

RIVERSIDE LAWYER

October 2019 • Volume 69 Number 9

MAGAZINE

In This Issue

Pets as Property or Family?

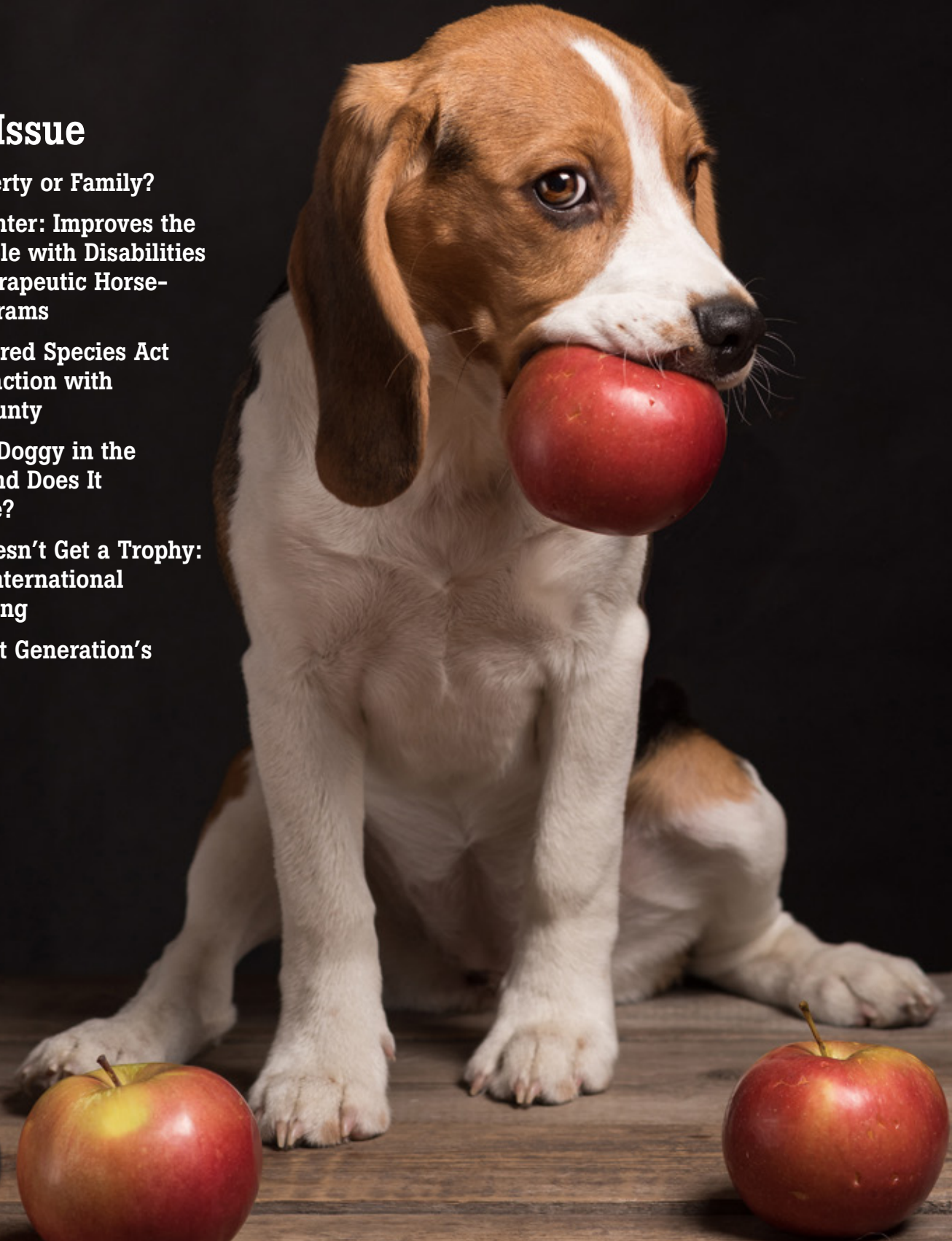
J. F. Shea Center: Improves the Lives of People with Disabilities Through Therapeutic Horse-Related Programs

The Endangered Species Act and Its Interaction with Riverside County

Who is That Doggy in the Courtroom and Does It Belong There?

Everyone Doesn't Get a Trophy: Regulating International Trophy Hunting

Who Are Next Generation's Murderers?



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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 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

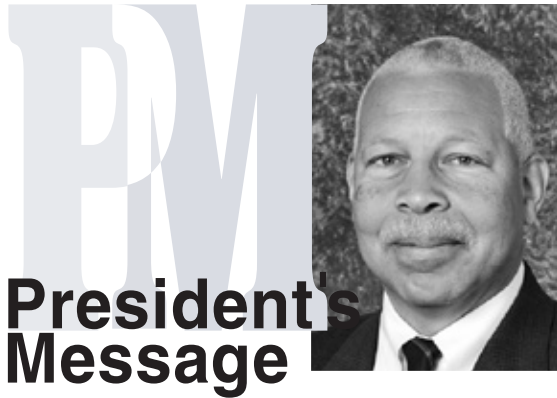
October

- 8 Joint RCBA & SBCBA Landlord/Tenant Section**
6:00 p.m. to 8:00 p.m.
Zacatecas Café, 3767 Iowa Avenue, Riverside
Speaker: Commissioner Bradley Snell
Topic: "Policies & Procedures in Murrieta Court: UD Calendar"
MCLE – 1 hr General
- 9 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Judge Emma Smith
Topic: "Navigating Mental Health Diversion, Overview & Procedures"
MCLE – 1 hr General
- 15 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Kenny Price, Pierce & Company
Topic: "Real Property Apportionment"
MCLE – 1 hour General
- 18 General Membership Meeting**
Noon – 1:30 p.m.
RCBA Gabbert Gallery
Speakers: Peter Houlahan (Author of *Norco 80: The True Story of the Most Spectacular Bank Robbery in American History*), Judge J. Thompson Hanks (ret.) and RSO Deputy Sheriff John Burden (ret.)
- 30 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Brian C. Unitt
Topic: "The Appellate Lawyer's Ethical Odyssey"
- 25 RCBA Dispute Resolution Presents: "The Use and Misuse of Apology and Forgiveness in Mediation"**
Guest Speaker: Peter Robinson, Esq.,
Professor of Law, Straus Institute for Dispute Resolution,
Pepperdine University School of Law
9:00 a.m. – 4:00 p.m. (check-in 8:30 a.m.)
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EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.





President's Message

by Jack Clarke, Jr.

A Conversation with RCBA Executive Director Charlene Nelson

This month, the *Riverside Lawyer's* focus concerns legal issues regarding animals. As always, the content of the articles in the *Riverside Lawyer* is excellent. But rather than comment on that subject further here, I thought it would be good time to put a spotlight on our Executive Director Charlene Nelson. For anyone who has worked with, or interacted with Charlene, they would know her as an extremely competent, extremely caring, and very effective professional. I think the following edited excerpts of an interview I conducted with her will show why:

Q: Charlene Nelson, how long have you worked for the Riverside County Bar Association (RCBA)?

A: I first came to the RCBA in 1977.

Q: How did that come to be?

A: I was taking an administration of justice course at Riverside Community College and the teacher wanted everyone to do a volunteer assignment in law enforcement or the legal field. It was suggested to me that I go to a bar association to volunteer. I did not even know what a "bar association" was at that time. I called the RCBA and they agreed to let me volunteer there. I volunteered from September through December 1977. I was planning to start school at University of California, Riverside (UCR) for the spring quarter in 1978. Then RCBA Executive Director Charlotte Lewis asked me to work full time for the RCBA while I waited to begin at UCR. I ended up working full time for a few months and then after starting at UCR, I went to part-time.

Later that year, I started working for the RCBA's Tel-Law program and worked with that program for nearly 20 years.

Q: You graduated from UCR with a degree in psychology, right?

A: Yes, I wanted to become a high school counselor. I was advised to obtain a teaching credential and teach first. I went through the credential program at UCR and then was employed as a long term substitute teacher. While teaching, I was called by the RCBA Executive Director William Cunningham to help develop the pro bono program for the RCBA. I thought it sounded like an interesting opportunity. Steve Cunnison (now retired judge) was the RCBA president at the time and hired me.

Q: What is the pro bono program for the RCBA?

A: It was called the Public Service Law Corporation (PSLC) of the RCBA.

Q: How long were you the Executive Director of the PSLC?

A: I started working there in 1983 as the project coordinator. I assumed the director responsibilities in 1986 and worked there until 2009.

Q: You have been the executive director for the RCBA for ten years now. Describe what your typical day looks like. Do you have a typical day?

A: Actually, there are no typical days. It is a balancing of many duties and constant interruptions. The executive director of the RCBA oversees the Lawyer Referral Service and all the various programs of the bar. I also work with Chris Jensen. Chris is the president of the board of directors of Dispute Resolution Service, Inc. (DRS), and oversee the day-to-day operation of that organization.

Q: And yet you organize and help facilitate the monthly meeting of the general membership and other functions?

