 bottles) annually for home consumption if they registered for a permit. Not only did this allow for

4 Sosnowski, Vivienne. *When the Rivers Ran Red: An Amazing Story of Courage and Triumph in America’s Wine Country*: Palgrave Macmillan c. 2009, p. 49

5 N.A.R.D Journal, Vol. 30, No. 1: Chicago, April 8, 1920 at p. 394 available at https://books.google.com/books/about/N_A_R_D_Journal.html?id=FVU9AQAAMAAJ

6 *Id.* at p. 60 quoting “Response by Prohibition Commissioner John F. Kramer to a Letter of Inquiry,” *California Grape Grower (Wines and Vines)* March 1, 1920.

rampant winemaking but the resulting beverage was tax-free, whereas an alcohol tax had previously been collected.

Repeal

In 1928, President Herbert Hoover called Prohibition “a great social and economic experiment, noble in motive and far-reaching in purpose.” But by the time repeal came in 1933 with the ratification of the 21st Amendment, the impact of Prohibition was far-reaching.

The federal government lost \$11 billion in lost tax revenue during Prohibition while spending over \$300 million attempting to enforce the law.⁷ The American way of life also incurred negative consequences from bootlegging, to an increase in organized crime and damage to public health.

Prohibition also changed the landscape of the justice system. For the thirteen years of Prohibition, approximately two-thirds of all U.S district court cases were violations of federal Prohibition laws.⁸ Because the courts were

7 Michael Lerner, *Unintended Consequences*, PBS, available at <http://www.pbs.org/kenburns/prohibition/unintended-consequences/>

8 *Olmstead v. United States*: The Constitutional Challenges of Prohibition Enforcement. See [http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/\\$file/olmstead.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/olmstead.pdf/$file/olmstead.pdf)

overwhelmed, plea bargaining became a more widespread practice.

Today

With the repeal of Prohibition, states were granted the power to govern all aspects of alcohol within their borders. This has led to a contradictory web of laws, sometimes in the same state. Today, “dry” counties exist and some states have “blue laws” prohibiting the sale of alcohol on Sundays. Alcohol taxes vary greatly by state, and it is a felony to ship wine to some states.

While the shipping laws remain confusing, in 2005, the U.S. Supreme Court intervened in *Granholm v. Heald* (2005) 544 U.S. 460, to rule that states cannot permit in-state wineries to ship direct to consumers within the state, while prohibiting out of state wineries from doing the same.

Questions exist in the law with regards to trademarking, happy hour specials and distribution. What does this mean going forward?

It means you don’t always have to understand the law to appreciate what it produces.

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GREAT LEGS

by Christine A. Greer

Swirl your glass then lift it to the light. You might see “Great Legs” on your wine. This shows the sugar content. The liquid streams down the glass showing the richness of the wine.

Whether the wine is golden or red you can again swirl the glass and cover your nose and mouth with the top of the wine glass. Now breathe in. You will smell the bouquet of the wine. You may smell hints of chocolate, tobacco, oak, berries, etc. The smell comes from the ground and the neighboring plants and trees where the vines are planted.

Many wine makers taste the dirt of the land prior to planting.

Now take a taste. Let the wine linger in your mouth. You may taste some of the hints of the smells from above. You may taste the process in which it was stored . . . oak or sans oak (without oak). Some people prefer the buttery oaky flavor while others prefer a sans oak or a wine that has been stored in stainless steel.

In Temecula, we have over 47 wineries. Go east on Rancho California Road and you will pass some of the larger wineries; continue through to a right on Anza Road and a right on De Portola -- on this road are many small wineries. Many compare Temecula with Napa with the main road (Hwy 79) having the large wineries and De Portola like the back side (Silverado Trail) of Napa. These range from large, hotel, restaurant locations to small local vintners. Since everyone’s tastes are different you may prefer some wines over others. Some like sweet wine while others like full body reds.

Many of the wineries offer wine tasting dinners which pair wine with different courses. Some wineries offer painting amongst the vines, running through the vines, hot air ballooning above the vines, stomping the vines, and many concerts and special events.

As a prudent attorney you may want to hire a wine tour or wine limo and plan to stay overnight at one of the hotels. A good rule of thumb is plan on tasting no more than three wineries. Trying to see the wine country in one day is hard to do.

Some of the wineries will allow you to bring in your own picnic basket while others provide either restaurants or picnic essentials. Many of the larger wineries

offer great gift shops, wedding venues, and special occasion specials (i.e., Mother’s Day specials).

Once you drive through the wine country you owe it to yourself to come to Old Town Temecula. In this downtown area you park your car and there are about 25 restaurants to choose from. You can sample wine soap, wine desserts, there are many wine tasting rooms. You can sample lavender, olive oil, vinegar, jerky, and fresh produce grow in the local area. You can couple your wine tasting with theater at the Temecula Valley Merc and Theater venue. The musicals and plays are like being in LA at the best venues in town. All seats are great.

My husband Richard Beck, a civil and criminal attorney, and I decided about eight years ago to get into the wine business. At the time prices were too high for our budget. But, as life always does, our dream was realized when a small winery, Curry, needed some financial infusion. We jumped at the chance and became partners. Our winery is Curry Vineyards located on 5th street in Old Town in a small red house that was the original location of the first dance hall in Temecula with a wine tasting venue. Our vines are located out in the wine country but are for private parties only. Our signature wines include Syrah, Cabernet Sauvignon, Cabernet Franc, and Zinfandel. We also have a great Sauvignon Blanc and Chardonnay. Tasting is Thursday thru Sunday after 1:00 p.m. with live music on Friday and Saturday. Please see our website Curryvineyards.com.

Once we got into the wine business we shifted gears to restore the oldest hotel in Old Town Temecula, The Hotel Temecula on Main Street. It was built in 1891 and we have completely restored the hotel top to bottom with nine rooms available. Good for a wedding venue or a family reunion. Of course we feature Curry Wine. Please visit our website thehoteltemecula.com (all one word) and watch the video.

Many say we have retired, yet what my husband and I have done is simply shift our days from court to entertainment.

One final humorous story: One of our favorite bench officers in Riverside decided to plant vines a couple of years ago. Like any good judge he did his homework. He planted and waited and finally his vines are producing. He was having some gopher problems eating his vines.

One night his wife woke up and could not find her husband. She went out to the vines and there he was asleep with his pellet gun over his shoulder, apparently waiting for the gophers to show up. For Christmas his wife bought him an Elmer Fudd tee shirt.

We all have wine in us, even if we don't drink it, many good foodies now cook with it.

Christine Greer is a family law attorney and mediator, real estate broker, business owner and developer, winery owner, hotel owner, journalist and fashionista. She enjoys travel, good wine, and good food. She is married to another attorney, Richard Beck. They have five children and six grandchildren. She farms grapes, avocados, and corn. She just added six chickens to the mix and wonders where to channel her dozen eggs a day!



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INTELLECTUAL PROPERTY ISSUES OF PARTICULAR CONCERN TO WINERIES

by Gregory T. Meath

MCLE SELF-STUDY

Most lawyers understand at least a little about intellectual property (“I.P.”), such as the concepts that copyright protects tangible works of authorship such as literary, musical, and artistic work, while trademark protects words, phrases, logos, symbols, or designs that identify the source of goods or services. However, the medium of the wine label presents some unique issues in both the trademark and copyright realms that practitioners should be aware of to assist their clients in avoiding some common pitfalls and addressing some emerging issues. These include selection of a highly protectable trademark, considering related goods when searching for possibly infringing trademarks, ownership and registration of copyrightable material included on wine labels, and taking advantage of the different legal standards for infringement of copyrights and trademarks to increase the probability of a favorable result in the event that your winery client’s label I.P. is infringed.

