

# RIVERSIDE LAWYER

March 2017 • Volume 67 Number 3

MAGAZINE

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The official publication of the Riverside County Bar Association

A portrait of Greg Rizio, a middle-aged man with short, wavy grey hair, smiling broadly. He is wearing a dark suit jacket, a light blue dress shirt, and a blue patterned tie. The background is a blurred outdoor setting with greenery and a wooden door.

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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), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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, 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.

*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 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.*

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

## MARCH

- 15 Estate Planning, Probate & Elder Law Section**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speakers: Judge Tom Cahraman, Judge Roger Luebs, Tim Johnson, Esq., Riverside Superior Court  
Topic: “Updates from the Probate Court: Forms, Rules and Regulations”  
MCLE
- Landlord/Tenant Law Section – Joint with SBCBA**  
6:00 p.m. to 8:00 p.m.  
Cask ‘n Cleaver  
1333 University Avenue, Riverside 92507  
Speaker: Commissioner David Gregory, Riverside Superior Court  
Topic: Policies & Procedures for Unlawful Detainers in Department 11”  
MCLE
- 17 General Membership Meeting**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speakers: Presiding Justice Manuel Ramirez, Don Davio, Jackie Hoar & Robert Collings Little  
Topic: “Mediation at the Court of Appeal, Fourth District, Division Two”  
MCLE
- 21 Family Law Section Meeting**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speaker: Nicol Stolar-Peterson  
Topic: “Kids Court, Children Testifying, Disclosures & The Ins and Outs of CPS”  
MCLE
- Family Law Mixer**  
5:30 p.m.  
The Brickwood  
3653 Main Street  
Riverside 92501
- 23 Joint Solo Small Firm & Business Law Sections**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Speaker: Dr. B.J. Hawkins  
Topic: “What is a CA Licensed Professional Fiduciary and Why It is Important to Me”  
MCLE





# President's Message

by Jean-Simon Serrano

With discussion of immigration taking up much of the public discourse recently, I thought I would touch on a recent change to the Evidence Code that didn't seem to get much notice or attention but which has far-reaching implications for undocumented workers.

Until very recently, damages were calculated differently for citizens/residents vs. those not legally in the United States. Typically in a personal injury case, you can recover medical bills, fees for future medical care, lost earnings and earning capacity, and pain and suffering. As it relates to lost earnings and loss of earning capacity, the measuring of said damages is usually based on earnings history. For example, someone who has earned \$75,000.00/year for the past 20 years can reasonably expect that they will continue to earn at least at that level into the future. That is, of course, unless the plaintiff is not a legal resident or citizen. That plaintiff, with the SAME history of earning \$75,000.00/year for the past 20 years has not been able to claim damages based on that amount. Since 1986 and the case of *Rodriguez v. Kline* (1986) 186 Cal. App. 3d 1147, lost earnings for an undocumented worker must be based on their potential earnings in their native country. In *Rodriguez* (supra), the plaintiff suffered substantial injury and had been working in the United States for 20 years. The defendant in that case appealed the award of damages and the Appellate Court overturned the verdict, finding that Mr. Rodriguez's damages should be based on his potential earning capacity in Mexico, and not based on his actual earnings over the past 20 years, in the United States. This has been the state of the law since *Rodriguez*.

In recent years, it has been argued that the finding in *Rodriguez* should not be limited to lost earnings/earning capacity and should also apply to the cost of future medical treatment. It is argued that future medical treatment should be calculated based on its cost in the country of plaintiff's lawful citizenship. For countries with nationalized health-care, I've heard the defense argue that there should be no award for future medical treatment. In essence the law works, in many instances, to reduce liability for defendants who injure plaintiffs who are not in the country legally.

Cases involving undocumented workers often include discovery regarding the plaintiff's legal status, propounded solely in what seems to be an attempt to harass, scare, or intimidate these persons.


In August of last year, California Assembly Bill 2159 passed, adding Section 351.2 to the Evidence Code. This Section reads:

- (a) In a civil action for personal injury or wrongful death, evidence of a person's immigration status shall not be admitted into evidence, nor shall discovery into a person's immigration status be permitted.
- (b) This section does not affect the standards of relevance, admissibility, or discovery prescribed by Section 3339 of the Civil Code, Section 7285 of the Government Code, Section 24000 of the Health and Safety Code, and Section 1171.5 of the Labor Code.

Because this section is so new, its full effect remains to be seen; however, it seems reasonable to assume that it will change the way damages such as loss of earning capacity and future medical expenses are calculated going forward. One's legal status is not to be admitted into evidence, the jury should be unaware of the plaintiff's status when it comes time to calculate damages, and one's legal status should not be used as a metric for calculating lost earnings, past and future. Further, this Section will certainly end discovery aimed at scaring or intimidating plaintiffs who are not in the country legally.

*Jean-Simon Serrano is an associate attorney with the law firm of Heiting & Irwin.*





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# BARRISTERS PRESIDENT'S MESSAGE

by Erica M. Alfaro



## Board Member Q&A: Alexandra Andreen

Alexandra is a Member-at-Large on the Barristers Board. She was raised in San Luis Obispo, CA. As a young child she was exposed to the legal community in the small coastal city as her parents are a judge and a lawyer, respectively. She was fortunate to have mentors in her parents and their colleagues, seeing firsthand how it was possible to have a successful and satisfying career in the legal profession.

Alexandra attended UCLA and studied Anthropology. She went on to attend Chapman University, Fowler School of Law. After graduation, she relocated to Riverside about eighteen months ago to work as an associate at Best Best & Krieger LLP. She handles litigation matters for a wide variety of public entity and business clients. Prior to attending law school, she had the opportunity to work at a law firm that handled tort actions for the County of San Luis Obispo. This experience affirmed her desire to practice municipal law as it is a great mix of two of her passions — local politics and the law.

Alexandra enjoys practicing law in Riverside and in the Inland Empire in general because it is a collegial community. Coming from a small home town, she was worried that she would lose the opportunity to work in a close knit community by moving to a larger community. However, she has found tremendous support, mentorship, exciting learning opportunities, and great



Alexandra Andreen

civility in the Inland Empire and is finding it to be a wonderful place to learn the legal profession and set down roots.

Alexandra enjoys being a Barristers Board Member because she is connecting with new and young attorneys and working with other members of the Board to expand the Barristers community. She is glad she has found a professional network to reach out to, swap new attorney war stories with, plan and attend MCLE events with, and continue to foster the collegial environment in our larger legal community. She is grateful to have found a warm and welcoming environment in Barristers and the RCBA.

Alexandra and her fiancé recently purchased a historic home in downtown Riverside. In her spare time, she enjoys completing home improvement projects, exploring the downtown area, exercising, cooking, and is a big board game enthusiast.

## Upcoming Barristers Events

Barristers will be holding a Happy Hour on Friday, March 17th (St. Patrick's Day) at The Mission Inn Presidential Lounge from 5:30-7:30pm. Appetizers will be served. Please join us and invite your colleagues. No RSVP is necessary.

Erica Alfaro currently works at State Fund.



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# Public Interest Law Foundation 2017 Gala Dinner and Silent Auction

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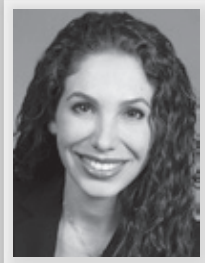


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**Proceeds from the dinner and silent auction will be used to support PILF's Summer Grant Program. The Program provides scholarships to Chapman students wishing to take public interest positions during the summer.**



# THE COUNTY OF RIVERSIDE OFFICE OF COUNTY COUNSEL

by Melissa R. Cushman

The County of Riverside first came into existence in 1883 when it was carved out of San Diego County and San Bernardino County. For the next few decades, the County, though large in territory, remained relatively small in population. During those years the District Attorney's Office handled all legal matters for the County, both criminal and civil. On September 15, 1941, after some 50 years of County growth, the County Board of Supervisors approved separating out civil matters into a separate office and established a new Office of County Counsel.