A: We have many monthly meetings (sections, committees, boards, general membership to name some). We publish the *Riverside Lawyer* eleven times a year. That is a big job. Jackie Carey-Wilson is the editor and does so much to facilitate the production of the magazine. Lisa and I help her with whatever she wants us to do. We are entering our sixth year of the New Attorney Academy, which is a very busy program. Robyn Lewis, the chair of the Steering Committee, and I work to administer the program.

Q: So your typical day is not typical at all.

A: No, not at all. We are always busy.

Q: But it sounds like you like it. Do you like your job?

A: I do.

Q: Explain why.

A: I love it for many different reasons. I like the busyness of it all. I enjoy working with the three different businesses and all that this entails. Most of all, I love working with all the different lawyers. I have such respect for all that you do; for the power you have to affect and change the lives of your clients and our society. You are the keepers and protectors of the law and can have a profound impact on society.

Q: What is your most memorable moment or moments in your career as executive director of the RCBA?

A: I really enjoy every installation. This is a wonderful evening. It is a night to celebrate this legal community that we are all blessed to be part of. I always go away from the evening very inspired. This legal community is a very special place.

Q: Explain why.

A: I hear lawyers talk about their experiences working in other counties and they always say that Riverside County is different. People genuinely care about one another and are willing to help each other be successful. Though our county is geographically large, our legal community is relatively small and pretty close-knit. So many attorneys donate many hours to pro bono efforts and charitable causes to make our community stronger. And so many generously give their time to the RCBA and all its different programs. I am very grateful and humbled to be able to be a small part of this community. I try to be a good spokesperson for lawyers and for the profession because I care about our members and truly believe in what you do.

Thank you Charlene.

Jack Clarke, Jr. is a partner with the law firm of Best, Best & Krieger LLP.



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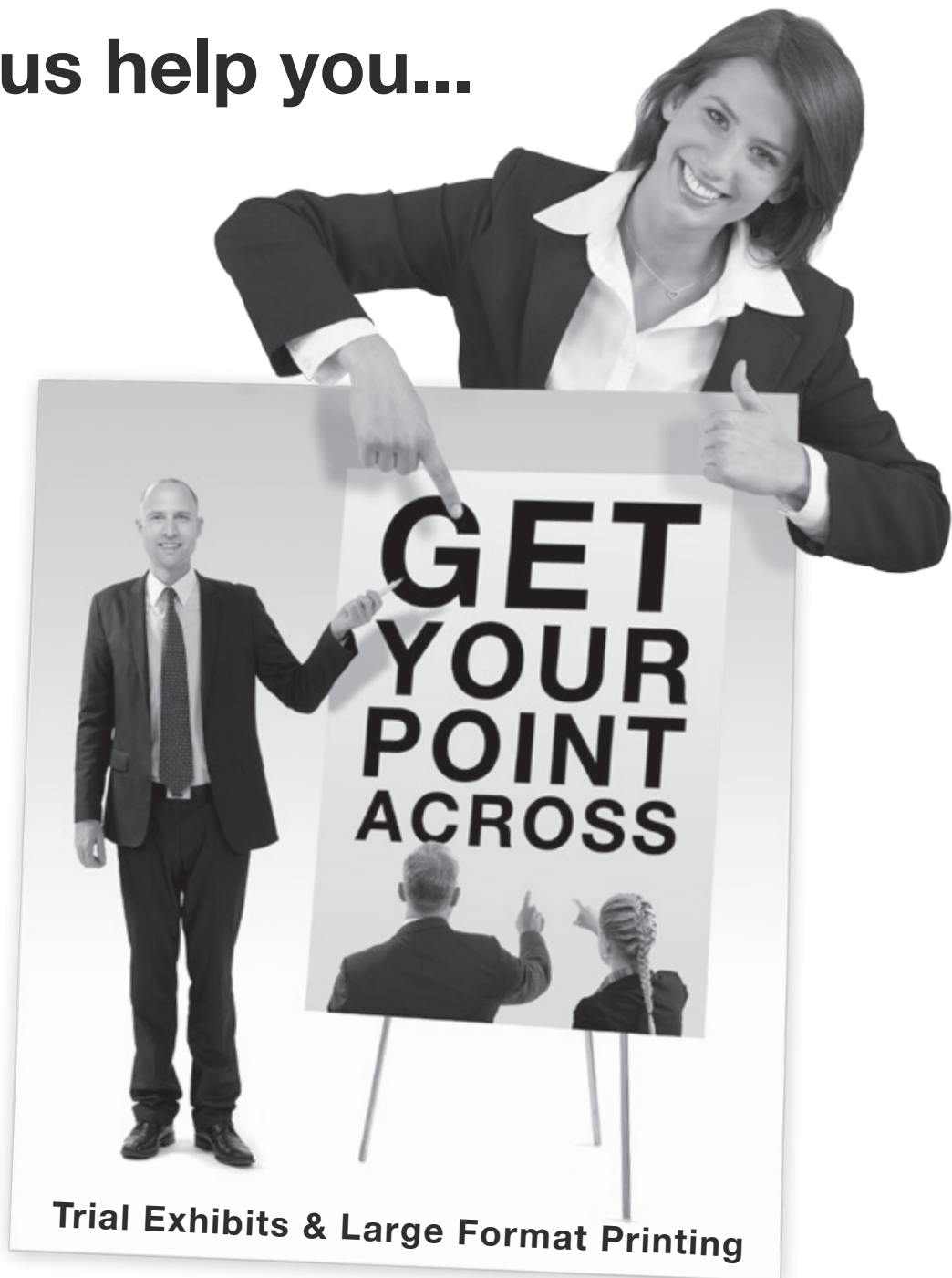


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BARRISTERS PRESIDENT'S MESSAGE

by Paul Leonidas Lin



Meet the RCBA Furristers, a subsidiary of the RCBA Barristers.

Deadlines, long hours, and demanding clients are just the tip iceberg of what makes the practice of law one of the most stressful careers one can have. However, there is a solution. Science tells us that having a furry friend can decrease

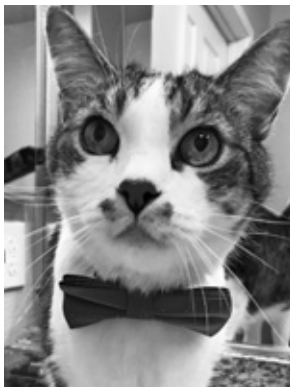
depression, stress, anxiety, and even lower your blood pressure. We here at the RCBA Barristers believe in science.¹ So here's an unapologetic parading of the pets of some of the RCBA barristers members.



Simba, a Terrier-Beagle Mix of Paul Lin, president of the Barristers.

Ten years ago, Paul saw this little runt running around on the streets in front of his house with the neighborhood kids. When asked whose dog was it, the kids responded "We don't know!" and went off to play something else. Obviously, this

little thing was too adorable to be a stray, so Paul took him in and put up signs so the owner can find him. To this day, no one has claimed Simba. So if anyone is missing a dog, too bad. The statute of limitations ran seven years ago.²



Lilo is an awesome Domestic Shorthair of Goushia Farook, president-elect of the Barristers.

Meet Lilo! He enjoys long naps and belly rubs. Lilo is a classic actor best known for his role as a starving kitty begging for treats.

Fun legal fact: Pursuant to California Family Code section 2605, a party in a dissolution,

may now seek joint or sole ownership of their pet! Lilo is

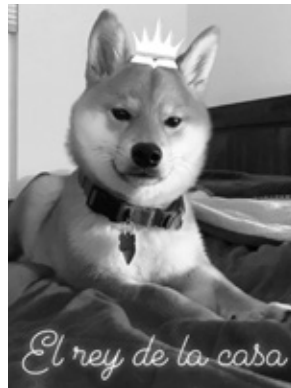
Goushia's separate property and she plans to keep him as such. Would you seek custody of your pet?



Marley is a loving Labrador-nephew of David Rivera, treasurer of the Barristers.

Marley is always eager to lend a helping paw, especially when food is involved. Ever the entrepreneur, Marley is the self-styled expert witness to David's law practice for dog bite defense cases, requesting compensation in the form of Purina Frosty Paws ice cream. David is happy

to oblige Marley's ice cream appetite whenever possible, notwithstanding that his law practice centers on business transactional law.



Mochi is a Shiba Inu of Alex Barraza, member-at-large of the Barristers.

Mochi is a fluffy bundle of joy that provides Alex with millions of heart-eye emoji moments. But because of this cuteness, many people want to stop and pet him during his walks. Fortunately, like most dogs, Mochi enjoys a good petting. But just like people, every

dog has a different level of tolerance for physical affection. As a criminal defense attorney, Alex knows the importance of getting consent. So please, before petting the next cute puppy you see, get consent of puppy-parent and puppy-child.



Rishi is a German Shepherd of Ankit Bhakta, member-at-large of the Barristers.

Meet Rishi, a four-year-old German Shepherd who is never too tired to play fetch! But—don't let his scholarly exterior fool you. While his owner safeguards his clients' assets from civil lawsuits, Rishi safeguards the house from coyotes and would-be burglars!

¹ For the unindoctrinated, a *Nacho Libre* reference

² See Cal. Code Civ. Proc., § 338, subd. (c).



Cubbie (left) and Jager (right). They are the Yorkipoo and Schnauzer of Lauren Vogt, member-at-large of the Barristers.

