

VOLUME 74 | NUMBER 2

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# RIVERSIDE LAWYER



## IN THIS ISSUE

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**Lemon Aid for Lawyers**

**It's Not the Cars, It's the People...**

***On the Road with Kerouac, Cassady & Cars***

**“But Officer, I Wasn’t Driving!” Autonomous  
Vehicles and the Need for Legislative Clarity**

**Insurance Defense Counsel**

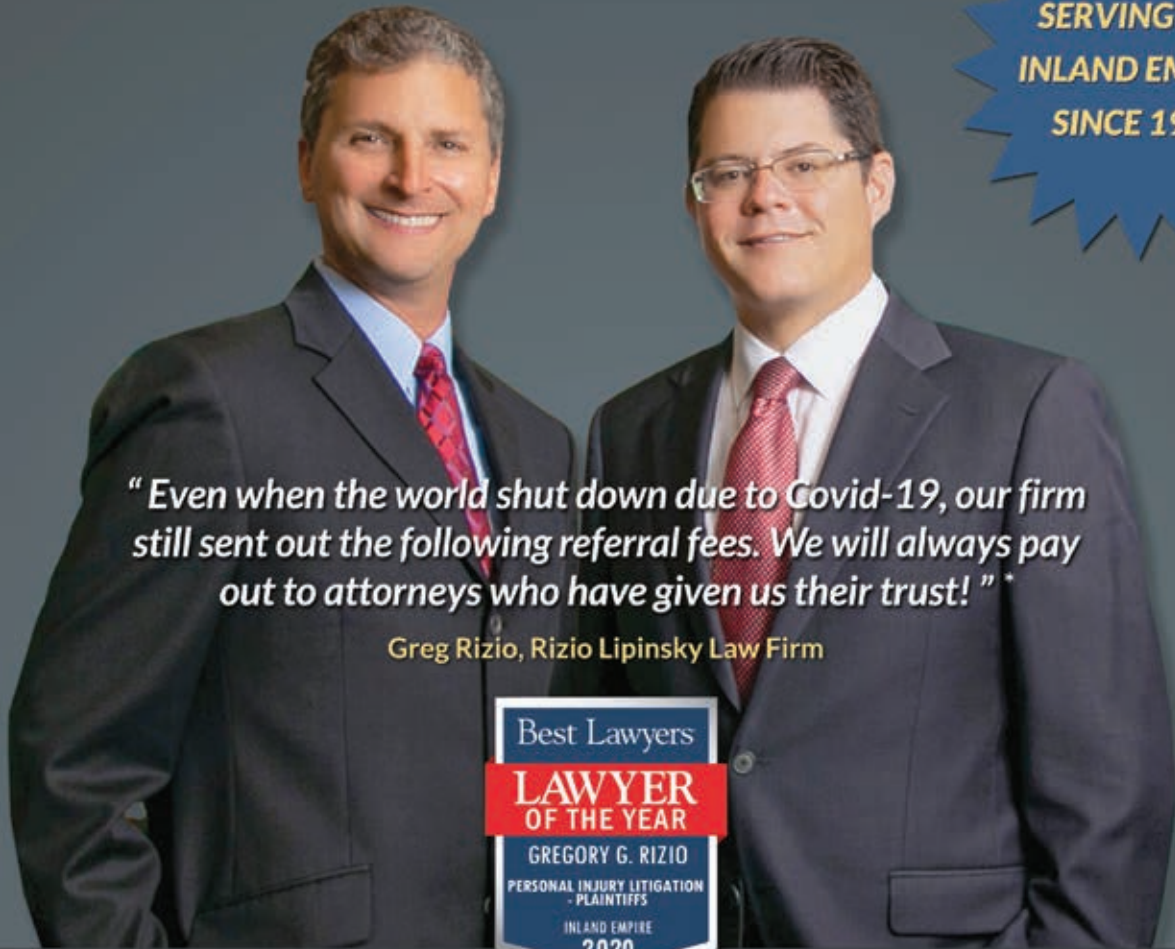


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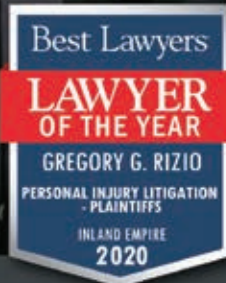
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# RIVERSIDE LAWYER

MAGAZINE

# Contents

## Columns

### 3 President's Message

by Mark A. Easter

### 5 Barristers President's Message

by David P. Rivera

### 7 Practicing Responsibly and Ethically: California's New Discovery Rules

by David Cantrell and Cole Heggi

## Cover Stories

### 9 Lemon Aid for Lawyers

by Michael Geller

### 12 It's Not the Cars, It's the People...

by Larry Maloney

### 14 On the Road with Kerouac, Cassidy & Cars

by Abram S. Feuerstein

### 17 "But Officer, I Wasn't Driving!" Autonomous Vehicles and the Need for Legislative Clarity

by Michael H. Patterson

### 19 Insurance Defense Counsel

by Boyd Jensen

## Features

### 23 Judicial Profile: Commissioner Elizabeth Tucker

by Mary Gilstrap

### 25 Opposing Counsel: Michael Geller

by Betty Fracisco

### 26 The RCBA Christmas Elves Program 2023 – Another Record Year

by Brian Pearcy AKA Head Elf

## Departments

### 10 Membership

### 18 Classified Ads

### 28 Calendar



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# PRESIDENT'S Message

by Mark A. Easter



## “TO SNITCH OR NOT TO SNITCH?”

At our MCLE Marathon in January, the one subject that came up in several sessions was the new so called “Snitch Rule,” California Rule of Professional Conduct 8.3. To those of us who have been practicing law since before Motorola flip-phones and Blackberry Trios, this seems like a significant new dimension to our professional obligations. So, I took a closer look and here is my suggested “Top Ten Things To Know About The Snitch Rule:”