The first County Counsel was Earl Redwine, who had previously been the County District Attorney. At its inception, the Office of County Counsel was staffed by Mr. Redwine and only two other attorneys, plus one secretary, who all worked together in a single room in what is now the historic Riverside County Courthouse. After eight years as County Counsel, however, Redwine and the Board of Supervisors got into a critical dispute. This dispute led then-Supervisor William Slape to introduce a motion to abolish the entire County Counsel's office. Supervisor Slape's stated purpose for abolishing the office was to "cut the cost of County government" by eliminating the County Counsel's \$600-a-month salary, plus the \$380- to \$450-a-month lesser salaries of the Assistant County Counsels.<sup>1</sup> While Slape's first motion was withdrawn, later that year the Board of Supervisors voted to discharge Redwine and transfer his duties back to the District Attorney, William Mackey.

Four years later, in 1953, the Office of County Counsel was reinstated and once again handled civil legal matters for the County. Not surprisingly, as the County continued to grow over the years, the duties and number of employees of the Office of County Counsel grew as well. From three attorneys and one support staffer, today the office is a full-service law office that employs 49 attorneys and 26 administrative support staff. No longer able to fit in a single room inside the courthouse and needing to ensure sufficient representation for the County across its more than 7,000 square miles, the Office of County Counsel is housed in four separate locations throughout the County. The main office is still located in the City of Riverside's downtown, the County seat. Since 2009, it has

been located in the downtown Riverside on Orange Street, across from the Historic Courthouse. The other offices are located in Murrieta, Indio, and in the Juvenile Courthouse in Riverside.

Due to the wide variety of matters the office handles for the County, the civil work handled by the Office of County Counsel is further broken down into five divisions, each with its own internal specializations. These divisions are: the Land Use and Code Enforcement Division, which handles ordinance compliance and planning; the Contracts, Public Works and Financing Division, which handles real property acquisitions, finance, service contracts, and public works; the Public Safety and Litigation Division, which handles public health and safety, general government, bankruptcy, and litigation; the Child Welfare Division, which handles cases involving allegations of child abuse or neglect; and the Health and Adult Welfare Division, which handles work related to the Riverside University Health System, Adult Protective Services, and Probate and Conservatorships for the Public Guardian.<sup>2</sup>

The attorneys and support staff in the above-listed departments work under the County Counsel, who is appointed by the Board of Supervisors to a four-year term pursuant to state law. Despite the number of years that have passed since the office was reinstated, there have been only seven individuals that have held the title of County Counsel since 1953. The current County Counsel is Gregory P. Priamos, who has held that office since 2014 and who previously served as City Attorney for the City of Riverside for the preceding 13 years. Of his time at as County Counsel, Mr. Priamos said, "As a public lawyer of nearly 30 years, I continue to be amazed at the breadth and scope of the duties and responsibilities of our lawyers to serve the 10th largest county in the country along with numerous special districts and joint powers authorities. The most rewarding aspect of working in the County Counsel's Office is that we impact millions of lives every day in very positive and direct ways."

*Melissa Cushman is a deputy county counsel with the Riverside County Counsel's Office in the Land Use and Code Enforcement Division.*



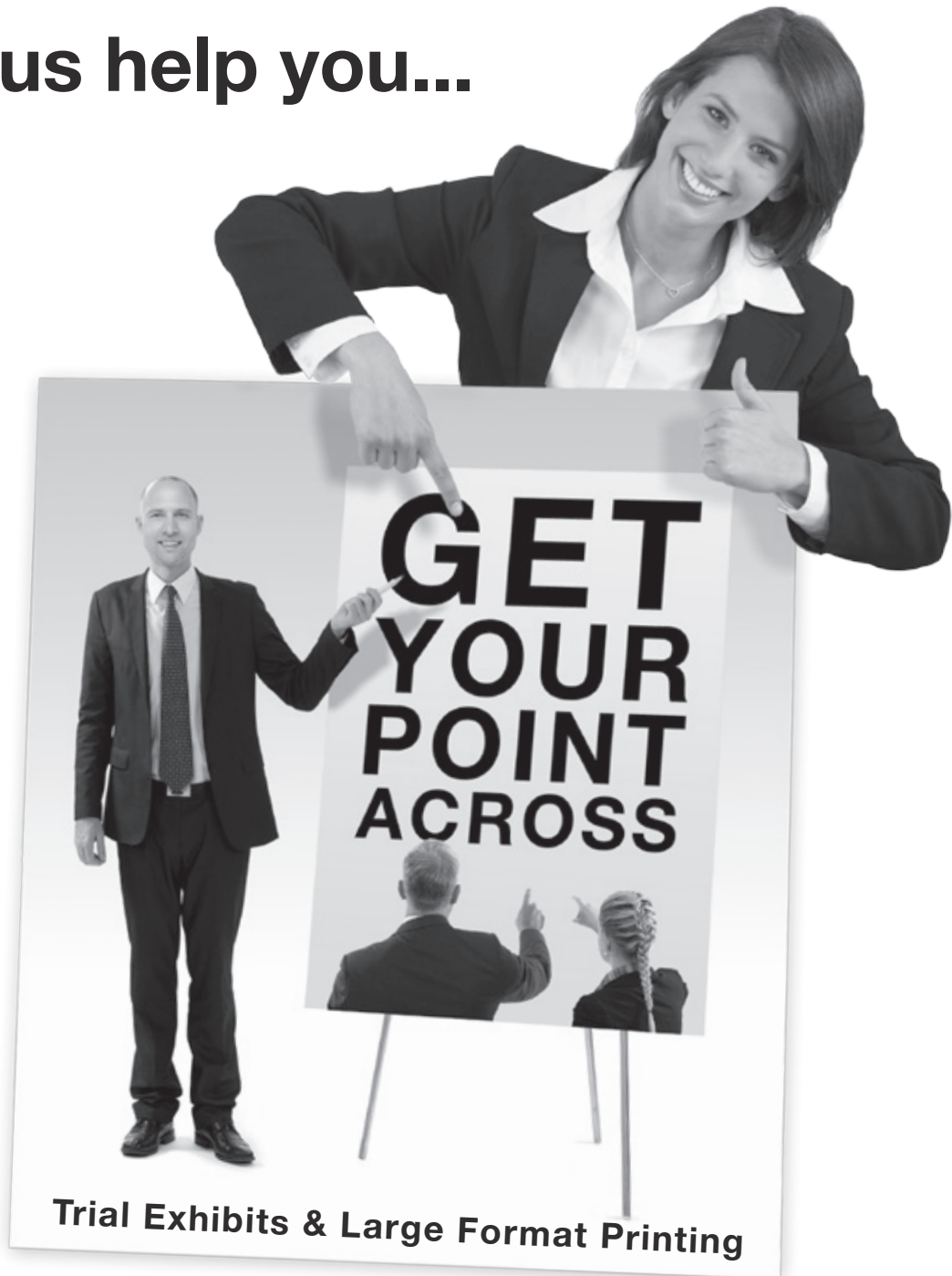
<sup>1</sup> "Slape Moves to Abolish County Counsel Office," *The Riverside Enterprise* (Aug. 2, 1949) p. 4 col. 1.

<sup>2</sup> For more information on the Office of County Counsel, see <http://www.countyofriverside.us/county counsel/Home.aspx>.