Trademark

A wine trademark may be anything that identifies who makes the wine. For example, the winery name, a name given to the particular wine, a vineyard designation, and a label design are all potentially trademarks. However, not all trademarks are created, or enforced, equally. A mark’s strength depends on where it falls on the distinctiveness continuum — the more distinctive the trademark, the stronger and more protectable it is.

Selecting a Trademark: A continuum of trademark strength and protection. The strongest marks are “fanciful” or “arbitrary.” Fanciful marks are made-up words like “Vicarmont,” and arbitrary marks are existing words that would not ordinarily be associated with a product, such as “Barefoot” or “Yellow Tail” for use on wines. Lower on the continuum are “suggestive” marks that indirectly convey a product characteristic, such as “Coppertone” for sunscreen. A mark is suggestive if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. “Citibank” for financial services, “Greyhound” for bus lines, “Jaguar” for auto-

mobiles, and “Playboy” for magazines are examples of well-known suggestive trademarks.

Farther down on the continuum are “descriptive” marks like “Coastal,” “Oakless,” or “Blends” which was held merely descriptive¹. Descriptive marks include those that describe the attributes of the product, comprise geographic terms, or surnames. Descriptive marks can only be protected if they acquire distinctiveness through use by a single source over time and have acquired “secondary meaning” among consumers. At the bottom of the continuum are “generic” terms like “Red Wine,” which can never be protected as trademarks and are available for all to use.

As a general proposition, wine marketing professionals and winery owners understandably prefer descriptive marks because they immediately tell the customers something about the product: where it comes from, who brewed it, what it tastes like, and/or what it looks like. But, descriptive marks have a substantially reduced bundle of rights associated with them than trademarks in the “higher” categories of our trademark continuum.

Suggestive marks are also often preferred because they plant a seed in the mind of consumers as to the nature of the goods and thus requires fewer marketing and advertising expenditures to build brand awareness. But, remember that the strongest and most protectable marks are words that are either coined terms or have no connection to the products. Suggestive trademarks come with one major risk: what one person thinks is suggestive, another person (or a court, or a trademark office examining attorney) may deem descriptive, and thus not protectable.

Consequently, most wine trademarks are comprised of suggestive and descriptive names. This means too many trademarks using too many associated terms, e.g. oak, valley, vine, cellar, farm, estates, family, canyon, hill, ridge, mount/mountain, creek, etc. And with thousands of new trademark applications being filed in the beverage field each year, descriptive marks are more likely to bump up against other owners who also have marks that claim that word and this means a higher probability of an infringement claim.

1 *In re Ren Acquisition, Inc.*, Serial Nos. 85787527 and 85787531 (October 3, 2014) [not precedential].

Therefore, choosing a unique and fanciful mark will not only be more protectable at the outset, it is less likely to infringe the rights of competitors. While practitioners want to avoid a situation where we are “the tail wagging the dog” when it comes to trademark selection, selecting a fanciful or arbitrary mark for a winery has never been more important and our clients must be made aware of the consequences of the choices they make when selecting their trademarks, particularly regarding infringement and enforcement.

Related goods? Another issue of particular, and increasing, importance to wineries seeking trademark protection is the concept of related goods. This is because where goods are related or complementary, the danger of consumer confusion is heightened.² But before we delve into the details of the concept of related goods, a little background information would be helpful.

The goods or services claimed on a trademark registration application must be claimed for one or more international trademark classes. Pursuant to international treaties, the United States Patent and Trademark Office (“USPTO”) follows the Nice classification system established by the Committee of Experts of the Nice Union and set forth in the *International Classification of Goods and Services for the Purposes of the Registration of Marks*, published by the World Intellectual Property Organization (“WIPO”).

The Nice classification system classifies groups of interrelated goods and services into 45 classes, e.g., Class 1 is for chemicals through Class 45 which is for security and social services. The classification system allows registration of identical or similar marks, used on unrelated goods and services to co-exist because they are in different classes, e.g. Delta Faucets (class 11 – environmental control apparatus), Delta Woodworking Tools (class 7 – machinery), and Delta Airlines (class 39 – transportation and storage). On the other hand, where goods and services are determined to be related or complementary, registration will be denied. In fact, the relatedness of the goods is one of the key considerations when weighing whether two trademarks are confusingly similar to each other. Where goods are related or complementary, the danger of consumer confusion is heightened.³

This is important to wineries because in 2015 the Trademark Trial and Appeal Board (“TTAB”) continued the trend of finding different categories of alcoholic beverages to be related goods. The TTAB is the USPTO’s administrative tribunal where trademark owners can seek to prevent registration, or seek cancellation of a confusingly similar trademark, and where applicants can

seek an appeal of a USPTO examining attorney’s refusal to register their marks.

A case that illustrates this trend is when Central California brewer High Water Brewing Inc. was refused a trademark on “No Boundary IPA” for use on beer because of a previously registered trademark on “No Boundaries” for use on wine. The TTAB denied High Water’s appeal of the examining attorney’s refusal to register because beer and wine are considered related goods.

The TTAB now typically finds that all alcoholic beverages are sold in the same channels of trade, such as liquor stores and restaurants, and thus, that consumers will encounter multiple types of alcoholic beverages in the same stores.⁴ The question is not whether the goods are similar or competitive, or even whether they are in the same international class (beer is in class 32, while wine and spirits are in class 33). Rather, the question is whether a consumer encountering the goods in the market “would mistakenly believe that they share or are affiliated with or sponsored by a common source.”⁵

A cuttingedge example of private parties seeking to take advantage of this trend concerns Conscious Cultures of Virginia’s application to register the “Barefoot Bucha” mark for its line of organic craft kombucha (a currently trendy fermented tea beverage, marketed as a non-alcoholic drink, but which in fact usually contains approximately 0.5% alcohol – below the FDA threshold for regulation as an alcoholic beverage). In July, the E. & J. Gallo Winery opposed the application, arguing that it was confusingly similar to eight registered marks associated with its “Barefoot” wines. The matter is pending.⁶

You may think that Gallo is pushing it to claim that kombucha and wine are related goods, but they have had success in this area in the past. Many will remember a rather infamous case, also involving Gallo winery, from the early 1990s—*E. & J. Gallo Winery v. Gallo Cattle Co.* 967 F.2d 1280 (1992). The district court in that case found that wine and cheese are complementary products, frequently served and promoted together in wine and cheese tastings and parties and found that wine, cheese and salami are complementary products. Ernest and Julio Gallo were able to stop their brother Joseph Gallo from selling cheese bearing the Gallo trademark.

More recently a California court found that energy drinks and wine were related. In *E. & J. Gallo Winery v. Grenade Beverage LLC* [No. 1:13-cv-00770 (E.D. Cal. Aug.

2 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 at 350.

3 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 at 350 (9th Cir. 1979).

4 *In re Brent Theyson*, Serial No. 85663894 (Dec. 4, 2015) (not precedential); *In re Millbrook Distillery, LLC*, Serial Nos. 85924732 and 85954556 (Feb. 9, 2015) (not precedential).

5 *Anheuser-Busch, LLC v. Innvopak Systems Pty Ltd.*, 115 U.S.P.Q.2d 1816 (TTAB 2015) (precedential).

6 *E. & J. Gallo Winery v. Conscious Cultures LLC*, Opposition No. 91222763 (Trademark Trial & App. Bd.).

15, 2014)] , the court held that “Gallo” (for wines) and “El Gallo” (for energy drinks) were similar trademarks and that the products were related. The court noted that, “El Gallo was promoted as a mixer for alcoholic drinks.”