1. Rule 8.3 does not apply to information we learn from an attorney who is seeking advice about their own conduct or their own duty to report conduct by others.
2. Rule 8.3 does not apply to information we might learn from participating in a substance abuse or mental health program like L.A.P. or The Other Bar.
3. To require reporting, the conduct must “raise a substantial question” as to that lawyer’s “honesty, trustworthiness, or fitness as a lawyer, which is either: a) a criminal act; b) conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; or c) misappropriation of funds or property.
4. Your knowledge of the reportable conduct must meet the standard of “credible evidence.” This means more than rumor or secondhand type information. It also means more than just your opposing counsel reciting or having a different view of the facts of a case than you. Attorneys are permitted to believe and recite their client’s version of the facts.
5. The “body” that you report the conduct to has to be either the State Bar or a “court or tribunal” that has jurisdiction to investigate and act upon the conduct. So, it isn’t enough to report the conduct to a private arbitrator or mediator.

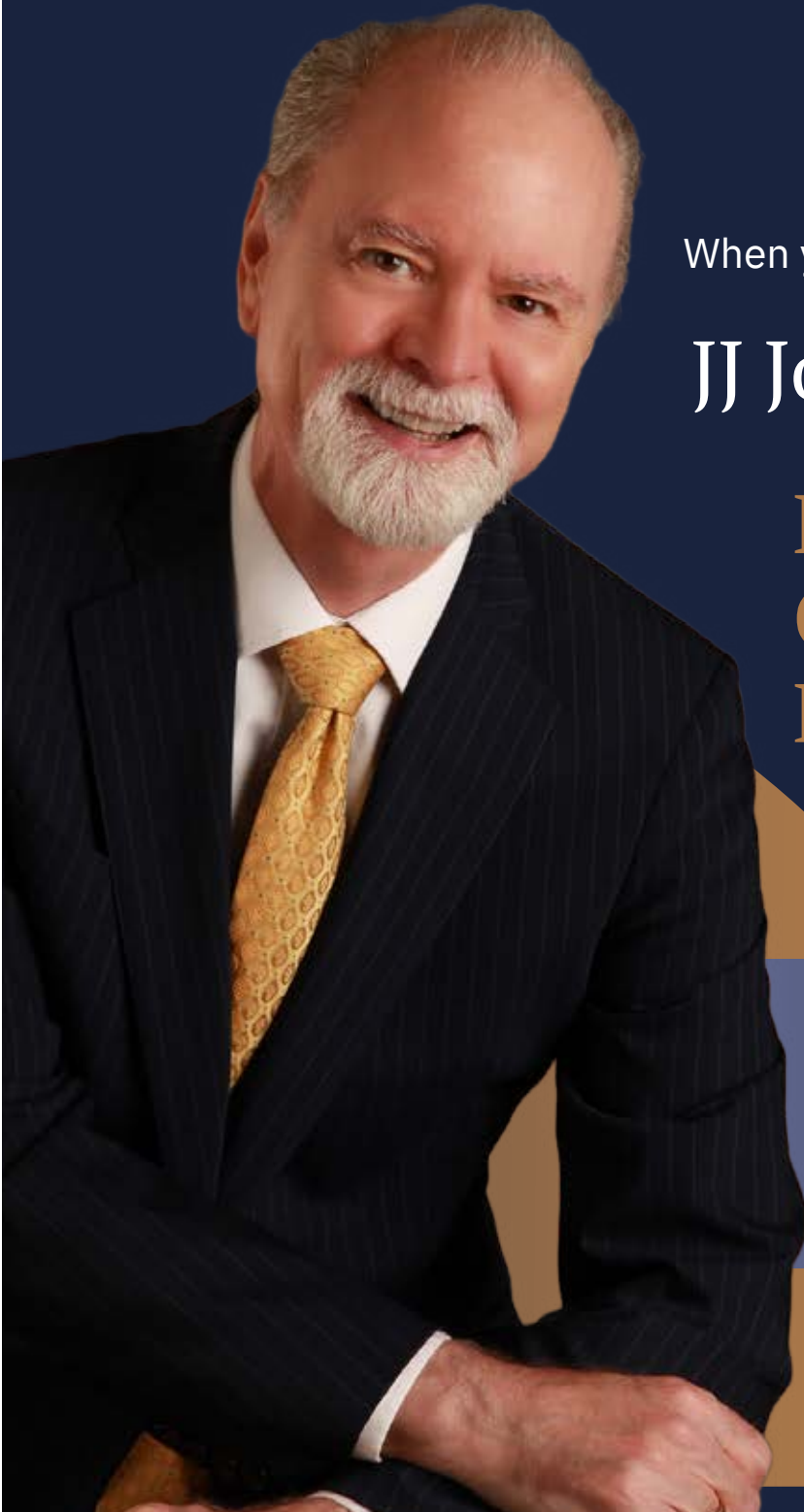
6. If the lawyer you are considering reporting is currently your opposing counsel on a matter, be careful how you speak to them, if at all, about the conduct. Rule 3.10 still applies. Basically this means that you can tell your opposing counsel that you will have to report them if the conduct continues, but you cannot use it as leverage, i.e., you cannot threaten to report the lawyer if they won’t settle (or provide some advantage) in a civil dispute.
7. On the flip side (and maybe this is obvious), if you become aware of reportable conduct, you cannot enter into an agreement to NOT report the conduct or agree to terms of a settlement that include not reporting the conduct.
8. Timing: If you have an obligation to report, you must do so “without undue delay.” This doesn’t necessarily mean “immediately.” It means as soon as you reasonably believe that reporting will not cause “material prejudice” to a client or an attorney. The timing may depend on the procedural status of your case.
9. Crimes in other states: There is no obligation to report conduct that would be a criminal act in another state (like smoking certain plants?) but is not a criminal act in California.
10. There is a difference between *mandatory* reporting and *permissive* reporting. You might observe or learn of conduct by an attorney that might violate the rules of professional conduct (such as rules relating to responsiveness to the client or diligence in the handling of a case), but does not rise to the “honesty, trustworthiness, or fitness” standard of Rule 8.3. You are *permitted* to report this conduct to the State Bar, but you are not required to do so, and unlike with Rule 8.3, you can’t be disciplined by the State Bar for not doing so.