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# RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE

by *Elaina Bentley*

In 1940, U.S. Supreme Court Justice Robert Jackson defined what makes a good prosecutor:

“... [T]he citizens’ safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.”<sup>1</sup>

Every day, the 705 members of Riverside County District Attorney’s Office work diligently to pursue truth, enforce the law, and safeguard the rights of all to ensure justice for the nearly 2.3 million residents of our county, the tenth largest in the country. In 2015, our office reviewed over 64,000 adult and juvenile cases and filed approximately 56,000 criminal cases handled by 250 prosecutors.

In the face of unprecedented challenges created by the most sweeping criminal justice reforms in California’s history, District Attorney Michael Hestrin vowed to lead an office committed to stability, loyalty to the public trust, and unprecedented community outreach, all while delivering the highest quality of prosecution services to our communities.

The true measure of that promise is reflected in our actions. We now work in Integrated Trial Team Units with updated technology at no taxpayer expense to increase efficiencies. Our Filing and Early Disposition program has greatly improved the quality of criminal filings and increased the speed with which cases successfully move through the system. Our new Training and Misdemeanor Units provide skills and ethics training for new prosecutors during their critical first two years of practice, and provide state-of-the-art interactive courtroom advocacy-training for career attorneys of all experience levels.

To address realignment, jail overcrowding, and fiscal constraints, we created our community-based Crime Prevention Unit to reduce recidivism and positively impact future public safety in our neighborhoods, schools and communities. We collaborate to combat gang affiliation, truancy and delinquency through several highly successful innovative outreach and diversion programs for our youth, recent offenders, educators and parents. Reaching over 25,000 persons annually, our acclaimed Gang Awareness, Mentorship and Education (G.A.M.E.) program has been

honored by an international White House Initiative, Harvard University, and the California State Association of Counties. Recently recognized as one of California’s most innovative and cost effective government programs, G.A.M.E. also received the Challenge Merit Award and the regional ACSA Partners in Educational Excellence Award.

Today, we have a Collaborative Courts Unit to complement our traditional prosecution methods, as we seek solutions to the revolving door recidivism of certain offender populations and the quality-of-life crimes that blight our neighborhoods and businesses. These prosecutors work in specialized courts like Veterans Court, Mental Health Court, and our pilot Homeless Court, to prevent recidivism through tailored support and supervision systems that still hold individuals accountable.

Our new countywide Organized Crime Unit and Gang Impact Team actively seek grant funding, while partnering with existing local, state, and federal prosecution and law enforcement agencies and taskforces. By leveraging our limited county resources, we can aggressively combat the proliferation of human trafficking and child pornography organizations and dismantle violent criminal street gangs and major drug trafficking organizations in our county.

The prosecutor’s job in today’s world is not for the faint of heart. The daily work requires an unfiltered, hands-on approach to the dark side of humanity others never see. The prosecutor sees the murderers, rapists, molesters, robbers, abusers, drug-dealers, and thieves, and the carnage left in their wake. For each criminal confronted in court, the prosecutor also sees the broken victim, the terrified witness, or the family devastated by an unthinkable crime. Through it all, the prosecutor must seek not only justice for a victim, but the whole community, while simultaneously protecting the rights of the accused. It is a heavy burden.

It takes a special individual to take on the awesome responsibility of being a prosecutor. It means long days, hard work, and infrequent thanks. The reward, however, is a life spent humbly in service to something greater than one’s self. For those who choose it, it is not a job as much as a calling:

“The [Prosecuting] Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern

<sup>1</sup> Robert H. Jackson, *The Federal Prosecutor*, 24 Am. Jud. Soc’y 18 (1940).

at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.”<sup>2</sup>

Embracing the belief that our work is a solemn obligation essential to the peace, safety, and happiness of our community, the members of this office strive tirelessly to achieve justice by seeking the truth, holding the guilty accountable, and protecting the innocent, while holding ourselves to the highest standards of integrity, fairness, and professionalism in service to our community.

*Elaina Bentley is an assistant district attorney with the Riverside County District Attorney's Office.*



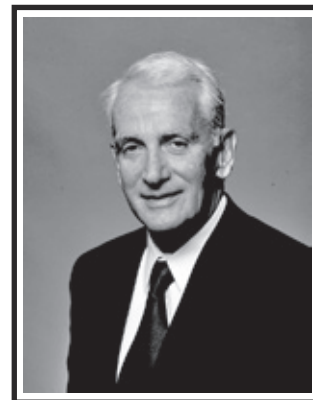
<sup>2</sup> *Berger v. United States* (1935) 295 U.S. 78, 88.

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# TRUMP VERSUS THE AMERICAN CITY: ROUND ONE — SANCTUARY CITIES

by Thomas Rice

While Lin-Manuel Miranda's *Hamilton* may be the musical du jour, the agrarian democratic vision of James Madison and Thomas Jefferson was a dominant force in the 2016 election. Hillary Clinton won substantial majorities in urban centers, winning 88 of the 100 largest counties (which, by and large, are those containing the largest cities), and claimed the popular vote. Nonetheless, Donald Trump's commanding lead among rural voters and in small cities enabled a sizeable Electoral College victory.

Although it would be a mistake to generalize too broadly about cities (a number of cities in Riverside County voted predominantly for President Trump) or rural areas for that matter, it is indisputable that there is a conflict in values between America's largest cities and the rest of the country. Over the next four years, this conflict will be playing out in the courts with public law at its heart. The battle over sanctuary cities seems set to be the first round in this conflict.

## What are Sanctuary Cities?

There is no strict legal definition of a sanctuary city. Prevailing sentiment appears to classify them as cities that, to some extent, protect undocumented immigrants from deportation by either actively refusing to cooperate with immigration officials or by simply not assisting such authorities.

The term recently rose to popularity in July 2015 following the murder of Kathryn Steinle in San Francisco by a Mexican national with a felony criminal record. The Steinle case was cited repeatedly by President Trump and his surrogates on the campaign trail. Given this history, it is no surprise that the term is highly politicized. Nonetheless, both sides of the debate seem comfortable with the label. That said, not every city publicly identified as a sanctuary city agrees with the moniker.

## Executive Order

On January 25, 2017, President Trump signed Executive Order 13768 ('Enhancing Public Safety in the Interior of the United States'), which addresses sanctuary jurisdictions. The order lays the groundwork to withhold federal grants from any jurisdiction that willfully refuses to comply with Section 1373 of Title 8 of the United States Code. Generally speaking, Section 1373

forbids states and local jurisdictions from prohibiting or restricting government agencies or officials from communicating with the Immigration and Naturalization Service regarding the citizenship or immigration status of any individual. The order gives the Secretary of the Department of Homeland Security the authority (and discretion) to designate a jurisdiction as a sanctuary jurisdiction and requires the Attorney General to take appropriate enforcement action against any entity that violates Section 1373 or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of federal law.

## The Legal Challenge

Immediately following the order's execution, the nation's most prominent municipal leaders came out in opposition. Mayor Eric Garcetti of Los Angeles, Mayor Rahm Emanuel of Chicago, and Mayor Bill de Blasio of New York each issued defiant statements.

On January 31, 2017, the City and County of San Francisco, which has a sanctuary city policy, filed a lawsuit challenging Executive Order 13768. San Francisco's sanctuary city policy is codified in two chapters of its Administrative Code: Chapter 12H prohibits city departments and personnel from using city resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the release status, or other confidential identifying information, of an individual except where required by federal or state law; and Chapter 12I prohibits city law enforcement officials from detaining an individual who is otherwise eligible for release from custody on the basis of a civil immigration detainer request issued by the federal government.