This trend toward finding more goods related to wine is not entirely new, it has been developing for some time. Over the past few years, the TTAB has found the following goods to be related to wine: soft drinks, other alcoholic beverages such as tequila, beer, and gelatin shots, food products such as certain sauces and vinegar, as well as restaurant services (class 34 hospitality) because wine is sold at and by restaurants and many restaurants have their own wine brands.

Perhaps one of the more remarkable examples of the trend toward finding goods related to wine was *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, Opposition No. 91197659 (June 26, 2013) [citable as precedent]. Here, the TTAB held that the applicant’s registration of the mark “Gott Light” for various water beverages was likely to cause confusion with opposer’s previously used and registered marks for wine, under the brands “Gott” and “Joel Gott” the TTAB held that “[the goods] have been shown to be related, to move through the same channels of trade, and to be available to the same classes of consumers.” The opposer submitted third-party trademark registrations showing that the goods were of the type that would originate from a single source and demonstrated that winery branded water is sold in the tasting rooms of wineries. Therefore, consumers can expect that water and wine will emanate from the same source.

After declaring that wine and water are to be considered related goods, for trademark purposes, you might think that any and all beverages would be considered related goods to wine. However, the U.S. Court of Appeals for the Federal Circuit drew a line in December 2014, holding that apple juice and wines are not related for purposes of likelihood of confusion. The Court found that the mark “Domaine Pinnacle & Design” for “apple juices and apple-based non-alcoholic beverages” [Domaine disclaimed] was not confusingly similar to the marks “Pinnacles” and “Pinnacle Ranches” for wine [Ranches disclaimed].⁷

Even if apple juice and wine were determined to not be related goods, the list of goods and services related or complementary to wine nevertheless continues to grow. This means that it is imperative to run trademark searches across international goods and services classifications not just because of the trend toward holding that all alcoholic beverages are related, but also relatedness with other goods and services. Winery clients will want to

choose trademarks that are not already in use on one or more of the goods determined to be related, and will want to know that they can enforce their trademarks against others using them on wine-related products or services, such as wine openers or wine glasses (class 21 – housewares and glass) or bottling services (class 35 – advertising and business services), or by a hotel or restaurant (class 34 hospitality), and the others mentioned in this article and others. The question to ask in determining whether goods may be considered related is whether a consumer encountering the goods in the market would mistakenly believe that they share or are affiliated with or sponsored by a common source.

Choosing a trademark that is stronger and more protectable on the continuum of protection, and searching for similar marks not only in the international classes that contain obviously related goods are by no means the only concerns for a wine trademark, but they are of particular and timely relevance to our winery clients. Another issue that needs to be carefully considered when protecting the I.P. comprised on a wine label is copyright.

Copyright

A copyright is a form of legal protection granted by U.S. federal law to protect the authors of tangible “original works of authorship” for both published and unpublished works. These works include literary, musical, and artistic works. Examples of works that can be copyrighted would include things such as a book, song, movie, or in the world of alcohol beverage packaging, copyright law applies to your label and/or bottle artwork. A copyright grants the owner the exclusive right to display, reproduce, and distribute the work. The copyright endures for the entire lifetime of the original author, plus 70 years following the author’s death.

Who owns the copyright? The actual creative author is the default owner of any copyrighted material. But, there is an important exception to the principle that you own all the copyright rights in a work you create. If you are an employee, and what you create is done as a part of your employment, then your employer, not you, owns all the rights. That is a consequence of the “works made for hire” doctrine in copyright law. California Labor Code section 3351.5 specifies that “work for hire” is produced by an employee whose employment triggers unemployment insurance.

Contrarily, if an independent contractor is engaged to create the winery’s underlying label artwork, or to create a label perhaps using (authorized) artwork by other artists as well as their own (as is commonly done by label company designers), the winery must have a written agreement from the author expressly stating that the

⁷ *In re Franciscan Vineyards, Inc.*, Appeal No. 2014-1269 (Fed. Cir. December 9, 2014) [not precedential].

work is made for hire for the winery to own all rights to the work. Although the agreement and course of dealings between a business and an independent contractor may give rise to an implied license for the business to use the works created by the contractor, it is highly preferable to avoid relying on an implied license.

I handled a winery case a few years ago that arose from this precise circumstance. A winery verbally hired an independent contractor artist to create works of art on the winery's tasting room interior walls. The artist painted a series of anthropomorphized woodland creatures over the period of a few months and was paid daily for her work. The artwork became a well-known feature of the winery. After a few years, the winery decided that it would use the various anthropomorphized woodland creatures as wine-label art, each creature on a different variety of wine. They photographed the artwork on the winery's walls and sent it to the label company's designer to be incorporated into their new label art.

After the wines featuring the new labels were released and being sold in the marketplace, the artist appeared serving a federal lawsuit for copyright infringement, and demanding an enormous payoff for the unauthorized use of her work. There was no written agreement and discovery revealed that while the parties had discussed the use of the wall paintings for postcards and posters sold by the winery, the parties were silent as to the use of the artwork on wine labels. The case settled with the winery paying an undisclosed amount to the artist to acquire full right, title, and interest in the artwork, which they can now use in any manner the winery sees fit.

Any winery that engages a non-employee to create a work and intends to own the copyright to such work should have a written agreement where the author expressly states that the work is made for hire. The written agreement should include a provision assigning the copyrights to the winery. An example of such a provision is: "To the extent that the Work Product is not recognized as a 'work made for hire' as a matter of law, the Contractor hereby assigns to the Company any and all copyrights in and to the Work Product." By including such a copyright assignment clause, a winery will be able to obtain full ownership to the copyrights.

Copyright registration. Assuming the label artwork meets the minimum degree of copyrightable material, (there are, in fact, some minimum standards for original artwork), the winery should put the copyright symbol on the artwork, thus ©. While it is true that technically copyright law protects the work the moment it is created, in order to file a copyright infringement claim in federal court, the winery has to register its copyright, so it is good practice to register a copyright to formally

document your client's claim. Both an underlying work of art, as well as the entire label that features it may be registered as a copyright.

The copyright registration process is relatively simple. If you wish to register a copyright you can obtain a registration form from the U.S. Copyright Office. There is a lower registration fee for online registration (\$35), the so-called eCo. If you register by mailing in a form, the cost is \$50. You will have to send in a copy or copies of the work that you want to copyright along with the application. Note: if you use mail, these copies are not returned to you, so if you send a "hard copy," make sure it is not your only "sample." If you file for copyright online, you can send copies of your work as electronic attachments. All samples will be entered into the public record.

For wineries, this issue of who owns the rights in the work is probably their biggest concern when it comes to protecting the copyrights in artwork and labels. But there is also another issue related to wine labels that concerns the overlap of copyright and trademark law.

Different Standards for Infringement of Copyright and Trademarks on Wine Labels

A copyright will protect your winery client's label artwork, while a trademark will protect their logo and brand name as source identifiers. Both of these principles should be taken advantage of by wineries who wish to protect the I.P. represented in their labels. The fact that the legal standards for copyright and trademark infringement are quite different can be beneficial to the winery in obtaining a remedy for infringement of the I.P. on their labels.

Copyright infringement — Substantially similar. The legal standard for copyright infringement is "substantially similar." "Substantially similar" means that an average person viewing the two works would recognize that the artistic expression in one was copied from the other. "Artistic expression" is a difficult concept to define in words. It is supposed to mean the specific artistic choices and details that go into a work, such as composition, rendering and colors, but not general concepts such as subject matter or similar artistic style. However, courts often describe infringing works as having the same "look and feel" or "total concept and feel" as the originals.