Privileged to be their dog-servant, when Lauren isn't serving her personal injury clients, she's at home serving Jager with snuggles. All the while Cubbie sits upon his white tower to observe the peasants as they pass by.

Zoey is a Golden Retriever of Megan Demkshi, immediate past president of the Barristers.

On the eve of closing statements after a particularly lengthy trial and many late nights at the office, Megan received a text message from her husband: "I think I'm ready for that dog we keep talking about." The jury came back on a Friday afternoon, and by Sunday morning, Zoey was in the car on the way to her new home.



Barristers Hike to Mt. Rubidoux

As lawyers we spend far too much time in our office and away from our furry-family members. Last year, we had our first group hike up Mt. Rubidoux. Unfortunately there were simply not enough furristers in attendance. Let's change that this year. Come join us for a morning hike on November 2, 2019. We'll meet at Ryan Bonamino Park at 8:30 a.m. The hike will begin around 9:00 a.m. After



*December 1, 2018
Barristers Hike to Mt. Rubidoux.*

the hike, we'll meet at Heroes for brunch and drinks. We will be sitting outside, so bring your furry friends!

Upcoming Events:

- Thursday, October 3 – The Barristers and JAMS bring you a MCLE and a beer tasting. Join us at 5:00 p.m. at the Riverside Law Library for a beer tasting and appetizers, with Elimination of Bias MCLE to follow.
- Friday, October 18 – Happy Hour at Retro Taco, starting at 5:00 pm.
- Saturday, November 2 – Hike with the RCBA Furristers! Meet at 8:30 a.m. and the hike starts at 9:00 a.m. Outdoor Brunch at Heroes immediately after.
- Friday, November 15 – Happy Hour at Probation Whiskey Lounge, starting at 5:00 p.m.

Follow Us!

Stay up to date with our upcoming events on the following:

- Website: RiversideBarristers.org
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- Instagram: [@RCBABarristers](https://www.instagram.com/RCBABarristers)

Paul Leonidas Lin is an attorney at The Lin Law Office Inc. located in Downtown Riverside where he practices exclusively in the area of criminal defense. He is the Immediate Past President of the Asian Pacific American Lawyers of the Inland Empire (APALIE) Paul can be reached at PLL@TheLinLawOffice.com or (951) 888-1398.



*** 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) 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).

Thank you.

PETS AS PROPERTY OR FAMILY?

by Marcus King

According to the 2017-2018 APPA National Pet Owners survey, 68 percent of U.S. households own a pet. The importance of pets to their owners is illustrated by the 2019-2020 American Pet Products Association survey, which found that people spent an all-time high on their pets in the forms of pet care supplies and services - \$72.56 billion dollars. That is a rise of \$3 billion dollars when compared to 2017. But, how does the law deal with the issue of pet custody, i.e., who is awarded a pet during a divorce? Pets are property, right? Or are they?

Here, in California, pet owners who are separating can breathe a sigh of relief. California Assembly Member Bill Quirk sponsored a bill that was signed into law by Governor Jerry Brown. That law, AB2274, gives the courts the discretion to consider the care of the pet animal in creating custody agreements regarding pets during divorce proceedings.

When going through a separation or dissolution of marriage, property isn't always the most important issue. Ask some couples and they will say that their children are the most important issue in their mind as they go through a divorce. Ask others and they will say that their pet is the most important issue to them, even to some couples that have children.

Custody, and even visitation of pets are important matters of contention in the largest of states, such as California, all the way down to the smallest state, Rhode Island. Perhaps, contract law should control the issue. In a decision from April this year, the Rhode Island Supreme Court affirmed the lower court's decision that kept a Marital Settlement Agreement (MSA) intact, which gave custody of the dogs to the wife, and twice-a-week visitation to the husband.¹

There are not many published cases providing the court guidance on how to handle the custody of pets. When looking at case law, one key case is *Ballas v. Ballas* (1960) 178 Cal.App.2d 570. The case involved a wife appealing an interlocutory that awarded their Pekingese dog to the husband. Because the wife was the only person pursuing the dog, the court said it was immaterial whether the dog was community property or separate property. Unfortunately, however, this case may be of limited utility as the facts of the case seem to only stand for the proposition that custody goes to the

person requesting custody when there is not a dispute between the parties on the issue. This case does not address the complex issues involving pets when custody is contested.

In 2017, Alaska was the first state to enact a law that considered a pet's best interest (mirroring child custody jurisprudence). This was followed by Illinois in 2018, and then, California became the third. With the majority of pet custody battles having to do with dogs at 88 percent, and 6 percent other (other pets which range from lizards to reptiles and everything in between), the law gives much needed discretion to the courts. Courts look at factors such as who has taken care of the needs of the pet, and this is a step in the right direction for an issue that will undoubtedly continue to come up in divorce proceedings.

Ultimately, the law is changing and changing fast in this area of the law and I predict that soon, who gets custody of the Shih Tzu may be the next cutting edge issue of family law.

Marcus King is a second-year law school student at the University of La Verne College of Law, clerked with the Law Offices of the Riverside County Public Defender in the summer of 2019, and is the proud dog-dad of Coffee, who is a Min Pin.



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¹ *Giarrusso v. Giarrusso* (2019) 204 A.3d 1102.

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J. F. SHEA CENTER: IMPROVES THE LIVES OF PEOPLE WITH DISABILITIES THROUGH THERAPEUTIC HORSE-RELATED PROGRAMS

by Robyn Lewis

I am the proud mama of nine year old triplet boys, Hayden, Henry, and Noah, and a five year old daughter named, Finley.

Hayden was diagnosed with autism at a very early age. We also discovered that he has 15q11.2 syndrome, which is a chromosomal deletion. For the entirety of his life, Hayden has been non-verbal. While he can understand everything that you say to him, he is unable to speak any words.

Hayden being non-verbal has been one of the biggest challenges that my husband and I have ever faced. In our experience, conventional speech therapy was not a help for our son. Initially, we were told that he was not cognitively ready to begin speech services.

We have since learned that putting a child in speech services sooner than later increases that child's chances of becoming verbal. Time and time again, we noticed that therapists and even people who worked with him at his school were under the impression that just because Hayden could not talk, he could not think. And nothing could be further from the truth.

Fed up, I began a crusade to try and find help for Hayden in whatever way I could. I learned that Hayden was not only autistic, but that he had a condition known as Developmental Verbal Dyspraxia. For children like Hayden, the brain struggles to develop plans for speech movement. With this disorder, the speech muscles aren't weak, but they don't perform normally because the brain has difficulty directing or coordinating the movements. Hayden's autism and the possible effects of his chromosomal deletion compound his ability to benefit from therapy for this condition.

Unfortunately for our family, there are not many speech therapists who are experienced with children like Hayden. My husband and I were devastated for him. Imagine a life where you cannot communicate what you want or how you are feeling. Hayden had learned a few signs for basic needs but we would feel helpless whenever we would see him look sad or when he would cry. I was determined to find a way to help him communicate in whatever way I could.

Thankfully, we were blessed to find the J. F. Shea Center for Therapeutic Riding, which is located in San Juan Capistrano, CA. The mission statement of the Shea Center is: "to improv[e] the lives of people with disabilities through therapeutic horse related programs."



Hayden with his therapist and volunteers from the Shea Center.

The Shea Center, which is now a non-profit organization, was founded in 1978 by Nancy and Derek Lewis. Their son, Michael, suffered from cerebral palsy. The Lewis family began a center where disabled persons, like their son, could benefit from the therapeutic nature of horse back riding.

Today, the Shea Center is internationally recognized as a premier therapeutic riding training facility. It now serves over 1,200 participants each year and provides more than 14,000 hours of client services annually. Utilizing 23 horses and the assistance of more than 800 community volunteers, the Shea Center has grown to be an organization with a \$4 million annual operating budget.

Hayden began a riding program at the Shea Center when he was about four years old, which is known as "hippotherapy." Hippotherapy means "treatment with the help of a horse" from the greek word "hippos," which means horse. There are several types of hippotherapy: speech therapy, physical therapy, and occupational therapy. Hayden initially began speech therapy at the Shea Center. Due to other medical issues that he developed, he also has benefitted from physical therapy and occupational therapy as well.

The patient in hippotherapy, like Hayden, receives therapeutic services while on horseback. The movement of the horse creates a combination of sensory, motor, and neurological input. The Shea Center explains on its website: "Horses used in a therapy setting have received substantial specialized training in order to optimize the movement quality transmitted to the client. The movement of the horse is multi dimensional and provides simulation of what a normal walking pattern should feel like. It is rhythmic, consistent, and predictable, like human walking. The repetitive movement allows the rider many opportunities to practice and refine balance responses, leading to improvements in core stabilization and postural control. The movement of the horse cannot be duplicated by any piece of equipment. The dynamic movement of the horse, combined with the dynamic environment, lead to functional change."

With his autism, Hayden engages in frequent "stimming" behavior. The term "stimming" is short for self stimulatory behavior. In a person with autism, stimming usually refers to specific behaviors that include hand flapping, rocking, spin-

ning, or repetition of words and phrases. For Hayden, he will flap his arms up and down or make repetitive noises. That type of behavior can often distract Hayden during conventional therapy.