In its lawsuit, San Francisco seeks to enjoin the enforcement of Executive Order 13768 on the basis that it, along with Section 1373, violates the Tenth Amendment to the United States Constitution (the City also seeks a declaration that the city is in compliance with Section 1373). The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In short, San Francisco alleges that Section 1373 and

Executive Order 13768 violate the anti-commandeering rule of the Tenth Amendment (the notion that the federal government may not commandeer state and local officials by compelling them to enforce federal law) elucidated in *Printz v. United States* (1997) 521 U.S. 898. Likewise, San Francisco alleges that Section 1373, and Executive Order 13768 to the extent it incorporates Section 1373, unconstitutionally regulates States in their sovereign capacity by targeting the authority of the States' officials and agencies to control their subordinates.

Assuming the suit survives the inevitable ripeness challenge, San Francisco's success will depend on how broadly courts are willing to interpret *Printz* and whether courts will find the Second Circuit's decision in *City of New York v. United States* (1999) 179 F.3d 29 (upholding Section 1373) persuasive. Although not mentioned in the lawsuit, some observers have suggested the courts may invalidate the order on the basis that it coerces state government entities in much the same way as the Affordable Care Act's Medicare expansion provisions, which were invalidated by the Supreme Court in 2012.

## Looking Ahead

The legal battle over sanctuary cities may take years to resolve. No matter how this battle is resolved, it would be silly to think that this will be the end of the legal conflict between Trump and urban America. Without a crystal ball, it's impossible to say what the next battleground will be. However, one might reasonably expect to see firearm regulation, anti-discrimination laws, and the response to climate change on the list.

Oddly enough, while Jeffersonian visions of democracy may be credited for the predicament of these cities, advocates of sanctuary city policies will now be hoping that Jefferson's vision of federalism and Madison's commitment to the separation of powers will prevail over Hamilton's desire for a strong central power. It is, undoubtedly, an exciting time for public law.

*Thomas Rice is an associate attorney at Best Best & Krieger and a member of the firm's Municipal Law Practice Group. He provides legal services to cities, special districts, and private clients across Southern California. He serves as the assistant city attorney for several cities in the region.*



# Neutrals Like No Others



## Hon. Joseph R. Brisco (Ret.)



Judge Brisco served for 21 years on the San Bernardino County Superior Court, most recently presiding over the mandatory settlement conference department. 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.

## Hon. Jeffrey King (Ret.)



Most recently an associate justice for the California Court of Appeal, Fourth District, Division Two, Justice King also handled civil and probate cases during eight years on the San Bernardino County Superior Court. Adept at keeping

cases on track and settling cases on appeal, he serves as a mediator, arbitrator, special master and referee in **appellate, business/commercial, employment, insurance, personal injury/tort, professional liability** and **real property** matters.

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# THE CALIFORNIA GOVERNMENT TORT CLAIMS ACT

by DW Duke

One of the most common pitfalls for new plaintiff attorneys and pro se litigants in California is the California Government Tort Claims Act found at Gov. Code §§ 810-996.6. Among the numerous provisions of the Act the most ominous is the requirement that prior to suing a government entity (local, county or state), or a government employee, for monetary damages arising from a violation of rights, death, or injury to person or property, the potential litigant must file a claim with the entity to be named as a defendant.<sup>1</sup> Although the Act is called the Government Tort Claims Act, it also applies to claims based on breach of contract. In short, the Act applies to any claim where the claimant is seeking “money or damages.”<sup>2</sup>

The claim must be filed within six months of the incident giving rise to the claim.<sup>3</sup> In the case where delayed discovery provisions would apply, such as in the case of medical malpractice actions, the trigger is when the claimant becomes aware of facts that would put a reasonable person on notice of the possibility of medical malpractice.<sup>4</sup>

If the claimant fails to file the claim within the allotted six-month period, the claimant may seek relief by filing an application for late filing along with the claim that is filed with the government entity. In the application the claimant must cite one of the allowable reasons for not filing timely which include 1) mistake, inadvertence, surprise or excusable neglect, 2) that the claimant is a minority, 3) that the claimant was physically or mentally incapacitated, or 4) that claimant is deceased.<sup>5</sup> The application must be filed no later than one year from the date of the incident giving rise to the claim, except in cases where the delayed discovery provisions would apply.<sup>6</sup>

The claim may be personally served on the entity or sent by US mail. It is prudent to send by US mail, certified with return receipt requested, to prove that it was sent. If the entity has no record of receiving the claim, it can seek dismissal by demurrer requesting the court to take judicial notice, pursuant to Evidence Code 452(c), that there is no record the claim was ever received; the court may sustain a demurrer on that basis unless it is convinced the claim was in fact sent. As a general practice, it is prudent to send the claim certified with return receipt requested and prepare a proof of service that is kept in the file along with the claim.

The claim must contain the following information:

- 1 Gov. Code Sections 905, 905.2.
- 2 Gov. Code Sections 905, 905.2.
- 3 Gov. Code § 911.2.
- 4 See *Whitfield v. Roth* (1974) 10 C.3d 874, 112 Cal Rptr 540.
- 5 Gov. Code § 911.6(b).
- 6 Gov. Code § 911.6(b).

- A. Name of the claimant and mailing address;
- B. The post office address where notices should be sent;
- C. The date, place, facts and circumstances giving rise to the claim;
- D. A general description of the injury, damage, or loss;
- E. The identity of the government entity causing the injury and the name of the responsible employee, if known;
- F. For claims less than \$10,000, the amount claimed and to be claimed in the future, and how the amount was calculated; and
- G. For claims greater than \$10,000, there is no requirement to set out the amount of the claim though the claim must state whether the matter will be a limited civil case.<sup>7</sup>

While the entity may notify the claimant of deficiencies in the claim, the claimant should be cautious in that the failure to set forth the facts sufficient to support each cause of action may result in a cause of action being barred if adequate facts are not alleged.

After the claim is filed with the public entity, the entity must respond within 45 days. If the claim is rejected the claimant has six months from the date the rejection is mailed to file a complaint with the court. Where the entity does not respond, the complainant has two years from the date of filing the claim to file a lawsuit.<sup>8</sup>

The reasons for the Government Tort Claims Act are to provide an opportunity for the public entity to settle before suit is filed and to permit the public entity to conduct an early investigation of the facts. Critics of the Government Tort Claims Act assert that its provisions simply provide an advantage to the public entity given that the claims are invariably rejected and there is no reason the government should have the advantage of early investigation allowing it to prepare a defense, while the claimant is forced to wait on the sidelines. Moreover, the primary effect of the Government Tort Claims Act, where it has any effect at all, is to cause attorneys and pro se litigants to miss the filing deadline and thereby lose their claims. Thus, say the opponents of the Act, it is an outdated draconian system that should be abolished.

*DW Duke is the managing partner in the Inland Empire Office of Spile, Leff & Goor, LLP and the principal of The Duke Law Group. He is the author of five books and a frequent contributor to the Riverside Lawyer.*



- 7 Gov. Code § 910(f) and CCP §§ 85, 86.
- 8 Gov. Code §§ 913, 945.6(a)(1).

# THIS IS OUR PASSION

by Steven L. Harmon

Just a little over 50 years ago a man was arrested in a small town in Florida for breaking into a pool hall and stealing money and liquor. He was taken to jail and after a few days he was arraigned before a judge and asked how he would plead. He pled not guilty and then he did something rather unusual for that time. He asked for an attorney. The judge was somewhat taken aback by this request and said of course he could have an attorney but only if he could pay for one. The man said he had no money at all and he certainly could not afford a lawyer. The judge said he was sorry but in that case the man would have to defend himself. And so this man with no money and no formal education and certainly no legal training, found himself in front of a jury on trial for his freedom trying to defend himself in a world he knew nothing about. Of course, it was a disaster and he was quickly convicted and sent to prison for five years.

This was a story told far too often in our country 50 years ago. But this particular story did not end there. While sitting alone in his prison cell this man picked up a pencil and on prison stationery wrote out, by hand, a petition to the United States Supreme Court in which he said it was not fair that he could not have a lawyer to defend him when his freedom was at stake simply because he was too poor to afford one. He asked for a new trial and for a lawyer to be appointed to represent him without cost.