Copyright extrinsic/intrinsic test. The Ninth Circuit has defined an "extrinsic/intrinsic test" in proof of substantial similarity in *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.* 562 F.2d 1157 (9th Cir. 1977). The intrinsic portion of the test measures whether an ordinary observer "would find the total concept and feel of the works" to be substantially simi-

lar.⁸ The extrinsic portion of the test, meanwhile, is an objective analysis of similarity based on “specific criteria that can be listed and analyzed.”⁹ Thus, this test requires substantial similarity “not only of the general ideas but of the expressions of those ideas as well.”¹⁰

Trademark infringement — Likelihood of confusion. If a party owns the rights to a particular trademark, that party can sue subsequent parties for trademark infringement.¹¹ The standard is “likelihood of confusion.” To be more specific, the use of a trademark in connection with the sale of a good constitutes infringement if it is likely to cause consumer confusion as to the source of those goods or as to the sponsorship or approval of such goods.

Trademark Infringement — The “Sleekcraft” factors. In deciding whether consumers are likely to be confused, the courts will typically look to a number of factors, including: (1) the strength of the mark; (2) the proximity of the goods; (3) the similarity of the marks; (4) evidence of actual confusion; (5) the similarity of marketing channels used; (6) the degree of caution exercised by the typical purchaser; and (7) the defendant’s intent.¹² In the 9th Circuit these factors are referred to as the “*Sleekcraft*” factors.

While many circumstances of infringement will support claims for both trademark and copyright infringement, the disparity in the tests for copyright and trademark infringement allows proactive wineries, who have registered their copyright and trademarks, to choose which I.P. right to focus on, and allows the maximum flexibility when assessing the merits of their claims vis a vis the facts of the unauthorized use. Depending on the circumstances of the alleged infringement relating to a wine label, a copyright claim or a trademark claim may be more likely to succeed. This is especially important in weighing which grounds to focus on when seeking a temporary restraining orders and preliminary injunctions ordering the alleged infringer to stop using the contested material pending outcome of the trial—very commonly sought pre-trial remedies in I.P. cases.

Conclusion

While the issues we have discussed in this article are not the only I.P. issues that are relevant to wineries, they are the most common and important. Understanding these basic concepts and how they relate specifically to the challenges faced by our winery clients will assist one in being proactive and responsive to their particularized

⁸ *Pasillas v. McDonald’s Corp.*, 927 F.2d 440, 442 (9th Cir. 1991).

⁹ *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1475 (9th Cir. 1992).

¹⁰ *Sid & Marty Krofft*, at 1164.

¹¹ 15 U.S.C. 1114, 1125.

¹² *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 at 350 (9th Cir. 1979)

legal concerns regarding protecting and defending the trademarks and copyrights included on their labels.

The selection of a highly protectable trademark is more important than ever given the propensity of wineries to choose descriptive and suggestive marks, and the ever increasing number of wineries entering the market with an ever increasing number of “brands” using these lesser-protected terms. This is having the result of increasing the number of trademark infringement claims. This is true not only because of the use of these terms on wines, but also due to the expanding notion of what are considered to be goods and services related to wine.

It is not enough for a winery to consider other similar trademarks used on alcoholic beverages, they must also consider use on goods and services such as: liquor stores, restaurants, cheese, salami and other foods often served or associated with wine, such as certain sauces and vinegar, soft drinks, gelatin shots, and water.

On the copyright side, it is imperative to assure that the winery is the legal owner of the copyrightable works that it uses on its wine labels. To this end, wineries should become comfortable with getting a full assignment of all right title and interest in artworks created on its behalf. At the very least, the winery should have acquired the right, via a written license, to use the artwork in the manner they desire, with an eye to the future with respect uses beyond that for which the work was created, if the artist will not provide a complete assignment of the copyright in the work.

Finally, by registering both copyrights and trademarks and taking advantage of the different legal standards for infringement of copyrights and trademarks attorneys representing wineries can increase the probability of a favorable result in the event that your winery client’s label I.P. is infringed, because they can focus the facts of the infringement into whichever of the two tests is most likely to result in a positive result for their winery client.

This article has been approved for 1 hour of General MCLE Self-Study credit. RCBA is a State Bar of California approved MCLE provider #521.

Gregory T. Meath J.D., LL.M is an Adjunct Professor of Law at Pacific McGeorge School of Law in Sacramento, where he teaches Computer & Internet Law, and at Humphreys College Lawrence Drivon School of Law in Stockton, where he teaches Intellectual Property and International Law. His law practice focuses on intellectual property, winery law, and international business transactions.



1. Copyright protects tangible works of authorship such as literary, musical, and artistic work. T / F
2. Trademark protects words, phrases, logos, symbols, or designs that identify the source of goods or services. T / F
3. Copyright and trademarks share a single legal standards for infringement
4. So-called suggestive trademarks are given the most protection against infringement under trademark law. T / F
5. The Nice classification system allows registration of identical or similar marks, used on unrelated goods and services. T / F
6. What is the USPTO's administrative tribunal where trademark owners can seek to prevent registration, or seek cancelation of a confusingly similar trademark, and where applicants can seek an appeal of a USPTO examining attorney's refusal to register their marks _____.
7. Wine labels may be eligible for trademark protection, but because labels are a designation of source, wine labels may not be copyrighted. T / F
8. For purposes of trademark, all alcoholic beverages are usually considered to be related goods. T / F
9. The legal test for copyright infringement is likelihood of confusion. T / F
10. If an independent contractor is hired by a winery to design a wine label, who is the presumptive owner of the copyright in the work created for the winery? _____.
11. Wineries should be encouraged to use terms such as oak, valley, vine, cellar, farm, estates, family, canyon, hill, ridge, mount/mountain, creek, because these terms are afforded strong trademark protection. T / F
12. For purposes of trademark infringement, in deciding whether consumers are likely to be confused, the courts will consider the so-called _____ factors.
13. The question to ask in determining whether goods may be considered related is whether a consumer encountering the goods in the market would mistakenly believe that they share or are affiliated with or sponsored by a common source. T / F
14. Copyright registration is a complex, expensive process, which is rarely worth the effort and expense for a winery considering I.P. protection for its label artwork. T / F
15. Wine and water have been determined by the TTAB to be related goods for purposes of trademark. T / F
16. Wineries may choose to register material included on their labels, and even the entire label itself, as a copyright and a trademark, to broaden the factual circumstances that will allow an infringement suit against those using similar material on their wine labels. T / F
17. California Labor Code section 3351.5 specifies that "work for hire" is produced by an employee who has worked for a winery for more than 6 months. T / F
18. Although the agreement and course of dealings between a winery and an independent contractor artist or label designer may give rise to an implied license for the winery to use the works created by the contracted artist or label designer, it is highly preferable to avoid relying on such an implied license. T / F

RESPONDING TO ALCOHOL TRADEMARK CEASE AND DESIST LETTERS

by Chris Passarelli

Branding is such a prominent part of the alcohol beverage industry, and in particular the wine industry. (Some even believe that the brand is more important than what is in the bottle!) The fact is that beverage lawsuits are becoming more numerous year after year, especially with the recent explosion in craft brewing and distilling leading the charge. As many of those alcohol trademark lawsuits are preceded with a cease and desist (“demand”) letter, below is some practical guidance on what to do if you or your client are the recipient of such a demand:

1. Don’t panic. I have read articles and spoken to recipients of demand letters – this can undeniably be a frightening, stressful experience, causing great psychological distress, anxiety and sleepless nights. But don’t let this overwhelm you. A mere legal demand can be viewed as an invitation to negotiate, and it isn’t always as bad as it seems. Read the letter, and put it aside for a day or two (unless next day response is requested!) to allow time for reflection – certainly do not respond immediately if this is not necessary, as this can be unnecessary, not to mention ill-advised, and very risky.