The minute that he got on the horse for the first time at the Shea Center, Hayden was like a different kid. The sensory input that he received while riding caused him to calm down in a way that I had never really seen before and allowed him to focus. With the help of his amazing speech therapists at the Shea Center, Hayden slowly began to be able to say words for the first time.

The Shea Center offers services to persons of all ages and who have all different types of disabilities. We know a middle school aged boy who suffered a stroke and received rehabilitative services at the Shea Center. There is a woman who rides with Hayden suffering from ALS. She was diagnosed with that terrible disease while pregnant with her second child. Hayden used to ride with a physician who became paralyzed in a ski accident. The Shea Center helps those with “developmental delay, cerebral palsy, autism spectrum disorder, brain injury, sensory processing disorders, functional curvature of the spine, neuromuscular dysfunction, genetic syndromes, dyspraxia, or developmental coordination disorder.”

The Shea Center also offers programs for military families and local senior community members. It also hosts a summer camp for children with and without special needs. My daughter, Finley, participated this past summer. While she already has developed empathy for those different from her because of

her brother, I was so pleased to see her have the opportunity to get to know other children who are different from her and learn compassion for others on an entirely different level.

I cannot say enough about the Shea Center. It has been an amazing place for our son. While Hayden has had some setbacks and is still unable to speak conversationally, I have been blessed to hear him say “mom” and “want tickles.” Without the services and the support that he has received at the Shea Center, I doubt he would have come as far as he has.

I would encourage you to go to the Shea Center website at <https://www.sheacenter.org>. There are volunteer opportunities as well as opportunities to donate money. In particular, there is a “Drive to Ride” fundraiser that my family participates in every year. The Drive to Ride campaign is a way to raise funds for priority programs, client financial aid, and horse care. “This grass roots campaign is unique in that it gives everyone an opportunity to participate by either sharing their story or supporting a team story.”

Having a child with special needs can be extremely difficult and isolating. But having the blessing of being able to be part of an organization like the Shea Center, has been an amazing opportunity for our family and for Hayden. It has given our family hope for Hayden and has made us feel like part of a larger family.

Robyn Lewis is with the firm of J. Lewis and Associates, APLC, chair of the New Attorney Academy, and a past president of the RCBA.



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THE ENDANGERED SPECIES ACT AND ITS INTERACTION WITH RIVERSIDE COUNTY

by Ali Tehrani

The County of Riverside boasts an ecological treasure trove of biodiversity. Over thirty threatened and endangered species call Riverside County home; from the Delhi Sands flower-loving fly to the Stephens' kangaroo rat (SKR).¹ Riverside County's charms, however, have increasingly attracted another species to its midst: *Homo sapiens*.² When humans populate areas inhabited by endangered species, tensions can arise between the need to preserve biodiversity and the need to accommodate development and economic growth. The Federal Endangered Species Act (ESA)³ has an impact on these oft-competing needs. This article provides a brief overview of the ESA and discusses how the ESA impacts development in Riverside County, how the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)⁴ eases regulatory burdens on development while promoting conservation, and recent changes to the regulations implementing the ESA.

The Endangered Species Act: A Brief Overview

The ESA seeks to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and to “provide a program for the conservation of such endangered species and threatened species.”⁵ To achieve these goals, the ESA includes several key provisions:

- Section 4 of the ESA governs the listing of species as threatened or endangered, and provides for the designation of “critical habitat” for listed species;⁶
- Section 7 of the ESA requires federal agencies to consult with the United States Fish and

Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration before implementing a federal project or issuing a discretionary approval (e.g., a permit under the Clean Water Act) for a private project;^{7, 8}

- Section 9 of the ESA prohibits the “take” of listed species;⁹
- Section 10 of the ESA authorizes the “incidental” take of a listed species, subject to permitting and conditions;¹⁰ and
- Section 11 of the ESA provides for substantial civil and criminal penalties, as well as injunctive relief, against any person or entity that knowingly violates the ESA.¹¹

To illustrate how these provisions work together, imagine that a company seeks to grade a vacant, privately-owned plot of land. The project does not appear to require any federal permit or license, and federal funding is not involved, so no “formal” consultation is necessary under Section 7 of the ESA. Bulldozers are lined up. Engines are revving. Before grading begins, a cry rings out. SKR—a species listed as “endangered” under Section 4 of the ESA—has been spotted in the project area. Development activity grinds to a halt. Why? Because Section 9 of the ESA strictly prohibits the “take” of any listed species, even where an entity seeks to engage in activity on its own land. To protect listed species, the ESA broadly defines “take” to include, among other things, the killing, harassment¹² or harming¹³ of a listed species.¹⁴ Rather than risk a “take” of the SKR and the associated penalties, the developer must obtain an “incidental take permit” (ITP) from the USFWS under Section 10 of the ESA.

1 See MSHCP, pp. 4.1-14 through 4.1-28, accessible at: http://wrcrca.conserveriverside.com/wrcrca/Permit_Docs/MSHCP_Docs/volume4/Vol4-Sec4.pdf.

2 Indeed, a recent United States Census Report lists Riverside County as the fifth fastest growing county in the nation. (Riverside is One of the Fastest Growing Counties in the County <<https://www.nbclosangeles.com/news/local/Riverside-LA-Counties-Rank-population-Growth-US-Census-508769041.html>> (2019).)

3 The ESA has a State counterpart, the California Endangered Species Act; this article, however, will focus primarily on the ESA.

4 Notably, the Coachella Valley also has its own multiple species habitat conservation plan.

5 16 U.S.C. § 1531, subd. (b).

6 16 U.S.C. § 1533.

7 16 U.S.C. § 1536.

8 Consultation with USFWS is required for most species; consultation with NMFS is required for marine species.

9 16 U.S.C. § 1538.

10 16 U.S.C. § 1539.

11 16 U.S.C. § 1540.

12 “Harassment” of a listed species is defined to include negligent acts that create the likelihood of injury to wildlife. (50 C.F.R. § 17.3.)

13 The harming of a listed species is defined to include “significant habitat modification” in certain circumstances. (50 C.F.R. § 17.3.)

14 16 U.S.C. § 1532(19).

Historically, the process of obtaining an ITP (or an incidental take statement where Section 7 consultation is required) could be costly—taking years and significant financial resources to complete.¹⁵ Notably, the USFWS cannot issue an ITP unless (1) the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity;¹⁶ (2) the applicant submits a proposed habitat conservation plan (HCP) that outlines, among other things, the project’s impacts, the steps the applicant has taken to minimize and mitigate such impacts, and alternatives to the project that would avoid the taking; and (3) the USFWS determines that, among other things, the applicant’s HCP will, to the maximum extent practicable, minimize and mitigate the impacts of the taking and that the applicant will ensure that adequate funding for the plan will be provided. Thankfully, at least in western Riverside County, ESA compliance has been streamlined with the implementation of the Western Riverside County MSHCP.

The MSHCP: Protecting Biodiversity and Streamlining ESA Compliance

In 2004, the USFWS and the California Department of Fish and Game¹⁷ issued approvals for the MSHC, which is a plan that would revolutionize ESA compliance in western Riverside County. Before the MSHCP, an entity seeking an ITP in western Riverside County would have to submit an HCP that generally entailed setting aside acreage as a habitat preserve for the particular species impacted by the entity’s project. The multi-year process to receive such a permit not only burdened development, but also resulted in an assemblage of unconnected habitats that was less than ideal for conservation of listed species. As set forth in the MSHCP, this “piecemeal and uncoordinated effort to mitigate the effects of Development does not sustain wildlife mobility, genetic flow, or ecosystem health, which require large, interconnected natural areas.”¹⁸

To better conserve species, the MSHCP provides for a 500,000-acre conservation area (Plan Area) that benefits 146 covered species, including over 30 species currently listed under the Federal ESA and the California ESA. As a result, a developer in western Riverside County no longer must spend years and significant financial resources developing a stand-alone HCP to mitigate its project’s impacts on a particular species. Rather, as long as the

species impacted is one of the 146 species covered by the MSHCP, the developer can generally obtain an ITP and meet its obligations under the ESA, the California ESA, the California Environmental Quality Act, and other laws and regulations relating to biological resources in Riverside County by complying with the MSHCP. Compliance with the MSHCP often entails, among other things, payment of local development mitigation fees to the relevant land use jurisdiction (city or Riverside County). The land use jurisdiction then remits these fees to the Western Riverside County Regional Conservation Authority,¹⁹ which uses these fees to obtain additional conservation lands and to oversee conservation in the Plan Area. The MSHCP thus not only facilitates development and improves conservation; it also empowers local government.

The ESA in Flux

The ESA can be complicated and, at times, challenging to apply. These complications are exacerbated by developments in case law and changes to the ESA’s implementing regulations. Notably, in August 2019, the U.S. Department of the Interior announced over 30 changes to the ESA’s implementing regulations, many of which changes could be viewed as streamlining ESA implementation or facilitating development. These changes predominantly relate to Section 4 (governing the listing of species as threatened or endangered and the designation of critical habitat) and Section 7 (governing consultation with the USFWS or NMFS where the project has a federal nexus) of the ESA.²⁰ Notably, the changes also include a withdrawal of USFWS’ blanket rule that threatened species are entitled to the same protections as endangered species.