Because of this poor man's determination and his simple plea for justice, ultimately the Supreme Court recognized the obvious truth that without counsel for the defense there can be no assurance of a fair trial and just because a person is too poor to afford a lawyer is no reason to deny them representation. The Supreme Court ordered that he be given a new trial, but this time ordered that the State provide him an attorney to defend him at the trial.

The case went to trial again, this time with a lawyer by his side to defend him and this time the man was acquitted of the charges.

The man's name was Clarence Gideon. The name of the case was *Gideon v. Wainwright*. And all because of this man's belief that he had been treated unfairly, and his simple, hand-written petition, the entire course of criminal justice in this country was changed forever.

From now on, the states would be required to provide a lawyer free of charge to anyone accused of a crime if they were unable to afford their own lawyer. From this Supreme Court decision, Public Defender offices throughout the country began to spring up. No longer would anyone

charged with a crime be denied the help of a lawyer just because they were too poor to afford one.

Every day the Riverside County Public Defender's Office proudly carries out this now Constitutional mandate to defend free of charge all those accused of a crime in Riverside County but who cannot afford a lawyer. This is a big job. Our office handles approximately 40,000 cases each year. We handle approximately 85% of all criminal cases throughout the County. We have 250 people working full time in six offices throughout the County including attorneys, investigators, paralegals, social workers, clerical, and administrative staff. Without the work of all these dedicated and passionate people, the criminal justice system in this Country would grind to a halt.

We do not choose our clients but, unless there is a conflict of interest, we are proud to say we will defend anyone who is in trouble and needs our help no matter what they are accused of doing and no matter how complicated the case may be. Our job is to do everything possible to defend our clients. It is not our job to make moral judgements about them. Our job is only to defend and help.

The work we do is long and hard. We are often presented with impossible cases and difficult clients. Many in the community misunderstand our role and often criticize us for defending "those people." Resources are always difficult to come by. We often lose our cases. We get tired and discouraged.

But there is something in every person who works in the Public Defender's office that makes them have to do this work. I think it is as simple as the realization that if we do not do this, then who will? When someone's freedom is at stake they must be defended, and if we don't do it, who will? This is a noble calling we all feel.

Our clients and their rights are our passion. We will never stop trying to do everything possible for them. Even though this work is hard and often discouraging, we feel blessed because we get to do this work. We are blessed because this is the greatest work a lawyer can do. Our fight is a noble fight. There is no greater feeling for us in our careers than the pride we feel at the moment we are in battle protecting another person's freedom.

So what Clarence Gideon started over 50 years ago – we are proud to carry on every day.

*Steven Harmon is the Public Defender for Riverside County.*



# THE FEDERAL PUBLIC DEFENDER'S OFFICE IN THE INLAND EMPIRE

by Jeffrey A. Aaron

The Federal Public Defender's Office in Riverside is appointed to represent indigent defendants in the Inland Empire, who are charged with violating a federal statute. In addition, the lawyers in our office travel to Magistrate Courts in federal enclaves in Joshua Tree National Park, the Marine Corps Logistics Base in Barstow, and the United States Army Desert Training Facility in Ft. Irwin. We routinely open anywhere from forty to seventy cases a month.

The history of the Federal Public Defender (FPD) in Riverside is, not surprisingly, closely linked to the history of the District Court itself. When Judge Robert Timlin was confirmed by the U.S. Senate in September 1994, there was no FPD presence in the Eastern Division of the Central District of California. Lawyers came from the Los Angeles office to handle what cases were assigned to Judge Timlin, but there were no office facilities or staff. Indeed, Judge Timlin's first courtroom was in the Riverside County Courthouse.

The first staff members of the FPD assigned to the Eastern Division were Deputy Federal Public Defender Oswald Parada, and legal secretary Leticia Martinez. In time, "Ozzy," as he was known, would become Directing Attorney of the office, and later a United States Magistrate Judge; and Leticia would become the branch manager and later our paralegal.

For several years, the office remained small. Then, with the confirmation of District Judge Virginia A. Phillips, the office began to grow more quickly. Richard Burda and Manuel Araujo joined the office as trial attorneys in 1999 and 2002, respectively. I came in 2003, replacing Richard Burda, who retired; and Rene Kahn, a former law clerk for Judge Robert Takasugi, came shortly afterwards.

The office was staffed with four trial attorneys and remained that way for several years. When Oswald Parada took his seat as a Magistrate Judge in 2003, he was replaced as Directing Attorney by Manuel Araujo, and, later, by then Deputy Federal Public Defender Jesus G. Bernal, who was also, in time, elevated to the U.S. District Court bench. When Judge Timlin took senior

status in 2006, Magistrate Judge Stephen G. Larson was appointed to succeed him.

While the Eastern Division grew to have two District Judges and three Magistrate Judges, the FPD grew to seven attorneys. When Judge Larson resigned to enter private practice in 2009, the Eastern Division was down to one District Judge. We did not get a second until Judge Bernal was confirmed by the U.S. Senate in 2012. Since July 1, 2016, Judge Phillips is now the Chief Judge of the Central District. This was very exciting for all of us in the Eastern Division as she is the first judge from our court to lead the entire District Court. Unfortunately, following her departure to Los Angeles in 2016, our Division is again down to a single District Judge.

While our Eastern Division only has one out of the 28 District Judges in the Central District of California, there are a number of District Courts nationwide that only have two or three District Judges. Indeed, our District Judges serve a population in Riverside and San Bernardino counties that exceeds four million residents. If the Inland Empire were considered a state, it would rank 27th in population.

It is one of the characteristics of the Eastern Division that it is chronically underserved in terms of federal resources. The District Court determines how many new filings a District Judge in the various divisions can receive, and excess filings are sent for random assignment in the larger Western Division in Los Angeles. The Eastern Division has routinely sent excess cases, both civil and criminal, to the Western Division, resulting in Federal agents and employees, as well as litigants and lawyers, having to travel to Los Angeles. Right now, about a fifth of the cases being handled by the lawyers in the FPD in the Eastern Division are actually in the Los Angeles court. Those of us who practice in the federal courts have talked for years about the possibility of getting another District Judge for the Inland Empire. We certainly have the cases to keep another judge busy!

*Jeffrey A. Aaron received his B.A. from UCLA and his J.D. from Rutgers. He is the Directing Attorney for the Federal Public Defender's Office located in Riverside.*





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# THE UNITED STATES TRUSTEE PROGRAM: AN OVERVIEW

by Mohammad Tehrani

The United States Trustee Program (“USTP”) is a component of the United States Department of Justice, and is charged with overseeing bankruptcy cases and supervising private bankruptcy trustees. The USTP’s mission is to “promote the efficiency and protect the integrity of the Federal bankruptcy system.” The USTP has been referred to as the bankruptcy system’s “watchdog.”

The USTP is composed of 21 regions overseen by separate United States Trustees (“U.S. Trustee”). Each U.S. Trustee is appointed by the United States Attorney General. There are 95 field offices. The Riverside office is a field office within Region 16, which encompasses the Central District of California. Peter C. Anderson is the U.S. Trustee for Region 16. Abram S. Feuerstein is the Assistant U.S. Trustee supervising the Riverside Divisional Office.

The USTP was established by the Bankruptcy Reform Act of 1978, which also overhauled the previous statutory guidelines to the current Bankruptcy Code, Title 11 of the United States Code. Prior to the passing of the Bankruptcy Code, bankruptcy proceedings were administered by federal officials with quasi-judicial powers, known as bankruptcy referees. The Bankruptcy Code eliminated the bankruptcy referee role, replacing them with bankruptcy judges, and transferred the referees’ non-judicial administrative duties to private trustees overseen by the USTP.