2. Read carefully. What exactly is the demand letter asking you to do? While many cease and desist letters are just that – requests to cease use of a mark – some demands do not rise to that level. Thus, it’s important to read and re-read the letter you receive from counsel, especially the specific call to action which usually comes toward the end of the correspondence. Some brand owners send “warning shots” where there is no current infringement issue, simply to deter or diffuse a potential anticipated issue. Such demands often state things like “we will monitor your use of the mark” or employ similar verbiage, but do not necessarily require any response (although you may nevertheless wish to respond, i.e., to refute inaccuracies and the like – with the advice of counsel, of course).

3. Know the basics. This is where it pays to have an expert in the alcohol beverage industry, due to subtle nuances in the evolving trademark law. One issue that often arises is that all alcohol beverage products are considered related for purposes of likelihood of con-

fusion, although this is not necessarily intuitively, or even realistically, the case. This is lost on many, even industry insiders, because it is a relatively obscure area of trademark law. However, it is the current state of the law in this area, which means that, as a result, wine producers are going after distillers, breweries are going after wine producers, etc.

4. Retain counsel. Even if you do not intend to “go the distance” in a dispute, it is well worth the hourly rate of an expert to be informed from the outset, to minimize potentially costly mistakes. Consider retaining counsel, if only on a limited basis, even if you do not ultimately intend to put up a fight. Otherwise, you may be playing right into the hands of your opponent, providing damaging admissions, agreeing to unreasonable demands, etc. After all, we can all agree that more information is always better than less information, right?

5. Adapt to survive. Now that you understand and appreciate the potential heartache attendant to a trademark enforcement scenario, do your best to minimize the risk of that occurrence. Have counsel conduct a thorough clearance search for your newly developed brands, slogans, designs, etc. Register your brands as trademarks at the federal and/or state level – this can be both a sword and a shield – and will provide you with at least an extra five minutes’ sleep at night. Create a line item in your marketing or branding budget for trademark protection (and enforcement, if you are becoming successful in your branding), and most importantly, keep your trademark counsel close at the ready.

Chris Passarelli is Senior Intellectual Property counsel at Dickenson, Peatman & Fogarty, where he focuses on trademark and copyright protection and enforcement in the alcohol beverage industries. Contact him at: cp@dpf-law.com.

This article is provided by Dickenson, Peatman & Fogarty for educational and informational purposes only and is not intended and should not be construed as legal advice.



MOCK TRIAL – STATE COMPETITION

by Judge Helios Hernandez II

Sacramento – March 18-20, 2016: The State Mock Trial Competition was held at the Sacramento Superior Courthouse on March 18-20, 2016. Riverside Poly High School represented Riverside County. Poly was 3-1. Their only loss was by one point to the Menlo School (San Mateo). Poly finished sixth in the overall standings. In the finals, Menlo lost to Dos Pueblos (Santa Barbara). Dos Pueblos will represent California at the Nationals which will take place May 12-14, 2016 in Boise, Idaho.

Poly prosecution attorney Sophia Helfand won one of the Outstanding Attorney awards. Redlands East Valley High School (San Bernardino) did not finish

in the top eight but four of their team members won awards: Brennan Bartley, Best Defense Attorney; Jordan Miller, Best Prosecution Attorney; Andres Downey, Best Witness; and Amber Chapman, Best Clerk.

Saddleback Christian (Orange County) did not finish in the top eight but had three award winners: Jonathan Kim, Pretrial Defense; Katherine Sakai, Best Witness; and David Chang, Best Witness.

The Honorable Helios Hernandez II is a judge for the Riverside County Superior Court and a member of the Mock Trial Steering Committee.



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JUDICIAL PROFILE: COMMISSIONER MICKIE REED

by Mary E. Gilstrap

“The beauty of this job is that the law always makes things fair.”

Commissioner Mickie Reed is no novice when it comes to courts and court procedures. She has worked on and off for the Riverside County Superior Court since 1986, when she began as a clerk and 28 years later, was hired as a court commissioner in the desert.

Reed started off her legal career working for the courts, originally as a file clerk and then as a courtroom clerk for Judge Noah Ned Jamin in Palm Springs. She also worked as a court investigator and examiner, handling a wide variety of matters including acting as a probate examiner, a family law examiner, a conservatorship and guardianship investigator, a domestic violence temporary restraining order hearing officer and a child custody recommending investigator.

Reed left the courts for law school, graduating from Western State University College of Law with her Juris Doctor in 1996. Immediately upon being sworn in as an attorney, Reed opened her own law office where she got her first client the day she hung out her shingle. Reed soon developed a practice of family law and criminal defense cases, boosted by her association with the Desert Public Defender’s Conflicts Panel. Reed handled more than 3,500 matters during her 18 years of practice on the Panel, including death penalty cases, and tried more than 50 cases to a jury.

Reed’s hallmark qualities are her unabashed confidence as well as an apparently inexhaustible supply of energy. Besides working full-time in her own practice, Reed raised three children and volunteered her time with numerous civic committees with the City of Indio for years, including chairing its Planning Commission and Nuisance Abatement Appeals Board and serving as its Finance Commissioner. Not satisfied with this full schedule, Reed decided to expand her horizons and opened a bridal boutique called Desert Bride, which had the virtual monopoly on bridal gowns and accessories in the eastern Coachella Valley. Her inspiration for opening her wedding dress boutique was a bridal magazine she bought. “I love dresses and the pageantry of weddings,” she said. Undaunted by her lack of retail business experience, Reed plunged ahead with the venture which was a success, filling a void for such stores in the desert. While acknowledging that she made every mistake in the book



Commissioner Mickie Reed

as a new business owner, Reed nonetheless successfully operated the store for six years before closing it in 2014 when she was hired as a court commissioner.

Assigned to the Civil Department in Palm Springs, Reed had to get up to speed on civil matters which she heard in Department PS3. “Civil was a new learning curve,” she admits, but she praises Judges John Evans and David Chapman for tirelessly helping her get acclimated. Following her stint in civil, Commissioner Reed was assigned to

the Family Law Department at Larson Justice Center, where she’s been for over 14 months. The heavy calendar doesn’t faze her. “I’m a worker bee, I like to keep super busy,” she said. Sharing duties with Judge Dale Wells, Reed handles about half of the family law matters, including domestic violence restraining orders and child support matters. Besides conducting mental health hearings, she also presides over Family Preservation Court which provides services for families with parents suffering from substance abuse. Despite her caseload, Commissioner Reed loves her job. “While I miss the camaraderie of defense attorneys,” Commissioner Reed said with a smile, “I don’t miss private practice.”

Raised on a farm in Alabama, Reed found herself in the Coachella Valley in the early 1980s, moving to Indio (“I had never even heard of it before!” she exclaimed) where she has lived ever since. Reed is married to Del Walters, retired from the United States Army and now the Postmaster of the City of Coachella. Their two sons Adam and Alexander are both law school graduates, having attended New England Boston College of Law and District of Columbia David Clark School of Law, respectively. Both took the California bar earlier this year and are waiting for their results. Reed’s daughter Alora is a senior at Indio High School and will be attending college in the fall.

Besides working full time as a court commissioner in Department 2E with her clerk Cheryl Moffat and Deputy Eisha O’Campo, Reed is a co-professor of Professional Responsibility at the California Desert Trial Academy College of Law. She also coaches the mock trial team at Indio High School, which she has done for 16 years.

Mary E. Gilstrap is a partner of the law firm of Roemer & Harnik LLP and a past president of the Desert Bar Association.