These changes to the ESA regulations, however, have lesser application in Riverside County, where the forward-thinking of local public officials in both the western county and in the Coachella Valley resulted in region-wide HCPs that facilitate ESA and California ESA compliance.

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¹⁵ 16 U.S.C. § 1539.

¹⁶ This means that if the purpose is to build a house, the developer can get a permit. But, a person cannot get an ITP just to kill a listed species for sport.

¹⁷ The California Department of Fish and Game is now known as the California Department of Fish and Wildlife (CDFW). CDFW implements the California Endangered Species Act and the Natural Communities Conservation Planning Act under state law.

¹⁸ MSHCP, p. 1-4.

¹⁹ The Western Riverside County Regional Conservation Authority is a joint powers agency comprised of one elected official from each of the eighteen participating cities in western Riverside County and the members of the County Board of Supervisors

²⁰ The revised regulations can be found on USFWS’ website, at https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html

WHO IS THAT DOGGY IN THE COURTROOM AND DOES IT BELONG THERE?

by Michael Geller

If you go into a courtroom today, you may see someone with a dog. While not common, not unheard of either. What are these dogs and why are they there?

Service Dogs

Service dogs are dogs that are specially trained to do work or perform tasks for a person with any disability, as defined by the Americans with Disabilities Act (ADA). Guide dogs provide assistance to blind or other sight impairments. Hearing dogs provide assistance to those who are hearing impaired by notifying them of certain noises or even the owner's names if so trained. For physical disabilities, service dogs can pick up dropped objects, retrieve objects by name, pull a wheelchair or provide other assistance that can be performed with the paws or a dog's mouth. Then there are also dogs trained to detect seizures or serious changes in blood sugar for diabetics. The key here is they have to be specially trained to assist with the disability, regardless of what it is.

With a few minor exceptions, service dogs may go with their owners anywhere people can go. That includes food service establishments, stores, restaurants, hospitals, doctor's offices, and travel in the cabin of an airliner and yes, even the courtroom.

While not in the ADA, for many years California has recognized that a dog cannot be prepared to assist a disabled person without training. California allows legitimate trainers of service dogs to take their dogs anywhere that a service dog can go.¹ While the law is unclear about exactly what is a "certified trainer," the Court of Appeal in *Miller v. Fortune Commercial Corp.*,² decided what a trainer is not. The court in *Miller* determined that the training exception is not a license to take your untrained dog anywhere under the guise of training and the Court set at least a minimum standard for the training exception.

What is still undecided, is whether or not an employer is required to accommodate a service dog in training by an employee. There is nothing in the law to require that an employer allow someone to train a service dog during working hours or bring their trainee dog to work every day. However, there are many corporations and government entities of all sizes that have embraced service dog

training and allow their employees to do it and in some cases, even sponsor a dog. The California Supreme Court recently refused to sanction a judicial officer who trained seeing-eye dogs while on the bench.

Therapy Dogs/Emotional Support Dogs

Most importantly, therapy dogs or emotional support animals are not service dogs. Except as otherwise provided by other laws, they are not allowed by law anywhere that people go and are not allowed in health department licensed food service establishments, including markets and restaurants.

However, since courts are not otherwise prohibited from allowing dogs in their location, it is up to the judge or presiding judge, as to whether or not to allow therapy dogs or emotional support dogs into the courtrooms. The courts have no authority to prohibit actual service dogs or service dogs in training.

Facility Dogs

Some service dog groups, including Canine Companions for Independence (CCI), provide fully trained dogs to qualified facilities or organizations for support or assistance. This includes law enforcement agencies, district attorney's offices and related organizations not for law enforcement but to assist witnesses, particularly very young witnesses called to testify in a court. There is nothing like a wet nose to provide a child with comfort.

Fake Service Dogs

It has been reported that as many as 80% of service dog owners have been accosted or bitten by a "fake" service dog.

A fake service dog is one that either is not trained to assist someone with a disability or, is being presented by someone who is not actually disabled pursuant to the ADA. Most fake "service dogs" are simply poorly trained pets that the owner wants to bring with them wherever he/she goes and attempts to exploit the law, which takes people at their word.

While at the present time there is no national certification, and while it is illegal to ask for identification or certification documents, one can ask "Is this dog a service animal required because of a disability?" and, "What work or task has the dog been trained to do?". These are the

¹ Civil Code §54.2(b).

² 15 Cal. App. 5th 214 (2017)

only two questions one can ask of a service dog owner. If they can't answer the second question, it is probably not a service dog. If the answer is something like "he keeps me calm", that is probably not a service dog and most likely an emotional support dog.

You also can't test the dog or the owner and you generally have to take the statements at face value. Contrary to popular belief the dog does not require a vest or other form of identification. However, it is a crime to misrepresent a service dog. Penal Code section 365.7 makes it a misdemeanor to knowingly and fraudulently represent one's self to be the owner or trainer of a guide, signal, or service dog.

What Does It Take to be a Service Dog?

Canine Companions for Independence (CCI) as the largest and oldest service dog provider believes it takes about 22-24 months to train a

service dog from birth. Of that time, about 16 months are spent with a puppy raiser who takes a 2-month old puppy and trains them with 25 commands, socializes them and trains them to work and function in the human world. After that, they are turned into the facility and work with professional trainers for about 6 months minimum to learn their specific job. When fully trained, they know over 40 commands total.

How Can You Identify a Fake Service Dog?

Bad behavior. A properly trained service dog will ignore most outside influences, including other dogs, people, and even food on the floor. A properly trained service dog will generally not bark unless commanded to and will not sniff or otherwise make any inappropriate contact with anyone or anything. A disabled person will not allow their service dog to sit on furniture in public places and will not feed

their dog in a restaurant. Anyone doing any of these things is probably a fake.

Michael Geller is a sole practitioner in Riverside (msg@mglawinc.com) specializing in motor vehicle law. Mr. Geller has been a puppy raiser of service dogs for almost 15 years and is currently raising Marcel III for CCI. (cci.org), which is his 13th service dog puppy. You will often see Mr. Geller around the local courts with a dog in tow.



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EVERYONE DOESN'T GET A TROPHY: REGULATING INTERNATIONAL TROPHY HUNTING

by David P. Rivera

I. Trophy Hunting: A Backdrop

Four years ago, an American dentist killed Cecil the lion, drawing international outrage over the practice of trophy hunting.¹ Trophy hunting is the recreational killing of animals with desirable characteristics for the purpose of preserving one or more of their body parts as a souvenir or memento of achievement.² These tokens—skulls, teeth, claws, horns, hides, or any other body parts—are frequently harvested from big game wildlife.³

Some of Earth's most iconic species are vanishing even as trophy hunting persists. At the start of the 20th century, the rhino population exceeded 500,000.⁴ Today, there are fewer than 30,000 rhinos.⁵ In 1900, the elephant population exceeded 10,000,000.⁶ Today, there are approximately 415,000 elephants.⁷ In 1900, the African lion population was 1,000,000.⁸ Today, there are no more than 35,000 African lions.⁹

Trophy hunting should be distinguished from poaching, which, together with habitat loss, is arguably the greatest threat to the survivability of some species.¹⁰ Nonetheless, the foregoing statistics support a concern

that trophy hunting is at odds with the conservation of wildlife species and is therefore unsustainable.

This article provides a brief overview of the international legal framework that regulates trophy hunting. It also examines how that framework is actualized under United States law. Lastly, it broadly examines the supporting and opposing arguments that trophy hunting aids conservation. This article does not examine domestic trophy hunting.

II. Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)—a multilateral treaty between the United States, 181 other countries, and the European Union—is the leading international effort to curb trophy hunting. It does not directly regulate the hunting of wildlife species in range countries (i.e., countries in which hunted species reside). Instead, it seeks to ensure that trade does not threaten wildlife species' survival in the wild. The treaty is not self-executing; it obliges CITES parties to adopt regulations that implement its conservation goals.¹¹

CITES is founded on a permit system that authorizes which species and related trophies can be exported from a range country and imported to a destination country.¹² To implement this system, CITES requires that each signatory designate a Management Authority and a Scientific Authority.¹³ Management Authorities ensure that CITES-protected species are traded legally with valid permits. Scientific Authorities determine whether trade in a protected species would harm that species' survival in the wild.¹⁴

Species protected by CITES are categorized into one of three lists, called appendices, depending on the

1 Jani Actman, *Nat'l Geog., News, Cecil the Lion Died amid Controversy—Here's What's Happened Since* <<https://www.nationalgeographic.com/news/2016/06/cecil-african-lion-anniversary-death-trophy-hunting-zimbabwe/>> (Oct. 15, 2018).
2 Mark Carwardine, *Discover Wildlife Home, Animal Facts, An Intro. to Trophy Hunting* <<https://www.discoverwildlife.com/animal-facts/an-introduction-to-trophy-hunting/>> (accessed Sept. 18, 2019) [hereinafter *Intro. to Trophy Hunting*]; Pervaze A. Sheikh & Lucas F. Bermejo, *Cong. Research Serv., Int'l Trophy Hunting* <<https://crsreports.congress.gov/product/pdf/R/R45615>> (Mar. 20, 2019).
3 *Intro. to Trophy Hunting, supra* n. 2.
4 Helping Rhinos, *About Rhinos, Why Are Rhinos Still an Endangered Species?* <<https://www.helpingrhinos.org/why-are-rhinos-endangered/>> (accessed Sept. 18, 2019).
5 *Id.*
6 U.S. Fish & Wildlife Serv., *Int'l Affairs, Publ'n & Media, Fact Sheets, African Elephant Conserv'n Fund* <<https://www.fws.gov/international/pdf/factsheet-african-elephant.pdf>> (Aug. 2014).
7 *Id.*
8 Maulline Gragau, *The African Exponent, World, Lions in Kenya Threatened with Extinction* <<https://www.africanexponent.com/post/9910-kings-of-the-jungle-likely-to-be-wiped-out-within-20-years>> (Mar. 21, 2019).
9 *Id.*
10 Int'l Union for Conserv'n of Nature, *Informing Decisions on Trophy Hunting* <https://www.iucn.org/sites/dev/files/iucn_sept_briefing_paper_-_informingdecisionstrophyhunting.pdf> (last updated Apr. 2019).