“Fun” Fact: Interestingly, all other states already have a mandatory rule. California was the last to adopt one. What happened to that whole “As California goes, so goes the Nation” thing?

Hopefully, this overview is informative. But if a situation arises, and you are uncertain, don’t hesitate to consult with a colleague, or better yet, get advice from an ethics specialist.

Okay, it is FEBRUARY...and that means that the Riverside County High School Mock Trial Competition is in full swing. I’m looking forward to seeing some great rounds of competition and as always, seeing some amazing student performances—hopefully by some future lawyers and judges in Riverside County. Good luck and Godspeed to all of the teams!

Mark A. Easter is the president of the RCBA, a partner at Best Best & Krieger LLC, and has been residing and practicing law in Riverside since 1989.



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# BARRISTERS

## President's Message

by David P. Rivera



### A Midterm Progress Report (Mostly)

#### I. Milestone

Wow. This is going by fast. I am not counting down the months, but a glance at my calendar tells me that the Barristers board is nearing its midterm. In honor of this nearing milestone, I'm going to discuss Barristers more this month, and the substantive legal theme of this magazine issue less (or not at all).

#### II. Misstep

This new approach isn't entirely deliberate. I drafted a fairly decent substantive article that not only fell squarely within the monthly theme, but also embraced a subject near and dear to my heart. Alas, I submitted it a wee bit late and a wee bit long. Formatting and layout restrictions at this late hour cannot be denied. Perhaps I can share it (off-theme) next month?

#### III. Progress Report

At the outset of this term, I established three goals: (1) Increase member participation, (2) Be mindful of Barristers' 60-year legacy, and (3) Have fun!

How fare we?



#### A. Increase Member Participation

We are clearly trending in the right direction. Member attendance at nearly all our events, particularly monthly happy hours, is on the rise. We book a routine reservation at each of our happy hour establishments du mois. In three months, those reservations have increased in size from parties of fifteen to more than twenty. Attendance at our January happy hour approached thirty people.

Our November General Membership Meeting/CLE saw attendance in the low- to mid-twenties. Two weeks ago, twelve people gathered on a Sunday morning for Beer Yoga. Early Eventbrite RSVPs for Mock Trial Scoring and Disneyland are flat out wonderful (see below for more details). I don't doubt that there will be falloff in actual attendance, but I remain thrilled about our members' response.

Participation is evident in other ways. Five Barristers sit on our Social Events, CLE, and Marketing Committees. They bring fresh insight to committee discussions, and we enjoy getting to know them better. Thank you, Derek, Sophia, Ceciah, Donna, and Clint!

I'm not certain what's driving our increased member participation, but a few possibilities come to mind. First, our Marketing Committee has taken steps to advertise our events well in advance of scheduled dates. We send initial notices and reminders across email and social media. Second, we just might be reaching out to an incredibly receptive group. Third, active members may be spreading the word themselves. Maybe it's a little bit of everything.

I want to send a shoutout to participants in RCBA's New Attorney Academy. So many of you are swinging by happy hour after NAA classes. Keep it up!

#### B. Be Mindful of Barristers' 60-Year Legacy

I honestly don't know how well we are progressing on this front, at least in the way of producing something tangible. We have spoken to past presidents and board members to gain an awareness of things we may have lost over time—things that may be worth recapturing. Some

of this feedback has gone into tentative event planning. I hope and expect that our efforts will pay dividends in the form of scheduled events.

### C. Have Fun!

At least some of our board members have received positive feedback on the fun front. I really hope you share those sentiments. If you don't, please let me know. I'm approachable and available.