NOMINEES FOR RCBA BOARD OF DIRECTORS 2016-2017

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated below, for a term beginning September 1, 2016. Enclosed is the ballot, which must be return postmarked by June 8. Election results will be announced at the RCBA General Membership meeting in June.



Jean-Simon Serrano

As President-Elect for 2015-2016, he will automatically assume the office of President for 2016-2017.

The following biographies have been submitted by each candidate:



L. Alexandra Fong

President-Elect

I am honored to be nominated for President-Elect of the Riverside County Bar Association. I am a Deputy County Counsel for the County of Riverside where I practice exclusively in the area of juvenile dependency. I received my undergraduate degree and J.D. locally.

I am currently Vice President for the RCBA and was elected to the position in June 2015. I previously served as Chief Financial Officer from 2014-2015, Secretary from 2013-2014, and Director-at-Large from 2012-2013. I am currently serving as Secretary/Treasurer of the Leo A. Deegan Chapter of the American Inns of Court ("Inn"), after being elected as Executive Board Member in May 2012.

After graduating from law school and passing the bar exam in 2000, I began practicing law at the San Bernardino Office of Lewis D'Amato Brisbois & Bisgaard LLP (now Lewis Brisbois Bisgaard & Smith LLP), one of the largest law firms in California. While at Lewis Brisbois, I was mentored by many local attorneys. I practiced primarily in public entity defense before moving to Riverside County Counsel, where I handled a wide variety of issues, including public entity defense, Code Enforcement matters, and the Assessor-County Clerk-Recorder matters.

Since 2005, I have been an active member of the RCBA. I am currently a member and contributing writer of the Bar Publications Committee for the *Riverside Lawyer*. I am also co-chair and member of the Continuing Legal Education Committee of the RCBA. Since 2010, I have been a member of the Inn. I have been honored to be a member of teams led by the Honorable Tom Cahraman (2010-2011, 2013-2014), the Honorable John Vineyard (2011-2012), the Honorable Jacqueline Jackson (2012-2013), the Honorable Bambi Moyer (2014-2015), and the Honorable Jack Lucky (2015-2016.) While a member of Team Vineyard, I was presented with the Louise Biddle Award.

I welcome the opportunity and privilege to serve the RCBA, and the legal community, as President-Elect.



Jeffrey Van Wagenen

Vice President

For almost 20 years, I have been proud to call myself a member of the Riverside County Bar Association. The Riverside County legal community has been my home ever since I first came to town as a law clerk for the District Attorney's Office in 1996. Since that time, I have been lucky enough to have experienced much of what the practice of law has to offer.

I am currently the Managing Director of Riverside County's Economic Development Agency (EDA). EDA has been tasked with enhancing the economic position of the county; improving the quality of life for our residents; building and managing county facilities; encouraging business growth within the county; developing a trained workforce; improving existing communities; offering a variety of housing opportunities; and, providing cultural and entertainment activities. In so doing, EDA strives to make Riverside County the most business friendly, family oriented and healthy community in the nation. In my new capacity, I have been given the opportunity to appreciate the value that all of our members add to the community, not just those working in the criminal justice arena.

Before joining EDA, I was an Assistant District Attorney for the County of Riverside, from 2011 to late 2014. I was tasked with the countywide administration of the District Attorney's Office and my duties included: meeting the human resources needs of 700 employees and more than 50 volunteers; development and control of an annual budget that exceeds \$100 million; coordination of our office-wide information technology efforts; management of our physical facilities, including offices in Riverside, Banning, Murrieta, Indio, and Blythe; and, the supervision of the clerical support division of the office. I was fortunate enough to direct the Training and Writs & Appeals Units of the office. I also had the distinction of being the DA's Office representative whenever the Office is a party in a civil action.

Prior to returning to the DA's Office, I had my own state and federal criminal defense practice with offices in Riverside and Murrieta, and temporary space in Indio. In addition to becoming certified as a specialist in criminal law by the State Bar of California's Board of Legal Certification, I had the opportunity to serve as a Judge Pro Tem in the Court's Temporary Judge Program.

My experience has given me the benefit of seeing our legal community from a broad range of perspectives, as a law office administrator, a prosecutor, a defense attorney, a civil plaintiff, a civil defendant, and a judge pro tem. I am proud to bring that perspective to the RCBA Board.

I have tried to give back to the legal community that has given me so much. I currently serve as the Chief Financial Officer of the Riverside County Bar Association. In addition, I am proud of my participation on two committees: the

RCBA Building Renovation Committee and the Technology Committee. As a member of the Building Committee, I relish the opportunity to remodel our "classic" RCBA building, where I had offices for 10 years, and restore it to its former glory. As a member of the Technology Committee, I am pleased to be constantly working to improve your on-line experience. I have previously served as President of the Leo A. Deegan Inn of Court and served on its Executive Board for many years, Chair of the Criminal Law Section of the RCBA, and as a member of the advisory committee of VIP Mentors (also known as "Volunteers in Parole"). I am also pleased to have participated for more than 10 years in the RCBA Bridging the Gap program, speaking to younger attorneys on the practice of criminal law.

I live with my wife and two children in the city of Riverside. My wife is actively involved with local non-profits, including the California Citrus State Park, and serves as a president of the local chapter of the National Charity League. She has previously served two terms as President of the Riverside County Law Alliance and as a board member for the Junior League of Riverside.

If I am provided with the continuing opportunity to serve each of you on the RCBA Board, my goal will be to make sure that our Board never forgets our Mission: To serve our Members, our Communities, and our Legal System. I would be honored to serve as your Vice President and would appreciate the opportunity to continue to serve on the RCBA Executive Board. Thank you for your previous trust, and I look forward to your continued support.



Jack Clarke, Jr.
Chief Financial Officer

Jack B. Clarke, Jr. is a partner in the Education Law and Litigation practice groups of the Riverside office of Best Best & Krieger LLP. He joined Best Best & Krieger after graduating from law school in 1985. Mr. Clarke is involved in litigation concerning education law, special

education disputes, public agency litigation and other types of substantial litigation matters.

Mr. Clarke received his Juris Doctorate degree, with distinction, from the University of the Pacific, McGeorge School of Law, in 1985 and his B.S. degree in Business from the University of California at Riverside in 1980. In law school, Mr. Clarke was elected to the Order of the Barristers, a national honorary society for outstanding achievement in courtroom advocacy, and served as a staff writer on the *Legislative Review of the Pacific Law Journal*, Vol. 15, January 1984. He also received the United States Law Week Award for Outstanding Contributions to the law school community. He is also a graduate of the National Institute on Trial Advocacy.

In 2001, Mr. Clarke was presented with "The Citizen of the Year" Award by the Greater Riverside Chambers of Commerce. The Riverside County Bar Association awarded Mr. Clarke with the James H. Krieger Meritorious Service Award in September 2010. He has twice been acknowledged as one of the 100 most influential lawyers in California by California Law Business Magazine. In February of 2011, Mr. Clarke was presented with the Omar Stratton Award by the NAACP. The American Diabetes Foundation also presented Mr. Clarke with the "Father of the Year" Award in June of 2011. In 2012, he was awarded the "Terry Bridges Outstanding Attorney Award" by the Leo A. Deegan Inn of Court. More recently, Mr. Clarke

was awarded the "Frank Miller Outstanding Civic Achievement Award" by the Mission Inn Foundation in 2015. Mr. Clarke is also a past Chairman of the Board of the Greater Riverside Chambers of Commerce. He currently serves as Secretary on the Board of Directors of the Riverside County Bar Association.