The USTP began as a pilot program encompassing 18 federal districts, and was further expended in 1986 to 21 regions, consisting of all federal districts with the exceptions of the District of Alabama and the District of North Carolina.<sup>1</sup> The USTP is

funded by the United States Trustee Systems Fund, which consists primarily of bankruptcy fees paid.

The U.S. Trustee’s duties are codified in 28 U.S.C. § 586. Consistent with the different forms of bankruptcy relief, the U.S. Trustee’s duties depend on the type of bankruptcy case that is being administered. There are five major categories of bankruptcy protection: (1) Chapter 7 – liquidation; (2) Chapter 9 – municipalities; (3) Chapter 11 – business reorganization; (4) Chapter 12 – farm reorganizations; and (5) Chapter 13 – wage earner reorganization. By statute, the U.S. Trustee may appear and be heard on nearly any issue arising in a bankruptcy case. The U.S. Trustee’s activity ranges from consumer protection in Chapter 7 and Chapter 13 cases to ensuring the fairness of organized debt restructuring plans by large corporations in Chapter 11 cases.

Among the activities undertaken by the Riverside Divisional Office include: (1) monitoring the progress of Chapter 11 reorganization cases; (2) forming Chapter 11 creditors’ committees; (3) protecting against abuses by debtors using the bankruptcy system for improper purposes; (4) furthering consumer protection goals by initiating enforcement actions against attorneys and unlicensed petition preparers; and (5) referring instances of suspected criminal conduct to the United States Attorney.

For more information, please visit the USTP’s website at: <https://www.justice.gov/ust>.

*Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.*



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<sup>1</sup> The Districts of Alabama and North Carolina are overseen by the U.S. Bankruptcy Administrator Program, which acts as an agent of the judiciary as opposed to the Executive branch.

# THE PUBLIC LAW SECTION IS MEETING THE CHALLENGES OF A REFORMED BAR AND SEEKS COMMITTED EXECUTIVE COMMITTEE MEMBERS

by John Appelbaum

Against the backdrop of a reforming California State Bar, the Public Law Section is poised to continue offering improved educational opportunities and value to its membership while embracing these reforms. Over the last three years, the section forged partnerships with California law schools bringing together high-ranking public officials and students to provide encouragement and advice in pursuing public-service related careers. Students not only get to learn from these officials, but they also get an opportunity to actually meet with them individually. This program has been implemented in Sacramento/Davis, San Francisco, Los Angeles, and San Diego to extremely positive reviews. Our commitment to students is also exemplified through our student writing competition where students get the opportunity to have their articles published, as well as to be recognized at the State Bar's Annual Meeting.

Through its partnership with California law schools, the section has greatly expanded its signature Open Meeting and Public Records Act Conference, recognized as the leading conference of its kind in the state. Open meeting and public record laws are a staple of public practice and have taken on added significance as the California Supreme Court tackles the pernicious issue of whether records related to public business which are stored on private e-mail accounts constitute public records. Public law practitioners are at an historic crossroads as law and policy seek to catch up to rapidly evolving technology. This conference not only strives to provide answers to these questions, but places a heavy emphasis on providing practical advice on difficult questions that often arise in these areas.

We have inaugurated a Public Surveillance and Privacy Conference featuring leading experts in the field, including Constitutional Law Scholar and Dean of UC Irvine School of Law, Erwin Chemerinsky. This year, we will launch a Use of Force and Public Liability Conference with Dean Chemerinsky which will bring together the foremost use-of-force experts in examining the law, policy, and public liability. Over the past year, we have witnessed an explosion of public interest in policing, as well as related suits against public entities. Recently, California passed

the Racial Identity and Profiling Act which will profoundly impact policing in California. The Public Law Section also initiated expanded webinar opportunities focusing on the unique issues facing public practitioners, while providing an inexpensive CLE alternative.

We offer cutting-edge articles in our *Public Law Journal* and have expanded our social media outreach, which will also include expanding the section's E-News to a bimonthly format to keep you better informed. Finally, exemplifying our commitment to highest standards of public service, we recognize the Public Lawyer of the Year historically awarded by the Chief Justice. More information about the Public Law Section can be found at: <http://publiclaw.calbar.ca.gov/PublicLaw.aspx>

We need committed Executive Committee members who want to make a meaningful difference during this exciting period. Applications to join the Executive Committee can be found at: <http://cc.calbar.ca.gov/>

*John Appelbaum is the chair of the California State Bar, Public Law Section.*



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2017.

**Jeffrey E. Caplan** – Derivee Capital Advisors, Riverside

**James F. Hodgkins** – Desert Mediation Group, Palm Springs

**Brandon M. Williams** – Law Student, Victorville



# THE RCBA ELVES PROGRAM 2016

by Brian C. Percy

On December 24, 2016, the RCBA's Elves Program concluded its fifteenth annual program of helping needy families in Riverside County. This year we were able to serve 46 families. Your Elves provided Christmas gifts and a holiday dinner to 202 individuals (126 children and 76 adults).

This year we worked with the following organizations to identify families in need: The Victim Services Division of the Riverside County District Attorney's office, the Riverside County Probation Department, the Community Emergency Outreach Program of the PW Enhancement Center ([www.pwecenter.org](http://www.pwecenter.org)).

Every year the success of the RCBA Elves Program is solely due to the great support and generosity of you, our membership. Helping others is infectious, and Elf participation has grown beyond the RCBA members to include their office staff and their families, clients and friends.

Now for some recognition.

## The Money Elves

Our funds came from direct donations and monies raised during several bar association events held throughout this past year. The money provided gifts for each family member, along with a Stater Brothers gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the family's holiday travel. I'd like to thank the following Money Elves for their support:

Steve and Laura Anderson, Alexandra Andreen, DaNeal Bailey, Peggy Barnes, Linda Byrd, Kim Byrens, Isabel Cesanto-Safie, Scott Ditfurth, Mark Easter, Sandra Freedman, Dario Frescas, Cynthia Germano, Howard Golds, Mike Grant, Jim Harper, Tim Haynes, Patsy Hinojosa, Cathy Holmes, Ana Horta, Roxana Jimenez, Mary Karslon, Ron Kauffman, Craig Keller, Miles Krieger, Dawn Leffler, Jessica Lomakin, Allison Martinez, Andrea McAreavy, Colleen Ojeda, Juan Ornelas, Michelle Ouellette, Casey Owen, Stephanie Ramos, Brittany Reese, Thomas Rice, Riki Rivera, Eddie Robles, Lisa Ruiz-Cambio, Dani Sakai, Charity Schiller, Cheryl Seaman, Haviva Shane, Ward Simmons, Monica Smith, Krysten Steele, Lauren Strickroth, Luis Tapia, Cathy Tisnado, Diana Valdez, Mandy Villareal, Debbie Vivian, John Wahlin, Joyce Zimmerman, Marina Kaye, Jo Larick, Judge Becky Dugan, Judge Kira Klatchko,

Holstein Taylor & Unitt, Paul Grech, Diane Singleton Smith, Judge Craig Riemer, Judge Dallas & Pat Holmes (Ret.), Sandra Leer, Judge Bernard Donahue, Judge John Monterosso, Judge Tom Cahraman, Greenberg & Greenberg, Judge Richard VanFrank (Ret.), Gregory Snarr, James Wiley, Neil Okazaki, Aitken Aitken & Cohn, Michael Gouveia, Scott Ditfurth, Dan Hantman, Glen Price, Ashley McDonald, Bratton Bratton & Razo, Judge Sharon Waters, Judge Jacqueline Jackson, David Werner, Diane Huntley, Barrie Roberts, Mark Singleton, Chris Johnson, Greg Rizio, Attorneys to Go, and the RCBA Barristers.