On a personal note, I can say that I would be ready to pass on the reins if I wasn't enjoying myself. I hope to see you over the coming weeks!

### Upcoming Events

February Happy Hour. Friday, February 16, 4:30 p.m. at Retro Taco.

Mock Trial Scoring w/ RCBA Barristers. Saturday, February 10, 8:30–11:00 a.m. at the Robert Presley Hall of Justice. Lunch immediately afterward at Retro Taco. Visit our Eventbrite page for more details and to RSVP!

Barristers Disneyland Day! Saturday, March 2, 8:00 a.m.–close. Visit our Eventbrite page for more details and to RSVP!



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If you have any suggestions as to possible events or activities, or comments on Barristers affairs, please email us at [barristers@riversidecountybar.com](mailto:barristers@riversidecountybar.com).

Contact me directly by email at [drivera@alumni.nd.edu](mailto:drivera@alumni.nd.edu), or by text or phone call at (909) 844-7397.

*David P. Rivera is a solo practitioner of business law in Highland, treasurer of the Hispanic Bar Association of the Inland Empire, and a member of the RCBA Bar Publications Committee.*

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# Practicing Responsibly and Ethically: California's New Civil Discovery Rules

by David Cantrell and Cole Heggi

The California legislature made significant changes to the Civil Discovery Act through the enactment of Senate Bill 235. These changes, which went into effect on January 1, 2024, have brought about substantial modifications to the civil discovery process in California state courts. Here's a summary of the key aspects of these changes:

**Mandatory Initial Disclosures.** The prior version of California Code of Civil Procedure section 2016.090, which was in effect from January 1, 2020, through December 31, 2023, gave parties in civil litigation the option of making initial disclosures to each other via stipulation. SB 235 amended Section 2016.090 so that it now requires parties to make initial disclosures 60 days after demand is made by another party.

**Content of Disclosures.** The disclosures now required in California are similar, but not identical, to those required in federal courts. The disclosures must include:

1. Contact information of known witnesses, along with the subjects of information each witness is expected to testify about (C.C.P. § 2016.090(1)(A));
2. Production or description of all documents, electronically stored information, and tangible things which (a) the party may use to support its claims or defenses, or (b) are relevant to the subject matter of the action. (C.C.P. § 2016.090(1)(B)). This category of disclosures is somewhat broader than its federal counterpart. Importantly, documents that the party intends to use solely for impeachment purposes need not be produced or described in a party's initial disclosures.
3. Any insurance policy or other contract under which an insurance company may be liable to satisfy a judgment entered in the action. (C.C.P. § 2016.090(1)(C)).
4. The "material provisions" of any contract under which a person or entity may be liable to satisfy a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. (C.C.P. § 2016.090(1)(D)). "Material provisions" include, but are not limited to, "the identities of parties to the agreement, the nature and limits of the coverage, and any and all documents regarding whether any insurance carrier is disputing the agreement's or policy's coverage of the claim involved in the action." (C.C.P. § 2016.090(1)(D)).

**Verification Requirements.** The initial disclosures must be verified through a written declaration by the party, the party's authorized representative, or signed by the party's counsel.

**Scope, Exceptions, and Sunset.** The new initial disclosure procedures apply in any civil action filed on or after January 1, 2024. Parties proceeding without an attorney, as well as parties in limited civil actions, probate cases, family law cases, and unlawful detainer proceedings, are not subject to the new initial disclosure requirements. Finally, the initial disclosure rules will sunset at the end of 2026; Section 2016.090 will revert to its previous form on January 1, 2027, unless the Legislature intervenes.

**Sanctions for Non-Compliance with Other Discovery Procedures.** Though unrelated to the new initial disclosure rule, SB 235 also introduced a change to Code of Civil Procedure section 2023.050 resulting in an increase in the minimum penalty for certain bad faith discovery conduct, raising the penalty from \$250 to \$1,000. This penalty applies only to the following discovery conduct: (1) responding in bad faith to document production or inspection requests; (2) producing documents within seven days of a hearing on a motion to compel filed due to the producing party's failure to respond to written discovery in good faith; and (3) failing to meet and confer in good faith in connection with another party's document production requests. This section also includes a new provision giving the judge discretion to require an attorney receiving such a sanction to report it to the State Bar. (C.C.P. § 2030.050(b)).

The intent behind each of these changes is to streamline the discovery process, making it more efficient and less costly, and to reduce gamesmanship during discovery. It is hoped that the new rules will significantly impact the early stages of litigation and will encourage parties to stipulate and limit the scope of disclosures to avoid potential sanctions. However, the full implications of these changes and how they will be enforced by California courts remain to be seen.

---

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# Lemon Aid for Lawyers

by Michael Geller

Everybody thinks they know what a “lemon” is when referring to motor vehicles. If you were to look up the phrase “Lemon Law” in the California Annotated Codes you will not find such a law. That being said, while California has among the strongest lemon laws in the country, the statutory basis for this law is not named “Lemon Law.”

The concept of lemon law arose in federal law under the Magnusson-Moss Warranty Act [15 USCS §§ 2301 et seq.], which is national in scope and took effect around 1975.

The California warranty statute that includes “lemon law” is the Song-Beverly Consumer Warranty Act, Civil Code Section 1790 et seq., which was passed around 1970.