Marlene Allen-Hammarlund
Secretary

Marlene, a 30-year member of the California State Bar, has been committed to the City of Riverside and the Riverside County Bar Association since coming to this city in 1989. She is Senior Counsel at Gresham Savage Nolan & Tilden PC, and specializes in civil litigation. Marlene is an "AV" rated attorney who frequently serves as a mediator for the Court of Appeal, and has served as a Judge Pro Tem on numerous occasions throughout Riverside County. She is an active member of the Riverside County Bar Association and currently serves on the Judicial Evaluation Committee as well as the Bar Foundation Committee. Marlene has mentored several new attorneys through the RCBA Mentoring Program and has contributed numerous articles to the *Riverside Lawyer*.

Marlene is currently the President of Commercial Real Estate Women (C.R.E.W. – Inland Empire), is active in the Leo A. Deegan Inn of Court, and serves on the Planned Giving Committee of the Riverside Art Museum. She is the former Chair of the Legislation and Elections Committee for the American Judges Association and has served as the Campaign Treasurer for several judges and political candidates.

Marlene received her J.D. from Loyola Law School, Los Angeles, in 1986. During law school she clerked for the Court of Appeal, Fourth Appellate District. Marlene has extensive trial experience and has argued several cases before the Court of Appeal.

Marlene would consider it an honor to serve on the Board of the Riverside County Bar Association and to have the opportunity to contribute to the important work that the RCBA provides.



Sophia Choi
Secretary

Sophia Choi is a Deputy County Counsel for Riverside County and has been with the office since 2006. She graduated from Notre Dame High School in Riverside as Valedictorian. She received her B.A. degree from the University of California, Los Angeles with highest Latin honors. She was a member of the Alpha Kappa Delta Sociology Honors Society and served as the General Manager for the Southern California Korean College Students Association. Sophia Choi received her J.D. degree at the age of 22 from Southwestern University School of Law in the SCALE two-year J.D. program and was Co-Editor in Chief for the *Advocates*. She received the CALI Excellence for the Future Award in Constitutional Perspectives. During law school, Sophia did an externship with the California Attorney General's Office in the Criminal Appeals, Writs, and Trials Division.

Sophia was the Co-Founder and Inaugural President of the Asian Pacific American Lawyers of the Inland Empire. She

has received special recognition from the City of Riverside, being honored as a recipient of the HRC Riverside Heroes Award by the Human Relations Commission and Mayor Ron Loveridge for her community involvement.

Sophia Choi has been active in the Riverside County Bar Association for several years. She is a contributing writer of the Bar Publications Committee, for which she has written numerous articles, including judicial and attorney profiles and featured articles. She has also been the Co-Chair of the Law Day Committee, through which efforts were made to contribute to the general public of the Riverside County community. Sophia participated as a scoring attorney in the Mock Trial program for several years. She further served as the Director-at-Large for the Riverside County Barristers Association and is a board member of the Leo A. Deegan American Inn of Court. She has also served as a Director-at-Large of the Riverside County Bar Association for two years. Sophia Choi would love the opportunity to continue to serve the Riverside community as the RCBA's Secretary. Riverside has been her home since the age of seven, and she would love to work actively to contribute to the advancement of the RCBA. Please vote for Sophia Choi.



Greg Rizio
Secretary

Greg Rizio is the senior trial attorney of Rizio Law Firm which specializes in catastrophic personal injury cases. He has been practicing in the Inland Empire since 1992 and opened his Riverside office in 2000. He prides himself in practicing with civility and recently received the 2014/2015 Leo A. Deegan American Inn of Court "Terry Bridges Outstanding Attorney Award." He is highly involved in the RCBA, working on several committees, including the New Attorney Academy and is a member of the Steering Committee for the newly formed RCB Foundation—the charitable arm of the RCBA. Greg also serves in leadership roles for several civil legal organizations, including the Consumer Attorneys of California (CAOC), the Consumer Attorneys of the Inland Empire (CAOIE) and the San Bernardino/Riverside ABOTA chapter.

Several organizations have honored Greg with their Trial Lawyer of the Year awards including the 2014 Western San Bernardino County "Jennifer Brooks Lawyer of the Year," the Consumer Attorneys of the Inland Empire "2015 William M. Shernoff Trial Lawyer of the Year", the 2015 OCTLA "Top Gun - Trial Lawyer of the Year" and the Statewide plaintiff attorney organization's (CAOC) "2015 Consumer Attorney of the Year" Award.

In 2014 and 2015, he was recognized as a top One Percent National Trial Lawyer in receiving the "Litigator's Award." He is also recognized as a Top 100 Trial Lawyer by the National Trial Lawyers Association, is a multi-year Super-Lawyer recipient in the Personal Injury category and a lifetime member of the Multi-Million Dollar Advocates Forum.

"Being a lawyer in the Riverside legal community has blessed my life in more ways than I can describe. It has accepted me, given me lifelong friendships, provided me with a community that has celebrated the good times in my life but, more importantly, that same community was there holding me up in the not so good times. This community has directly shaped me into the lawyer that I am today."

"At a point in my career where there are more years behind me than ahead of me, I want to give back to this community as much as it has given to me. That is why I want to serve on the RCBA Board. However, in looking at all the candidates running, I can confidently say that no matter who wins the seats in this election, the Riverside Legal Community wins."

Greg's proudest accomplishment is raising his three children — Cassie, Caleb and Olivia — with his wife of 21 years, Ericka.



Julie Hill
Director-at-Large

Julie M. Hill is a Certified Family Law Specialist practicing family law throughout California.

Ms. Hill grew up in Riverside and moved to attend college, law school, and practice law in Los Angeles, Lassen County (Office of District Attorney), San Diego, and San Francisco until returning home to open her law office in 2003. Prior to becoming an attorney, Ms. Hill practiced Forensic Social Work for 12 years with California's Conditional Release Program. Ms. Hill served as the Hearing Officer with the Riverside Department of Mental Health and currently volunteers as Judge with the San Bernardino Restorative Youth Court. Last year, Ms. Hill attended a "Week in Legal London" with the State Bar of California and participates in the Southern California Family Law American Inn of Court. Ms. Hill provides legal services for Veterans Affairs and Law Day. In 2003, Ms. Hill joined RCBA and the Family Law Section and since 2006 has been on the panel of RCBA's Fee Arbitration Program.

As a Director-at-Large, Ms. Hill hopes to raise the profile of the RCBA in its extraordinary service to its members and the community.



Chris Johnson
Director-at-Large

As a lawyer for over 20 years, Chris has handled transactional and litigation matters in employment law, real estate, land use, title review, bond (re)financing, public finance, and school and church development.

After receiving his Juris Doctorate from the University of San Diego cum laude in 1993, he obtained his initial training as an associate working with the trial lawyers in the San Diego law firm formerly known as McInnis Fitzgerald Rees & Sharkey. In 1998, he worked as in-house counsel for the Insurance Company of the West. From 2002-2015, he was the principal of his own law practice, Single Oak Law Offices, in Temecula. In November of 2015, Chris joined the prominent and well-known Riverside based firm Reid & Hellyer. Chris is the senior attorney of their Temecula location.

Chris has been a member of the Riverside County Bar Association since 2010. Since that time he has participated as a panel member during a day of "Access to the Courts" for the public and as scoring attorney in the High School Mock Trial competitions. For the past three years, he has served as the Co-Chair of the Solo & Small Firm Section of the RCBA. As a Director-at-Large, Chris would strive to enhance several facets of the ongoing enterprise:

- Increase the participation and coordination of private, public, and governmental practitioners in the Association;
- Garner greater inclusion of those practitioners who practice outside of the traditional downtown area such as southwest county and the desert communities;
- Emphasize greater civility and professionalism in practical legal training curriculum such as the ongoing New Attorney Academy training program. Also explore the possibility of bringing that program to other regions of the county.