I would also like to provide a very special "Thank you" to Mark Easter and Greg Rizio. Mark has once again done a fantastic job of rallying a large number of his colleagues at Best Best & Krieger to the cause. Greg's very generous donation provides us a healthy "bump" to our fundraising process.



Shopping & Money Elves – Sebastian Kaye and Marina Kaye

Nesa Targhibi, Breanne Wesche, Head Elf Brian Percy,  
Erica Alfaro & Priscilla George





*Mike Razo, Bill Bratton, Pam Bratton, Jessica Diaz, Casey Wilkerson, and Gabe Razo*

The Elves Program would also like to take a moment to say a very special thank you to one of our young Elves who has been volunteering her time since she was 10 years old. Marina Kaye, daughter of local attorney Diana Renteria, turned 18 last year. Marina held a birthday bash to celebrate the occasion and asked that no gifts be given but only donations for the Elves Program. Thank you Marina for your kind and giving heart.

## The Shopping Elves

Thanks to the help of the numerous Shopping Elves, my assistant Veronica Reynoso, Charlene Nelson and a very helpful Kmart staff. We were able to shop, bag, tag, and deliver hundreds and hundreds of presents to the bar association in just over three hours, a new record. It was a joy to experience the festive mood of various

*Card from Marina Kaye*

Dear Elves Program, Riverside County Bar Found.,

Out of all of the volunteering that I have done over the years, this specific program has been my favorite. No other program has created such a feeling of accomplishment and good will than this one. I started ~~do~~ participating in this annual charity event when I was around 10 or 11 and it has become my favorite part of the holiday season. It truly puts into perspective all the blessings that so many families share. A personal opportunity, the Elves Program is unlike any other. Those who take part see the good being done on such a personal level that the effects are easily seen. This donation is made with love and given with gratitude. Thank you for continuing such a beautiful charity event. *Marina Kaye*

individuals, firms, and families as they put on their Elf hats and their best bargain-hunting caps to find deals for our families. This year's Shopping Elves were:

Paula Leverato, LaShon Halley, Tony Negerete, Cassandra Godinez, Marcos Reynoso and family, Ann Gherity, Nesa Targhibi, Jesse Male and family, Barbie Trent, Breanne Wesche, Judy Banegas, Matt Strickroth, Danielle Singleton, Marie Moreno Myers, Socorro and Rodrigo Marquez, Christina Sovine, Judge Sunshine Sykes, Daisy DeAnda, Marina and Sebastian Kaye, Bratton Bratton & Razo, Erica Alfaro, Priscilla George, Judi Murakami, Laura Mau and family, Poly High School Students, and PW Enhancement Center of Moreno Valley.

As always Big Kmart stepped up to the plate providing us with an additional discount on every item purchased. Walter's Auto Sales & Service donated the use of a very large Mercedes Sprinter van that was our sleigh for the night. Once again a great big thank you

*Wrapping Elves*



*Wrapping Elves*



to General Manager Steve Kienle and his parts manager Scott Eisengberger for making the transport of the vast number of gifts so much easier.

## The Wrapping Elves

After the shopping was finished, all the gifts were delivered to the Bar and filled the RCBA board room and several other workrooms. Over the course of two evenings, the Wrapping Elves wrapped the mountains of toys, clothes and household goods. A huge thank you to this year's Wrapping Elves, who were:

Mark Singerton, Daisy Deanda, Vivian Duarte, Christianne Kirk, Nesa Targhibi, Judge Dallas & Pat Holmes (Ret.), Lauren Caldwell, LaShon Halley, Ashley Ruiz, Shumika Sookdeo, Priscilla George, Erica Alfaro, Dan Hantman, Goushia Farook, Paulina Smykowski, Reynaldo Martinez, Michael Rios, Marina Kaye, Michelle Boulos, Breanne Wesche, Julianna Crawford, Gabriela Torres, Erik Aguilar, Evelyn Briceno, Robbie Cravatt, Victoria Williamson, Antoniette and Angelica Jauregui, Michael Schneider, and Poly High School Students.

## Delivery Elves

Our Delivery Elves delivered our gifts throughout Riverside County, including the cities of Corona, Norco, Lake Elsinore, Perris, Hemet, Riverside, Moreno Valley, and the Coachella Valley. This year's Delivery Elves who donated their time and gas were:

LaShon Halley, Isabel Safie, Judge Charles Koosed and family, Ashley Ruiz, Daisy DeAnda, Gina Maples, Diana Renteria and family, Mike Donaldson, Breanne Wesche, Yoginee Braslaw, Jailene Cabrera, Lisa Yang, Kizzy Moore, Gabriela Torres, Lachelle Crivello, Hilda Favela, and Paulina Smykowski of the Riverside County Probation Office.

## Special Thanks

Once again, big kudos to my assistant Veronica, whose dedication and organizational skills made this a very efficient and fun experience for all involved; to the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang, for all their energy and assistance; to the management and social workers of Light House Social Services, and the PW Enhancement Center (Community Emergency Outreach Programs) and the Victim Services Division of the Riverside County District Attorney's Office for spreading the word and making sure we help the most needy families in the county. Once again, "Thank you" to Big Kmart and it's staff at the at Mission Grove in Riverside.

Finally, a jumbo sized "Thank you" to the Elves themselves. Your wonderful spirit and camaraderie,



*Brian Percy and Veronica Reynoso with the staff at the PW Enhancement Center*

which are represented in the photos accompanying this article, make this entire endeavor so rewarding to yours truly. We apologize for any misspelled names and for any names that may have been omitted.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for next year. Ladies and gentlemen, I submit to you, this is a wonderful opportunity for you, your family, and your staff to share the joy of the holiday season.

*Brian C. Percy was President of the RCBA in 2002 and is the chairperson (i.e. "Head Elf") of the Elves Program.*



## 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](http://www.riversidecountybar.com) to submit your email address or send an email to [lisa@riversidecountybar.com](mailto:lisa@riversidecountybar.com)

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



# KRIEGER AWARD NOMINATIONS SOUGHT

by Judge John Vineyard

In 1974, the Riverside County Bar Association established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service beyond the bar association and the legal profession.

The Meritorious Service Award was named for James H. Krieger after his death in 1975, and has been awarded to a select few RCBA members that have demonstrated a lifetime of service to the community beyond the RCBA. The award is not presented every year. Instead, it is given only when the extraordinary accomplishments of particularly deserving individuals come to the attention of the award committee.

The award is intended to honor the memory of Jim Krieger, and his exceptional record of service to his community. He was, of course, a respected lawyer and member of the Riverside bar. He was a nationally recognized water law expert. But, beyond that, he was a giant in the Riverside community. He was known and respected in too many community circles to name (See the great article by Terry Bridges in the November 2014 issue of this magazine). The past recipients of this award are all known and respected by the community at large – Judge Victor Miceli, Jane Carney, Jack Clarke, Jr. and Virginia Blumenthal, for example.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who either are currently practicing or sitting in Riverside County, or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA Board of Directors are not eligible, nor are the current members of the award committee.

If you would like to nominate a candidate for this most prestigious of RCBA awards, please submit a nomination to the RCBA office not later than April 21, 2017. The nomination should be in writing and should contain, at a minimum, the name of the nominee and a description of his or her record of community service and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

*Judge John Vineyard is the chair of the Krieger Meritorious Service Award Committee and a past president of the RCBA.*



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# OPPOSING COUNSEL: MICHAEL H. WHITE

by Paula Hernandez

## Michael H. White Joins Riverside Community as Director of Riverside Legal Aid.

In the early 2000s, an American drama series aired on television called *The Guardian*. In the show, the protagonist Nick Fallin is a corporate attorney sentenced to 1,500 hours of community services with Legal Services of Pittsburgh as a result of a drug conviction. The legal service office is run by Alvin Masterson, a working man's lawyer who plays by the rules, and is determined to keep Nick honest. I remember binge-watching this show while in law school and being enthralled with Alvin Masterson's scrupulous ideals and how his passion for the voiceless and impoverished seemed to be engrained in his body and soul.