11 Conv. on Int'l Trade in Endangered Species of Wild Fauna and Flora, *Discover CITES, About CITES, What Is Cites?* <<https://cites.org/eng/disc/what.php>> (accessed Sept. 18, 2019).
12 U.S. Fish & Wildlife Serv., *Int'l Affairs, CITES, CITES 101* <<https://www.fws.gov/international/cites/cop16/fws-news-spotlight-on-cites.pdf>> (accessed Sept. 18, 2019).
13 U.S. Fish & Wildlife Serv., *Int'l Affairs, CITES, How CITES Works* <<https://www.fws.gov/international/cites/how-cites-works.html>> (accessed Sept. 18, 2019) [hereinafter *How Cites Works*].
14 *Id.*

protection those species are to be accorded.¹⁵ Appendix I, which provides the greatest safeguards, includes 931 species threatened with extinction.¹⁶ Trade in Appendix I species for commercial purposes is prohibited outright.¹⁷ Trade for primarily non-commercial purposes is permitted, provided that export and import permits are first received.¹⁸ Those permits are available only upon a finding by the proper Scientific Authority that taking the animal will not harm the species' survival odds.¹⁹ (This is known as a "non-detriment finding" or "NDF".)²⁰

Appendix II includes 34,419 species that are not necessarily facing imminent extinction, but whose trade requires oversight to forestall threat.²¹ Trade is permitted to the extent that an animal was legally obtained and an export permit, supported by an NDF, has issued.²² An import permit is not required unless national law provides otherwise.²³

Appendix III includes 147 species that are listed at the request of at least one CITES party for the purpose of enlisting aid from other CITES parties to regulate trade in that species.²⁴ Export permits are required, but they need not be supported by an NDF.²⁵ Import permits are not required.²⁶

III. United States' Implementation of CITES

In the United States, CITES is enforced through the Endangered Species Act ("ESA"), which prohibits "any person subject to the jurisdiction of the United States [from] engag[ing] in any trade in any specimens contrary to the provisions of the Convention [i.e., CITES]..."²⁷

The CITES-required Management and Scientific Authorities are vested by the ESA in the Secretary of the Interior, which is tasked with implementing CITES. However, the functions of those Authorities are actually carried out by the United States Fish and Wildlife Service ("FWS") as part of the Department of the Interior.²⁸

Under the ESA, protected species may be listed as endangered or threatened.²⁹ Species are designated as

endangered or threatened "solely on the basis of the best scientific and commercial data available" through consultation with interested parties, including foreign governments, and subject to international conservation agreements.³⁰

An "endangered species" is "any species which is in danger of extinction throughout all or a significant portion of its range."³¹ A "threatened species" is "any species which is likely to become an endangered species within the foreseeable future."³²

If a species is listed as endangered, it generally cannot be imported to, or exported from, the United States.³³ It is also illegal to sell, deliver, receive, carry, transport, or ship endangered species.³⁴

Until recently, FWS automatically granted to threatened species the same maximum protections enjoyed by endangered species. On August 12, 2019, the Trump administration announced that, going forward, this will no longer be the case. Beginning 30 days after publication of this change in the Federal Register, new additions to the threatened species list will be evaluated on a case-by-case basis to craft species-specific protections.³⁵

It is important to note that it remains possible to import trophies of protected species into the United States. To do so, FWS must first issue an import permit upon a rare finding that the import is for purposes that enhance the propagation or survival of the imported species. The ESA's requirement for this "enhancement finding" is a higher standard than CITES' requirement for an NDF. Enhancement findings can be substantiated only when a trophy is taken from a well-managed and supported conservation hunting program.³⁶

IV. Enhancing Conservation Through Trophy Hunting?

Killing wildlife species to spur population growth seems counterintuitive. In theory, however, trophy hunting revenues can be used as a means to fund range countries' conservation efforts. Examples of such efforts include the maintenance of hunted wildlife populations,

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Fish & Wildlife Serv., *Int'l Affairs, CITES, How CITES Works* <<https://www.fws.gov/international/cites/how-cites-works.html>> (accessed Sept. 18, 2019) [hereinafter *How Cites Works*].

¹⁸ *Id.* at art. II, III § 2-3.

¹⁹ *Id.* at art. III § 2-3, VII § 2.

²⁰ *Id.*

²¹ *How CITES Works, supra* n. 13.

²² *CITES Treaty, supra* n. 17, at art. IV § 2.

²³ *Id.* at art. IV; *How CITES Works, supra* n. 13.

²⁴ *How CITES Works, supra* n. 13.

²⁵ *CITES Treaty, supra* n. 17, at art. IV.

²⁶ *Id.*

²⁷ 16 U.S.C. § 1538(c)(1).

²⁸ *Id.* at § 1537a(a).

²⁹ *Id.* at § 1533(a)(1).

³⁰ *Id.* at (b)(1).

³¹ *Id.* at § 1532(6).

³² *Id.* at (20).

³³ *Id.* at § 1538(a)(1)(A).

³⁴ *Id.* at (D)-(F).

³⁵ U.S. Fish & Wildlife Serv., *Newsroom, 8/12/2019, Trump Admin. Improves the Implementing Regulations of the Endangered Species Act* <https://www.fws.gov/news/ShowNews.cfm?ref=trump-administration-improves-the-implementing-regulations-of-the-&_ID=36443> (Aug. 12, 2019).

³⁶ U.S. Fish & Wildlife Serv., *What We Do, Foreign Species FAQ* <<https://www.fws.gov/endangered/what-we-do/foreign-species-faq.html#>> (last updated Dec. 6, 2018).

maintenance of their habitats, and enforcement of anti-poaching measures.³⁷

Translating theory into practice is difficult, in large part because killing additional animals through trophy hunting can exacerbate circumstances in the face of plausible obstacles. For example, range countries might lack the political will to strengthen and implement conservation laws. Likewise, they might lack the resources necessary to conduct accurate population surveys, protect and restore habitats, or enforce anti-poaching measures. Corruption might divert funds from conservation efforts. Moreover, corruption might actually encourage mismanagement of trophy-hunted species for improper financial gain.³⁸

One example of conservation success can be found in Namibia's use of selective trophy hunting. Namibia auctions hunting permits for special hunts that fall within science-backed quotas. These hunts generate considerable income. In one recent auction, an American hunter paid \$350,000 for a permit to hunt an aging black rhino. Namibia deposited the permit proceeds into its Game Products Trust Fund, which it then used to successfully administer the country's Black Rhinoceros Conservation Strategy. FWS issued an import permit for the hunter's rhino trophy after finding that it would enhance the propagation or survival of the endangered species.³⁹

V. Summary

Trophy hunting is viewed by some as an undesirable contributing factor to the declining populations of many wildlife species. Mindful of this concern, the United States and 182 other parties have signed the CITES treaty to regulate international trade in wildlife trophies. The primary mechanism for doing so is a permitting system that requires conservation-related findings for trading trophies of the most protected species. As a consequence, everyone won't get a trophy and that's okay.

David P. Rivera is a solo practitioner of business law in Highland. He is the treasurer of the Riverside Barristers, a director-at-large of the Hispanic Bar Association of the Inland Empire, and a member of the RCBA Bar Publications Committee.



³⁷ Raul M. Grijalva, H.R. Comm. on Nat'l Res., Media, Reports, *Missing the Mark: African Trophy Hunting Fails to Show Consistent Conserv'n Benefits* <<https://naturalresources.house.gov/imo/media/doc/Missing%20the%20Mark%20Final.pdf>> p. 12-13 (June 13, 2016).

³⁸ *Id.* at 13-14.

³⁹ *Id.* at 15-16.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective October 30, 2019.