The core of each statute is similar. However, there are a number of significant differences between Magnusson-Moss and Song-Beverly which are beyond the scope of this article. The rest of this article will be based solely on the Song-Beverly Act.

Song-Beverly covers all new consumer goods, that are used, bought or leased for use primarily for personal family or household purposes, and includes clothing and consumables. This means that if you purchase a computer or a camera that the manufacturer cannot or refuses to repair, you have similar remedies under Song-Beverly as you do with lemon automobiles, including the one-way plaintiff’s attorney’s fees clause. Case law requires that in order for a motor vehicle to be subject to Song-Beverly it had to have been purchased in California. Food for thought if you are considering an out-of-state vehicle purchase.

The Act does not cover goods used primarily for business purposes although, for motor vehicles, there is an exemption for small businesses that have less than 5 vehicles registered in the name of the business. However, such small business vehicles must have a gross vehicle weight under 10,000 pounds to qualify.

Under Song-Beverly, coverage is based on the use of the product, not the type of product. If you purchased a Boeing 777 Jet for personal purposes, it could be covered by Song-Beverly.

For Song-Beverly to apply generally, the good must come with a written warranty. Goods sold as-is or with all faults are exempt from Song-Beverly. However, for motor vehicles, a service contract counts as a “warranty” enabling invocation of Song-Beverly for some motor vehicles sold as-is with a service contract.

The sections of Song-Beverly that cover motor vehicles is located in Civil Code Section 1793.2 (d)(2), which is the generic lemon law and, the Tanner Consumer Protection Act, Civil Code Section 1793.22, which is an extension of the lemon law.

All of Song-Beverly is also tied in with the Uniform Commercial Code (UCC) as to acceptance of the goods,

rejection of goods and revocation of acceptance. In addition, if a vehicle is covered by an express warranty, generally the implied warranty of merchantability also applies.

A vehicle is considered a “lemon” if, while covered by the manufacturers written warranty, the manufacturer is unable to conform the vehicle to the written warranty after a reasonable number of attempts and, the issue of the non-conformity substantially impairs the use, value or safety of the vehicle.

All these elements are generally up to the finder of fact to determine. There is no hard and fast reasonable number of attempts, although there must be at least one attempt to bring a cause of action for breach of the written warranty. In addition, substantial impairment is also generally a much-contested issue.

The Tanner Act sets some objective criteria for the presumption of a lemon although to invoke the Tanner Act, there are additional pre-filing requirements. Tanner says a vehicle is presumptively a lemon if it is in the shop for the same items or system over 4 times in the first 18 months or 18,000 miles for most things and for safety concerns, over 2 times. While everyone wants to say their issue is safety, the lemon law issue would have to be a clear safety system of the car, such as the brake or steering failure. In addition to the over 2 or over 4 times for a repair, the Tanner Presumption can also be invoked if the vehicle is in the shop more than 30 days total in the first 18 months or 18,000 miles, whichever comes first. Even if Tanner is invoked, it is a rebuttable presumption that the vehicle is a lemon. There is case law involving what is a repair attempt, what constitutes a “day” for repairs, or if parts are not available immediately. Many parts were not available during the Covid times and that could be a valid defense to the lemon law.

For a breach of the implied warranty of merchantability, no repair attempts are necessarily required. In simplistic terms, merchantability is whether the goods are of fair and average quality and fit for the ordinary purpose for which such goods are used. So, if you purchase a car that never starts, you may have a breach of the implied warranty of merchantability since you can’t use the car for its intended purpose.

If a vehicle is believed to be a lemon, a buy-back demand needs to be made to the manufacturer. Every new vehicle comes with a lemon law book detailing how to notify the manufacturer. Failure to notify the manufacturer is a fatal defect in a lemon law case. Taking it to the dealer for repairs is not deemed notice to the manufacturer.

The manufacturer may offer a repurchase or deny it from the demand letter. If there is a denial, a suit may be filed. Remedies under the lemon law are a repurchase or replacement with an offset for use computed under the statute, any incidental and consequential damages that

flow from the breach, such as rental cars, towing, etc., and attorney's fees and costs. While attorney's fees are available for the prevailing plaintiff, they are not available for the prevailing defendant. In addition, if the refusal to repurchase is willful, which is up to the jury, in addition to the repurchase, the jury can award up to double damages. So, if the jury award is a repurchase with damages totaling \$25,000, the jury can choose to award anywhere from \$25,000 to \$75,000.

The replacement formula is based on MSRP to MSRP, less the allowance for use, because in most cases, you could not get an exact duplicate of the vehicle you possess.

For a breach of the implied warranty of merchantability, the willful damages of up to twice the award is not available, but the other remedies are available.

And, thanks to my case, *Martinez v. Kia* (2011) 193 Cal. App. 4th 187, Review denied, you do not even need to keep your car to invoke the lemon law remedy. While the Court will have to fashion a remedy outside the statute since you do not have the car to return, they must do that under the holding in *Martinez*.

*Michael Geller is a sole practitioner practicing in Riverside dealing in all aspects of consumer law and consumer protection, including lemon law. He has been practicing since 1995.*



# MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2024.

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# It's Not the Cars, It's the People...

by Larry Maloney

I retired from the world of clauses, forms, and solving other people's problems to a world of automobiles and the people who care for them.