Recently, I had the incredible opportunity to meet Michael H. White – my own “Alvin Masterson” – not in Pittsburg, or Los Angeles, but in Riverside, California. On September 1, 2016, Michael H. White was appointed to be the executive director of Riverside Legal Aid (also known as the Public Service Law Corp. of the RCBA). Michael is a man who has worn many hats – he is a lawyer who has practiced in a wide array of fields; a professor at both traditional and online schools; a mediator for over 25 years who is frequently called upon to mediate or arbitrate issues; and, a leader and founder of non-profit and for-profit organizations. But aside from his noticeably impressive resume, what captivated me the most was Michael's warm, quiet aura, his humble attitude over his accomplishments and his emphasis on the Riverside Legal Aid, not himself. I could sense some discomfort from so much attention on him and I later discovered that he had only agreed to this article being written about him to bring more awareness to Riverside Legal Aid. And so, I promised him that this article would do exactly that.

I sat down with Michael to discuss the work they do, the current challenges, and his vision for the future. The mission statement for Riverside Legal Aid is “to provide pro bono legal services, education and counseling to qualified low-income residents of Riverside County.” The services offered range from family law matters, evictions, guardianship/conservatorship to debtor/creditor collection cases, contract disputes, bankruptcy, and Federal District Court civil cases. Riverside Legal Aid only handles civil matters and its attorneys rarely represent clients in court. But the services offered do not stop there. Riverside Legal Aid



Michael H. White

offers a variety of workshops and clinics: (1) Accounting Workshops; (2) Bankruptcy Workshops; (3) Bankruptcy and Federal Pro Se Clinic; (4) Employee Rights Workshops; (5) Decedent Clinic; and (6) Low Income Taxpayer Clinic. I could not imagine how such a plethora of services and workshops could be offered without a horde of staff members and attorneys on board; yet, I knew that most likely this was not the case. It is no secret that legal aid clinics are understaffed, underfunded and only survive on the energy of visionaries like Michael White. As Michael explained to me, Riverside Legal Aid does employ both full-

time and part-time staff attorneys and paralegals – but this number is minuscule. The organization operates primarily through volunteers, and here is where Michael introduced me to the first of many challenges. In Michael's own words, this organization only functions if “lawyers are willing to do pro bono work.” But while many might be willing, few are motivated to turn thoughts into actions, and thus, Riverside Legal Aid continues to struggle with its number of volunteers. The root of this problem could lie in the fact that the outsized prevalence of pro bono work is done by attorneys from big law firms – which are usually located in bigger cities like Los Angeles and San Francisco, and not in smaller cities like Riverside.

Understanding the impact of such a disadvantage, Michael sees recruiting volunteers as one of his top duties as director. However, having only been in the position of director for six months, Michael has shared with me that before he even thinks about making big changes, his first job is to “understand what the job is.” Once he does that, the next question becomes: “how can we do what we are doing better?” I want to point out how Michael emphasized “we.” Michael highlighted that the work that Riverside Legal Aid accomplishes is only achieved through a collaboration of engaged individuals from the community with a united goal of caring for people. Michael's work revolves around making the organization better.

In discussing some of the present challenges at Riverside Legal Aid, Michael talked about the pertinent need to procure more private donations. While the majority of the funds used to provide legal services to low-income residents come from government grants, the government requires the use of their funds to go only to those residents who make less than \$30,000 dollars a year. This clear-cut



line excludes so many others that are in dire need of help, but that unfortunately earn a little more than the amount allowed by the government.

Every year, many low-income residents who can barely survive with what they earn are still denied legal services because their financial situation is not recognized by the government as “poor enough.” Michael plans to reduce the inequality gap and expand their legal services through private donations. This way, indigent residents who earn more than \$30,000 dollars a year have the opportunity to benefit from legal services as well. Currently, private donations can be made online at Riverside Legal Aid website, but Michael does not plan on passively stopping there. His vision for private donations stretches beyond the generic individual online donations. He wants to involve the local business community and encourage them to recognize the value of giving to the Riverside Legal Aid.

Michael’s work is certainly cut out for him, but from our brief conversation I am fully convinced that there is no better fit for this position and that the future of Riverside Legal Aid will thrive under his leadership. For interested attorneys, the Riverside Office is located in the RCBA Building at 4129 Main Street, Suite 101 in Riverside. Michael reassured me that the application process is simple and can be done by contacting Riverside Legal Aid’s Office.

Volunteer attorneys can work as few or as many hours as they can spare; every hour counts and impacts a life. Each year, Riverside Legal Aid helps nearly 3,000 clients obtain

access to justice. In 2015, more than 40 attorneys donated more than 2,500 hours, valued at more than \$750,000.

As a young law school graduate and recent bar exam taker, the ABA Model Rules of Professional Conduct still haunt my mind. To refresh your memory, Rule 6.1 states that “every lawyer has a professional responsibility to provide legal services to those unable to pay.” The rule provides that each lawyer should aim to provide at least 50 hours of pro bono public legal services per year.

While there is no counterpart to the ABA Model Rule 6.1 in the California Rules of Professional Conduct, The State Bar of California has a Pro Bono Resolution that recognizes that there is a growing need for pro bono legal services and that “lawyers should ensure that all members of the public have equal redress to the courts for resolution of their disputes and access to lawyers when legal services are necessary.” As a result, the State Bar Board of Governors urges attorneys to devote at least 50 hours of pro bono representation per year, and urges all law firms and public and government employers to support their employees who choose to engage in pro bono representation.

I think to myself, what better place to contribute our time, energy, and advocacy skills than at our local Riverside Legal Aid.

*Paula Hernandez graduated from Pepperdine Law in May 2016. She is an associate at Gresham Savage Nolan & Tilden.*



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### Conference Rooms Available

Conference rooms, small offices and the Gabbert Gallery 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@riverside-countybar.com](mailto:rcba@riverside-countybar.com).



## RIVERSIDE COUNTY SUPERIOR COURT – NOTICE OF DESERT CRIMINAL CALENDAR CHANGES

Effective March 13, 2017, the Indio Branch of the Riverside Superior Court has made the following criminal court assignments and calendar changes:

- Courtroom Judicial Officer Calendar Assignment
  - 3T - Judge Charles Stafford Felony Master Calendar and Misdemeanor Pretrial Calendar
  - 2G - Judge Otis Sterling III Criminal Trials
  - 2K - Comm. Gregory Olson Misdemeanor Arraignment, Mental Health and Drug Court Calendar
  - 3M - Judge Kira Klatchko Family Law (effective March 20, 2017)
- Department 3T: The daily Department 3T calendar schedule will be:
  - 8:30 a.m. felony master calendar matters
  - 10:30 a.m. misdemeanor pretrial calendar (DV calendar on Thursdays)
  - 1:30 p.m. continued matters from morning calendar
- Department 2K: The daily Department 2K calendar schedule for the misdemeanor arraignment, mental health or drug court matters will continue unchanged. The only change is the department.



### \* ATTENTION RCBA MEMBERS \*

#### How would you like to receive (or read) the *Riverside Lawyer* magazine?

Some members have told us they prefer reading the online version of the *Riverside Lawyer* (available on our website at [www.riversidecountybar.com](http://www.riversidecountybar.com)) and no longer wish to receive a hard copy in the mail.

**OPT-OUT:** If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email ([rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com)).

Thank you.

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