He and his family volunteer at the homeless outreach on 4th Street in Downtown San Diego and at the Doors of Faith Orphanage north of Escondido. He enjoyed coaching both his daughters in competitive youth soccer. He has lived in Temecula with his wife and their two teenage daughters since 2003. Since his union with Reid & Hellyer, Chris has become involved with a few local southwest Riverside County committees, such as the Economic Development Corporation of Southwest Riverside County (EDC) and the Murrieta-Temecula Group, both of which focus on economic, entrepreneurial and business development within the Southwest Riverside community.



Lori Myers
Director-at-Large

Lori Ann Myers was born in Huntington Beach and grew up in Lake Forest. Prior to attending law school, she received a real estate license, which she still maintains. She received her law degree from Western State University College of Law. She has practiced almost exclusively in the area of criminal defense. Working as a clerk for the Orange County Public Defender's Office in law school, cemented her belief that criminal defense was her calling. Ms. Myers' first job as an attorney was with the Riverside County Public Defender's Office.

Currently, Ms. Myers has a vibrant private practice, which includes representation of clients in the counties of Riverside, San Bernardino, Los Angeles, Orange and San Diego. She has tried multiple homicide cases and meets the State Bar requirements to represent clients charged in capital cases in which the death penalty is sought. She has tried, to verdict, cases involving sexual molestation, rape, driving under the influence, vehicular manslaughter, assault, robbery and gang allegations.

Her involvement in the community has included participation as a scoring attorney for various Mock Trial competitions and a volunteer with VIP Mentors. This organization, formerly called Volunteers in Parole, contracts with the California State Bar Association to provide volunteer attorneys who serve as mentors to parolees. The program helps facilitate a successful re-entry into society by providing the parolee with much needed guidance and advice from a reliable mentor. Currently, she is the Co-Chair of the Criminal Law Section for the RCBA.

In addition to her private practice, Lori provides representation to indigent criminal defendants. The Public Defender has many cases in which a conflict of interest is present. In these situations, the defendant is still entitled to a defense attorney. The County of Riverside contracts with entities to provide defense attorneys to indigent defendants who cannot be represented by the Public Defender. Ms. Myers has been

working within this system of court-appointed counsel for over a decade.



Carmela Simoncini
Director-at-Large

Carmela Simoncini is a research attorney at the Court of Appeal, Fourth Appellate District, Division Two, in Riverside. She is an adjunct law professor, teaching Legal Writing II, Appellate Advocacy, and Juvenile Dependency Law at Thomas Jefferson School of Law in San Diego. Before coming to the Court of Appeal in 2007, she was a staff attorney at Appellate Defenders, Inc. in San Diego for 22 years, where she assisted and trained panel attorneys while maintaining a caseload of criminal and juvenile appeals. She previously served as a Deputy Public Defender for Tulare County between 1983 and 1985, where she tried more than a hundred cases to jury, after being in general private practice from 1979 to 1983.

Carmela is an active member of the Riverside County Bar Association, and current Chair of the Appellate Law Section. She has organized at least four MCLE programs per year, sufficient to obtain State Bar approval for the RCBA to confer Appellate Specialist Credit. For the past two years, she has worked with the Appellate Law Section preparing materials to assist self-represented civil appellate litigants, a project that will be continued through the coming year.

Carmela received her Bachelor of Fine Arts degree from Arizona State University, with focus in Drawing and Painting. She earned her Juris Doctor degree from Western State University College of Law and was admitted to the California Bar in 1979. She received an LLM degree cum laude in Criminal Law from the University of San Diego School of Law in 2003. She is a contributing author to the C.E.B. Juvenile Dependency Practice Manual, and is a frequent speaker at seminars on topics relating to Appellate Practice, Criminal Law and Procedure, and Juvenile Law.

Carmela lives in San Diego with her husband Roland (Pete), and has an adult son (Bartolomeo), who lives in Arizona. She commutes daily to Riverside because it is such a wonderful and warm—in every sense of the word—place to work. In her spare time, she enjoys painting, making art quilts, and studying Italian.



Shumika Sookdeo
Director-at-Large

Shumika T. R. Sookdeo is a Managing Attorney at Robinson Sookdeo Law, a general practice law office that handles family law, criminal law, bankruptcy law, and eviction cases. The office is located in Riverside, which enables Shumika to serve members of a community where she was raised. Prior to being admitted to the California Bar, she volunteered as a Law Clerk with the Law Offices of the Public Defender in Riverside. Currently, Shumika is licensed to practice law in California and Florida.

Shumika graduated in 2004 from University of California, Santa Barbara with a degree in English. She earned her Juris Doctorate in 2007 from Barry University School of Law, in Orlando, Florida. While attending law school, Shumika competed on one of the school's Mock Trial teams. She also had a

summer internship with the Orange County Public Defender's Office in Orlando, Florida.

She currently serves on the Riverside County Barristers Board as a Member-at-Large. She is the Immediate Past President of the Richard T. Fields Bar Association, an African American bar association located in the Inland Empire. During her presidency, Shumika spearheaded the organization's MCLE endeavors, and planned its first seminars. She currently serves on the California Association of Black Lawyers Board as a Member-at-Large, and previously as an Affiliate Representative (2014-2015). She also served as an Affiliate Representative on the National Bar Association's Board (2014-2015).

Shumika has spoken at several events at UC Riverside to encourage students regarding their educational pursuits. She has mentored Riverside high school mock trial competition students. She also appeared on KCAA Radio's Inland Empire Talks Back, to discuss California Proposition 47, in April 2015.

She is an avid volunteer for various organizations and clinics that assist students, low income families and troubled youth throughout the Inland Empire and in the Los Angeles area. Shumika has been a volunteer attorney at the Harriett Buhai Center for Family Law, located in Los Angeles since 2012. She has also been a volunteer Education Representative with the RCBA's Project Graduate program, mentoring foster youth since 2013.

Shumika enjoys working out with her husband, snowboarding, volunteering, and masquerading for carnival. She is honored for the nomination for Director-at-Large.



Matthew Strickroth
Director-at-Large

I am proud to call myself a member of the Riverside County Bar Association and a Deputy District Attorney for the County of Riverside. I received my Bachelor's degree from the University of Notre Dame, and my law degree from

Chapman University. The Riverside legal community has been my home since I began my career with the Riverside County District Attorney's office in 2008. As a member of the felony prosecution team, I strive to uphold the highest standards of integrity, work ethic, and professional conduct.

I am an active supporter of the Riverside County Bar Association, and I value the services the RCBA provides. It is an essential forum to address issues that impact our justice system and the attorneys who practice in Riverside County. I welcome the opportunity to contribute further.

My wife, Lauren, and I are active members in the community. I participate as a mentor for underprivileged youth, am involved in the Riverside County Youth Court, and participate in the mock trial program. I look forward every year to reading to Riverside students through the RCBA's Adopt-a-School Reading Program.

I welcome the opportunity and privilege to serve on the Board of Directors for the Riverside County Bar Association.



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 or send an email to lisa@riversidecountybar.com

The website includes bar events calendar, legal research, office tools, and law links.



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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.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2016.

Xavier J. Ernst – Law Student, Temecula

Emily R. Hanks – Office of the District Attorney, Riverside

Sarah E. Keagy – Law Student, Rancho Cucamonga

Natalie Keller – Riverside County Superior Court, Indio

Laryssa King (A) – Law Office of Dawn M. Saenz, Riverside

Richard E. Lutringer (A) – Lutringer ADR Consulting, Palm Springs

Krystal Lyons – University of La Verne COL, Ontario

Jessica M. Munoz – Voices for Children, Riverside

(A) – Designates Affiliate Member



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