The automobile, a self-propelled vehicle, is the primary component in our transportation system – a system that can transport anyone from any place to any other place, at any time, day or night, on a moment's notice. The system does not require reservations, permission, or notice. This simple formula has given birth to an unprecedented freedom of movement. As each individual unit (a car) is individually owned, this has released an explosion of creativity in every aspect of the automotive world.

The world of automobiles has given birth and expression through many larger-than-life characters such as Henry Ford, Ransom Olds, Carroll Shelby, and oh so many more. On a more down-to-earth level, everyday people have built, designed, and raced cars. Each vehicle is an expression of freedom and the "I can do" spirit of freedom. The upcoming L.A. Roadster show in Pomona will showcase thousands of cars, each one built, designed, maintained, and driven by a proud owner as an individual expression of his or her personality.

Southern California has grown up and developed in the way it has because of the automobile.

Riverside has its own "**Show & Go Car Show**" downtown each year – this year on May 4, 2024. However, every weekend in almost every city and town there are small, and not so small, groups of people getting together to celebrate the car. These more than once-a-year gatherings have become a lifestyle. I have become part of several such car groups. What I have learned is that, as much as I appreciate the cars, it is the people who are the most important and most interesting.

On any Saturday morning in parks or parking lots around the state, and probably the country, random groups of car people show up, driving whatever car they have that runs, to enjoy hot coffee, donuts, and cars. Some groups meet monthly and some weekly. Some groups identify by the type of vehicle they drive or its marquee, class, age, or style. However, there are some groups that celebrate the car in all of its many forms. One group I would like to highlight below meets weekly, rain or shine.

Every Saturday morning, the **Saturday Morning Car Guys** get together. Depending on weather and other events, drivers start coming in about 7:00 or 7:30 a.m. The Rickshaws (a local car club) provides coffee and donuts. Frequently on a nice weekend, anywhere from 50 to 150 cars trickle in. Some Car Guys attend several gatherings on any given weekend. The process is simple but universal – park, set out your lawn chairs, collect a cup of coffee and a donut, and appreciate your car, my car, and all cars. We have had cars as old as a 1917 Model T to the new 2023 Corvette. We have everyday drivers, rare cars, pickup trucks, woodies, rat rods, the occasional motorcycle, low riders, sports cars, race cars, exotic cars, military trucks, antique vehicles, foreign, domestic,

luxury, and grand touring cars, and a few others that defy description. All are interesting.

Given all this variety, I have come to recognize that the most important aspect of each vehicle is not the engine, paint job, rarity, the construction, or any other superficial or mechanical aspect, but the people who come with each car and their stories. The cars are wonderful and interesting, but the people are the key element. An example of some of the more dazzling, colorful, and unique cars that show up each week are 1941 Willys; 1951 Jaguar Mark V; Rat Rods and hot rods; 1957 Pontiac Safari; low riders and woodies; Corvettes from the C1 to the C8; a GS90; 1974 Jensen Healey; 1979 Lancia Zagato; BMW M 1; an American LaFrance Fire Engine, and many, many more. Each car is driven by its proud custodian/owner/driver and each has a story.

One Saturday Morning Car Guy regular has driven the Pikes Peak "Race to the Clouds" before it was the civilized paved road it is today. Others have acquired cars from parents or grandparents, and lovingly maintained or restored them. One Car Guy comes with his bike that sprang from his imagination. It is a Harley Davidson three-wheeled race bike, a model that never really existed, but was developed from his skill and imagination. Once a car showed up that incorporated all the aspects of the vehicles in the animated movie *Cars* in one vehicle.

We have a Saturday Morning Car Guy who arrives almost every week in his 1974 Jensen Healey. He brings his dog, Charlie. He opens the car door; Charlie gets out and runs to greet everyone. Charlie knows everyone; he begs for a donut. We all talk about our cars and life. When it's time to go, Car Guy calls Charlie, who hops in the car and off they go.

Also, in the car group there is a young woman who drives a 1957 Ford Fairlane 500. The car is white over blue. She is always dressed in white and blue, like a Ford ad. Another attendee drives a 1968 Datsun 2000, which she acquired in a divorce. She assured me that she received the better part of the deal. There is also a man who restores important and rare automobiles such as a 1937 812 Cord. He drives an unrestored 1937 Plymouth Roadster. Another regular restores cars such as a 1951 Jaguar Mark V and 1929 Armstrong-Siddeley. He also collects antique and unusual tools.

Cars are much more than merely steel, composite, fiberglass, rubber, wood, and rust. Of the racers, published authors, restorers, the everyday drivers, it is the people who are the real stars of the show.

*Larry Maloney was in private practice in Riverside from 1980 to 1998 practicing mostly Family Law. He served as the Family Law Facilitator for the Riverside Superior Court from 1998 until 2021. He also served as chair of the Lawyer Referral Service Committee and was an attorney and board member for PSLC. He is currently retired.*





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# On the Road with Kerouac, Cassady & Cars

by Abram S. Feuerstein

"I can't kill myself because I am a Catholic," Jack Kerouac said. So, he told his friends that he decided instead to drink himself to death.<sup>1</sup> And in 1969, at the age of 47, the author of the beat-generation<sup>2</sup> defining novel, *On the Road*, succeeded. A fast trip by any odometer.