Edith Angeliyan-Seitz – Inland Counties Legal Services, San Bernardino

Kristy M. Arevalo – McCune Wright Arevalo LLP, Ontario

Nida P. Channah – Gibbs & Fuerst LLP, Murrieta

Leah Christensen – McCune Wright Arevalo LLP, Ontario

Roberto Grijalba Garcia – Stream Kim Hicks Wrage & Alfaro PC, Riverside

Mary J. Hanna – Office of the City Attorney, Riverside

Emily C. Headlee – Office of the County Counsel, Riverside

Christopher Steven Hernandez – Law Office of Christopher Hernandez, Fullerton

Anthony L. Kim – Inland Counties Legal Services, Rancho Cucamonga

Justin H. King – Law Offices of Justin H. King, Rancho Cucamonga

Rebecca E. Nasrallah – Law Student, Fontana

Tuan Q. Nguyen – McCune Wright Arevalo LLP, Ontario

Dustin Nirschl – Turoci Bankruptcy Firm, Riverside

Erik C. Oh – Inland Counties Legal Services, Riverside

Mario M. Oropeza – Ford Walker Haggerty & Behar LLP, Corona

Kenny S. Ramirez – Girardi & Keese, San Bernardino

Danielle Reyes – Law Student, Anaheim

Mark I. Richards – McCune Wright Arevalo LLP, Ontario

Phillip C. Selio – Law Student, Ontario

Sanae Shinotsuka – Inland Counties Legal Services, San Bernardino

Marsha L. Smith – Lester & Cantrell LLP, Riverside

Jamie L. Traxler – Law Student, Riverside

Michele M. Vercoski – McCune Wright Arevalo LLP, Ontario

Brigitte Melissa Wilcox – Solo Practitioner, Corona

David C. Wright – McCune Wright Arevalo LLP, Ontario





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WHO ARE NEXT GENERATION'S MURDERERS?

by Jessica Jerving

The current state of our country is that mass-shootings are the new normal. Many people do not even bat an eye when they hear on the news that there was another school shooting or mass murder at a festival or shopping center. Parents now have to talk to their children about what to do if they see someone wielding a gun at their school. Now that our environment has been so infected and numbed by the normalcy of an angry man writing a manifesto and shooting everyone in sight; it is important not only to have the debate and discussion in our country about gun control, but also about awareness in the community of dangers that have not yet manifested into tragedies.

As stated by American Anthropologist Margaret Mead, "one of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it." It is a commonly held belief that childhood cruelty to animals has some sort of correlation to criminality or aggression towards people whether later in adolescence or adulthood. The American Psychiatric Association added physical cruelty to animals as a diagnostic tool for childhood conduct disorder in the *Diagnostic and Statistical Manual of Mental Disorders 5* (DSM). It is also common for probation departments to use a history of animal abuse in youth as a red flag for treatment in juvenile court systems. The U.S. Department of Justice¹ has recognized animal abuse in assessing risks of future violence, as well as the FBI² seeing animal cruelty in profiling serial killers.

Although several studies have been done over time to determine what the correlation is between animal cruelty and adult interpersonal aggression; the question lies on where does this behavior originate? Is it a result of childhood trauma, early onset of mental illness or both?³ What else could motivate children to hurt animals? Does this aggression towards animals assist in creating a desire to harm people in the future, or is it just a symptom of the bigger problem? Of course in an article about animals, it be "hoof" 's me to ask: what comes first ... the proverbial chicken or the egg?

Let's talk research. Miller and Knutson (1997) did a study examining the difference between incarcerate males versus college undergraduates and not surprisingly the percentage of felony offenders committing animal abuse was significantly higher.⁴ A 1999 study in a South African prison where men were surveyed about their own self-reported animal abuse, of the 58 men who committed violent crimes over 63 percent had com-

mitted some act of animal cruelty.⁵ Wright and Hensley (2003) researched the link between childhood animal cruelty and serial murderer, and found a link through a number of case studies showing an escalation of violence from animal cruelty to human violence.⁶ The research in this field is voluminous, too much for this article to cover. Needless to say, a link has been discovered.

Every state in our country has animal abuse laws on the books; however, only 30 states criminalize some more egregious levels of animal abuse as felonies.⁷ It is clear that California law attempts to take these offenses related to animals seriously. Animal abuse investigations and prosecutions are not rare. California law casts a wide net in the ability to prosecute the mistreatment of animals or the failure to act to protect animals. The California Penal Code defines an animal as "every dumb creature;" we are off to an interesting start on word choice California Legislature!⁸ There are a number of laws in California related to animal cruelty; many of which are misdemeanors. Some of these crimes which are only misdemeanors include poisoning of animals⁹, abandonment or neglect of animals,¹⁰ injury or death to a service dog,¹¹ and sexually assaulting an animal¹² just to give a few examples. California is one of those 30 states that prosecutes animal abuse cases either as wobblers or general felonies with a maximum exposure of three years of custody time.

Violence towards animals is by no way the only way to find who will be the next serial killer or school shooter. The human psyche is multidimensional and way too complicated to be explained in such a short-sighted fashion. However, as members of this community, maybe it's time to keep our eyes open to what is going on around us, instead of dealing with deadly consequences. Let us all try to find a way to help these children who have endured trauma or abuse or who have mental health issues before life takes them in the wrong direction.

Jessica Jerving has been a criminal defense attorney with the Public Defender's Office in Riverside County for almost 10 years. She is currently practicing in the area of Juvenile Delinquency. She is also a very proud mother of two sweet little boys.



1 "Animal Abuse and Youth Violence" Juvenile Justice Bulletin. U.S. Department of Justice, Office of Justice Program. September, 2001. Frank R Ascione.
2 Joseph Ketron, "Childhood Animal Cruelty Motives and Their Relationship to Recurrent Adult Interpersonal Crimes," 30. (2017)
3 "Abused and neglected children have a higher likelihood of arrests for delinquency, adult criminality, and violent criminal behavior . . ." Widom, C.S. 1989. The cycle of violence. Science 244:160-166.
4 Miller, K.S., and Knutson, J.F. 1997. Reports of severe physical punishment and exposure to animal cruelty by inmates convicted of felonies and by university students. *Child Abuse and Neglect* 21:59-82.

5 Schiff, K. Louw, D. and Ascione, F.R. 1999 Animal relations in childhood and later violent behavior against humans. *Acta Criminologia* 12:77-86.
6 Wright, J., & Hensley, C. (2003). From animal cruelty to serial murder: Applying the graduation hypothesis. *International Journal of Offender Therapy and Comparative Criminology*, 47 (10), 71-88.
7 "Animal Abuse and Youth Violence" Juvenile Justice Bulletin. U.S. Department of Justice, Office of Justice Program. September, 2001. Frank R Ascione.
8 Penal Code § 599b.
9 Penal Code § 596
10 Penal Code §§ 597f, 597s
11 Penal Code §600.5
12 Penal Code § 286.5



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JUDICIAL PROFILE: HONORABLE MICHAEL J. RAPHAEL

by Victor Lee and Gabriel White

Before turning to biography, let's take a brief detour to the internal procedures of the court where Justice Michael J. Raphael serves as an Associate Justice, Division Two of the 4th District Court of Appeal. Appeals are decided by panels of three justices, but each is initially assigned to a single justice, who authors a draft tentative opinion that serves as the starting point for the panel's discussion. That draft is then circulated to other members of the panel, together with a "pink sheet," where the author gives a brief summary, and the other two panel members can express their first reactions. In the past, the "pink" was simply a sheet of paper (guess what color...) with three boxes delineating spaces of several inches in which the justices would handwrite their comments. More recently, the document is electronic, and the boxes for comments are not limited to the few inches that would show if the document were printed, thanks to scroll bars on their sides.

Even with this modern innovation, it is not uncommon for comments on the "pink" to be brief enough that they would have fit in the box of the old paper version. On a few occasions, however, Justice Raphael has taken full advantage of the modern technology to describe his thoughts at length. In one case, he composed comments on a knotty legal issue that extended to nearly three pages, single spaced, when copied into a Word document. This is believed to be a new record for the court. It is also a fine exhibit in support of the observation about Justice Raphael made by one of his colleagues on the bench: he is "tremendously thoughtful" in his legal work, not only on opinions he authors, but also on cases where he serves as a panel member, bringing the "same level of commitment and energy" to both roles.

Justice Raphael (pronounced "ruh-FELL") did not always plan on a career in the law. Growing up in Ohio and Southern California, none of his family members were lawyers; his father is a professor and rabbi, and his mother a social worker. (Although Justice Raphael is the fourth generation of his family to live in Southern California, his father's work took them to Ohio when he was in kindergarten.) Even in college at Rice University, where he graduated in 1990, he anticipated a career



Honorable Michael J. Raphael

in journalism. The first time he became interested in legal matters was during a college summer internship at the Chicago Tribune. It "happened by chance" that the issues he covered during the internship all had to do with the law, and law caught his interest leading into his senior year of college. After college, he went to Yale Law School, where he was a senior editor of the *Yale Law Journal* and an editor of the *Yale Journal of Law & Policy*. He received his J.D. in 1993.

After law school, Justice Raphael first served as a law clerk for the Honorable Nathaniel R. Jones of the United States Court of Appeals for the Sixth Circuit. When his clerkship ended, he joined the Washington, D.C. office of the national law firm Sidley Austin, where he practiced as a trial and appellate court litigator. He left the firm to work as an investigative counsel for the Government Reform Committee of the United States House of Representatives, conducting an investigation of issues related to campaign fundraising arising from the 1996 Presidential election.