In a short span, Kerouac's literary output certainly had been impressive. There were novels, poetry and songs – even a book of Haikus – some released by his estate after his death and most of which remain in print today.<sup>3</sup> His work is now included in the prestigious Library of America series.

But *On the Road* had put Kerouac on the map. Published in 1957 twelve years before he died, in thinly disguised fiction, the novel recounts Kerouac's trips crisscrossing the country (with a foray into Mexico) in the late 1940s mostly with fellow beat personality Neal Cassady,<sup>4</sup> and along the way chronicles their visits with various persons and personalities, including novelist William S. Burroughs (*Naked Lunch*) and poet Allen Ginsberg (*Howl*). The book frequently makes the list of the 100 books to read before your Amazon prime membership permanently expires.<sup>5</sup>

Kerouac had kept journals of the trips. Then, supposedly in a caffeinated three-week stretch he typed out 125,000 words in one long unpunctuated paragraph on a 120-foot scroll of paper, which he pre-constructed so that he would not waste time changing sheets of typing paper. When done, he commented to Cassady: "I've telled all the road now. Went fast because the road is fast."<sup>6</sup> BTW, the original "scroll" manuscript sold at auction in 2001 for \$2.4 million to Jim Irsay, the owner of the Indianapolis Colts football team.<sup>7</sup>

1 The comments are recounted by Jerry Cimino, the co-founder of San Francisco's Beat Museum, at a ceremony from the museum's 20th Anniversary Party. See <https://www.kerouac.com/qa-from-our-20th-anniversary-party/>. Kerouac also had written in a poem from his *Book of Sketches*, "This drinking is my alternative to suicide & all that's left." See S. Cunha & Jim Sampas, eds., *Truth and Beautiful Meaningful Lies: A Collection of Quotes* (Rare Bird Press/Sal Paradise Press 2023) (hereafter, "Kerouac Quotes"), p. 93.

2 Kerouac borrowed the term "beat" from a Times Square street hustler named Herbert Hunke, who in the mid-1940s had shown Kerouac some of New York's underside and had described "beaten down," drug addicted individuals. "I'm beat" or tired, he told Kerouac. See [https://en.wikipedia.org/wiki/Herbert\\_Hunke](https://en.wikipedia.org/wiki/Herbert_Hunke). But Kerouac said that he used the term beat optimistically, with a nod towards the *beatitudes* of Christ and the qualities of kindness and compassion expressed in the Sermon on the Mount. See generally, <https://beatitudeisbeat.weebly.com/ldquoabeats-and-beatitudesrdquo.html>.

3 See generally, [https://www.amazon.com/Books-Jack-Kerouac/s?rh=3A283155%2Cp\\_27%3AJack+Kerouac](https://www.amazon.com/Books-Jack-Kerouac/s?rh=3A283155%2Cp_27%3AJack+Kerouac).

4 While Cassady himself befriended and influenced several Beat authors, he produced little written work. He shows up again in the 1960s as the cross-country driver of "Further," Ken Kessey's bus filled with the Merry Pranksters, whose antics were described by Tom Wolfe in *The Electric Kool-Aid Acid Test* (1968). Five years younger than Kerouac, Cassady died in 1968 at the age of 42.

5 See e.g., <https://thegreatestbooks.org/items/66>.

6 Howard Cunnell, "Fast This Time: Jack Kerouac and the Writing of *On the Road*," included in *On the Road: The Original Scroll* (Viking 2007) (hereafter, "Original Scroll"). Of note, the author Truman Capote accused Kerouac and the other beat novelists of being typists instead of writers. See generally, <https://quoteinvestigator.com/2015/09/18/typing/>.

7 See generally, "On the Block, \$2.4 Million for 'On the Road,'" *The New York Times*, May 23, 2001.

For readers yearning for plot and character development, *On the Road* will not be your psychedelic drug of choice. It meanders as do Jack and Neal (in *Road* aka the fictional characters Sal Paradise and Dean Moriarty, respectively). "Sal, we gotta go and never stop going 'till we get there!," Dean urges. Sal: "Where we going man?" "I don't know but we gotta go."<sup>8</sup>

They hit the road when they get the "itch." But for what purpose? Hard to know. On the surface, they search for but never find Neal's alcoholic skid row father, who abandoned the young Neal to Denver's orphanages, reform schools and jails; or at a deeper level, the two seem to be embarked on a spiritual quest for what they call "IT,"<sup>9</sup> and in the process say seemingly important things about the "road." "Nothing behind me, everything ahead of me, as is ever so on the road," one of the characters observes.<sup>10</sup> And: "The road must eventually lead to the whole world."<sup>11</sup> And: "He knew the road would get more interesting, especially ahead, always ahead."<sup>12</sup> And: "We had finally found the magic land at the end of the road and we never dreamed the extent of the magic."<sup>13</sup>