As part of his work as investigative counsel, Justice Raphael conducted dozens of depositions. In the course of doing so, he "kept finding himself talking to" opposing counsel who were former assistant United States attorneys, and it gave him ideas. In 1999, when he felt it was time to "get out of the political world," Justice Raphael returned to the Los Angeles area as an Assistant United States Attorney in the Central District of California, where he would work for the next twelve and a half years, including five years, from 2007-2012, as chief of the Criminal Appeals Section.

During his time as an AUSA, one of Justice Raphael's most prominent cases was as a special counsel in the Northern District of California, investigating the illegal leak of grand jury testimony by Barry Bonds and other athletes during a federal investigation of steroids in sports. (Because a limited number of people could have leaked the grand jury testimony, including prosecutors in the Northern District, he was appointed from outside.) The investigation placed him in conflict with some in the journalism community that he had once thought to join. It seemed for a time that the only way

the case would be solved would be for the journalists who published the leaked grand jury testimony to give up their sources, and the journalists seemed prepared to go to jail rather than do so. Fortunately, the case was solved by other means (an informant who was a disgruntled employee of the leaker) before things came to that, and the matter concluded with a successful prosecution.

In 2012, Justice Raphael was appointed by Governor Jerry Brown to serve as Judge on the Los Angeles Superior Court. In six years on that court, Justice Raphael handled several different calendars, ranging from small claims and unlawful detainer, to misdemeanor or criminal, to law and motion calendars for all limited civil and personal injury matters for the entire county. For his last three years as a Superior Court Judge, Justice Raphael was assigned to an unlimited civil calendar. During that time period, he also served two four-month terms as a pro tem Justice in Division Five of the 2nd District Court of Appeal. In 2018, Governor Brown nominated Justice Raphael for his current position, and he was unanimously confirmed.

When asked to compare his experiences serving on two different Courts of Appeal, Justice Raphael cited the tentative opinion program of the 4th District, Division Two as the major difference. He views the tentative opinion as a “great opportunity” for attorneys, and helpful to the Court, because it can focus oral argument if attorneys know in detail the Court’s preliminary thinking about how the case should come out and why. Also, the tentative opinion allows appellate counsel to weigh in on the issue of publication, which is generally not possible in other courts.

Outside of work, Justice Raphael used to be a serious runner, completing nine marathons between 2011 and 2016, including the Boston Marathon. An ongoing heel injury, however, has forced him to largely give up running in recent years. Also notable is that Justice Raphael is an avid Dodgers fan. He has managed to indoctrinate the older of his two sons, a third grader this year, into Dodgers fandom. His second grader, however, has a contrarian streak, and has adopted the Angels as his team. Justice Raphael moonlights as a Little League coach, and appreciates the flexibility that the Court of Appeal’s schedule allows him, saying that he “loves the work,” and doesn’t mind “doing it at odd times.”

Victor Lee and Gabriel White are appellate court attorneys at the Court of Appeal, 4th District, Division 2, and are assigned to the chambers of Justice Michael J. Raphael.



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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@riversidecountybar.com.

Proposed Local Rule and Form Changes Effective January 1, 2020

Pursuant to California Rules of Court, Rule 10.613, the Superior Court of California, County of Riverside, proposes that local rule and form changes be made, effective January 1, 2020.

The proposed changes are: Title 4 (Criminal): Local Form RI-CR004 – Felony Plea Form (Amend); Local Form RI-CR005 – Misdemeanor Plea Form (Amend); Local Form RI-CR087 – Immigration Consequences Addendum (New); Local Form RI-CR053 – Driving Under the Influence – Penalties (New); Local Form RI-CR052 – Driving on a Suspended License – Penalties (New); and Title 5, Division 2 (Juvenile): Local Rule 5281 – Filing De Facto Parent Forms (Amend).

To view the proposed changes please visit the court’s website at: <https://www.riverside.courts.ca.gov/localrules/localrules.shtml>. Please direct any comments regarding the proposed changes to the Riverside Superior Court Executive Office, 4050 Main Street, Riverside, CA 92501. Comments may also be sent by email to courtexecutiveoffice@riverside.courts.ca.gov. Comments must be submitted by 5:00 p.m. on October 21, 2019, so they can be considered as part of the rule and form adoption process.



THE RCBA ELVES PROGRAM – SEASON XVIII

by Brian Pearcy

Since Christmas 2002, your RCBA Elves Program has helped local families in need to provide Christmas to their children. While the US economy has improved significantly, our economy still presents challenges for many. This will be your 18th opportunity to show that we care about and do give back to the community that supports us. Once again, your RCBA is providing four opportunities for you, your family, your staff, your colleagues, and friends to become an Elf and share your time, talents, and interests with these local families in need. Some schools have recognized our program as a way for students to earn public service credits. So the questions to you are: How many Elf categories do you want to participate in this season and how many can you recruit to help?

Shopping Elves: Monday, December 9, 2019 at 5:30 p.m., is our designated shopping day and time. All RCBA “Shopping Elves” will meet at the Kmart, which is located at 7840 Limonite Avenue in Riverside (Jurupa Valley). As a Shopping Elf, you will receive a Christmas “wish list” from your adopted families. Your job is simple: shop and fill your basket with as many gifts as possible within the dollar amount given to you at the start of the evening by our Head Elf, Brian Pearcy. This is a real opportunity to test or show off your “value” shopping skills. Many of our Shopping Elves have made this a family affair using its younger members to assist in selecting the “cool” gifts for the kids while learning about the value of charity and the joy of giving to the less fortunate.

Some law offices bring their entire staff and are joined by their families and make this a night of bonding. Whatever the motivation, please put on an Elf cap and come and join us. A good time will be had by all. And, if you’d like to stay and help with the checking out and bagging gifts at the registers, we welcome your help.

Wrapping Elves: After the Shopping Elves finish their job, Wrapping Elves swing into action.

As Wrapping Elves you will have two opportunities: **December 11 and 12, starting at 4 p.m.** We meet in the RCBA boardroom (on the first floor of the Bar building) and wrap all the gifts purchased. Wrapping Elves must ensure that all the gifts are tagged and assembled, by family, for easy pick up and distribution by the Delivery Elves. Experience has shown that the holiday music, snacks, and camaraderie of wrapping gifts together will help even the biggest Grinch shake off the “bah humbug” blues and get them into the holiday spirit. Excellent wrapping and organizational skills are welcomed, but are not required. Santa sightings have occurred in the past. There are rumors that Santa may drop in to visit his Wrapping Elves again!

Delivery Elves: If you need a way to kick-start the warm holiday glow inside and out or just want to feel like Santa on Christmas Eve, this is it!

Depending on the total number of families adopted, teams of two-four Delivery Elves are needed to personally deliver the wrapped gifts to each of our families from December 13

to 21, picking up your packages at the RCBA. This part of the program has been designed to accommodate your personal schedules.

Over the years, many members have expressed that delivering gifts to the families was by far one of the most heart warming Elf experiences. It is also a good opportunity to teach your young ones early the rewarding feeling of helping those less fortunate than themselves. When signing up, please inform us of the type of vehicle you have, so we can match the number and size of gifts to the storage area available in your vehicle.

Money Elves: The Money Elves provide the means necessary for the other Elves to shop, wrap, and deliver presents to the families we adopt. Donations received will fund gifts purchased from Kmart and the purchase of gift cards from Stater Brothers, so the families can buy food for a nice holiday dinner, and the purchase of gas cards, so they can get to the grocery store.

Because of where Christmas falls on the calendar, we are essentially shopping one week earlier this year. So, you can really help us by sending in your donation early since it allows us to determine our budget for the families we help. The majority of funds need to be donated no later than December 6, to allow for the big shopping night, but late donations can still be used for the food and gas cards. The more money we raise means a greater number of families we can assist. (Remember our goal is 60+ families this year.) Please note, even if you are a procrastinator, we will accept money after December 20. Monies received this late will be applied to any last minute “add on” families or will be saved to get us ahead on donations for next year.

Please make your checks payable to the Riverside County Bar Foundation and write “Elves Program” in the memo section of the check. The RCB Foundation is a 501(c)(3), so all donations for this project are tax deductible. The RCB Foundation Tax ID# is 47-4971260. Please send your checks directly to the RCBA. We thank you in advance for your holiday generosity.

To become a Shopping, Wrapping, Delivery, or Money Elf (or a combination of these), please phone your pledge to the RCBA at (951) 682-1015 or email your name and desired Elf designation(s) to one of the following: Charlene Nelson (charlene@riversidecountybar.com), Lisa Yang (lisa@riversidecountybar.com), Brian Pearcy (bpearcy@bpearcylaw.com), or Mr. Pearcy’s assistant, Anna Gherity (agherity@bpearcylaw.com). You can also reach Anna at 951-686-1584.

To those who have participated in the past, “Thank you” and to those who join us for the first time this year, we look forward to meeting you. Don’t forget to tell a friend or two or three!

Brian C. Pearcy is a past president of the RCBA and chair (i.e. “Head Elf”) of the Elves Program.





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