Yet, notwithstanding the heresy in saying so, in the end the two trippers are just out for "kicks." They travel "for joy, for kicks, for something burning in the night."<sup>14</sup> Their journey is not a search for their own souls much less an exploration of a greater American post-war soul. They steal some gas while the station attendant is asleep. Wow, what a heist! Lots of fun there. Even more fun, the veteran car thief Neal (Dean) steals yet another car to take the group to all black jazz clubs on the other side of town. Then off to Mexico to smoke pot and have paid sex with likely underage girls; why, does IT get any better? The peso sure went far in those days, didn't it? "Look at me, look at me, look at me now! It's fun to have fun, but you have to know how," states Dr. Seuss' mischievous cat perhaps with equal wisdom in *Cat in the Hat*, published the same year as *Road*.<sup>15</sup>

Sure, this is a book to be read when young – maybe during the gap years after college, while sofa sitting and residing in a parent's basement and wondering what to do with a liberal arts degree. Those who are On the Phone instead of already on the road. But one of life's cruel realities and old jokes is that the phrase "hip joint" has different meanings at different ages. For

8 Kerouac Quotes, p. 28. This essay has used Kerouac Quotes in referring to passages from *On the Road* because of the varying pagination of the numerous in-print editions of the book, as well as the differences between the author's original version (see fn. 7), and the 1957 well-edited version.

9 Indeed, a search for "IT" may well have characterized the real-life Kerouac, a deeply Catholic, French-Canadian immigrant who soon after writing *Road* delved into Buddhist studies..

10 Kerouac Quotes, p. 25.

11 Kerouac Quotes, p. 29.

12 Kerouac Quotes, p. 30.

13 Kerouac Quotes, p. 46.

14 Kerouac Quotes, p. 132.

15 See <https://www.shmoop.com/quotes/fun-to-have-fun.html>. Interestingly, Ayn Rand's influential *Atlas Shrugged* appeared in 1957, too. Here are three brief quotes from it: "There are no evil thoughts except one: the refusal to think"; "Wealth is the product of man's capacity to think"; and "No one's happiness but my own is in my power to achieve or to destroy." See <https://bookroo.com/quotes/atlas-shrugged>.



card carrying AARP members, possibly the passage of 75 years from when Kerouac wrote the book has made it hard to join his celebration (romanticization?) of the antihero Neal. To AARPers, Neal's charms will be elusive, and his coolness not much colder than room temperature. Kerouac might have been able to find a deeper truth lurking in con man Neal's utterances, but Thelma and Louise driving off the cliff together at movie's end seem more likely to find "IT" than Neal and Jack.

This is not to say that Kerouac's writing does not have enduring beauty or is not otherwise memorable; indeed, when Kerouac turns his attention to describing the jazz sounds bebopping from Charlie Parker's saxophone, or the notes that emerge from George Shearing's piano, the rhythmic prose has unmatched beauty. Also, Kerouac's characters act and speak impulsively infusing the narrative with a frenzied energy unique in literature. As one of them observes: "This can't go on all the time – all this franticness and jumping around. We've got to go someplace, find something."<sup>16</sup> Appropriately, Allen Ginsberg referred to Kerouac as having created "a spontaneous bop prosody."<sup>17</sup>

### **Automobiles *On the Road***

Ultimately, what makes *On the Road* possible of course are automobiles. World War II had ended and Detroit re-tooled. Although tail fins would not reach their full potential until the mid-50s, instead of pre-war, plain Jane assembly-line Model Ts, Detroit began producing automobiles that expressed American strength and prosperity, and the optimism and free movement of Americans. Kerouac captures that spirit: "Whoeee! yelled Dean. Here we go! And he hunched over the wheel and gunned her."<sup>18</sup> "All he needed was a wheel in his hand and four on the road."<sup>19</sup>

The *Road* characters hitchhike or take Greyhound buses. They also use travel bureaus, carsharing businesses of sorts that matched drivers to cars.<sup>20</sup> At times they somehow scrape together enough money to buy cars.

Though other cars make an appearance, only three cars are mentioned by name and model year in the novel. First, Neal and Kerouac (Dean and Sal) hook up with a brand new 1947 Cadillac Limousine through a Detroit travel bureau. Its wealthy owner had taken a train to Chicago and wanted his gleaming car taken there. Neal, a maniac driver, decides he wants to set a speed record. He does most of the driving (Kerouac ironically did not possess a license and did not know how to drive)<sup>21</sup> and drives the car into the ground. The dented mud-encased car is barely recognizable when it is returned. The owner does not press charges.

<sup>16</sup> Kerouac Quotes, p. 30.

<sup>17</sup> The reference comes from Ginsberg's dedication to Kerouac at the front of *Howl and Other Poems* (Pocket Poets Series No. 4, City Lights Bookstore 1956). In speaking to Kerouac's stylistic spontaneity, Kerouac's official biographer, Douglas Brinkley, has observed that Kerouac believed that a person's first thought is his or her best thought, and that notwithstanding the risk of some bad writing, it is best to get thoughts expressed on paper quickly and without a filter. See Lecture, "Jack Kerouac's America" by Douglas Brinkley, The University of Texas at Austin, April 24, 2008, retrieved at <https://www.youtube.com/watch?v=deifj70EC68> (hereafter, "Brinkley Lecture").

<sup>18</sup> See <https://www.autoweek.com/car-life/a32425791/jack-kerouacs-on-the-road/>.

<sup>19</sup> Kerouac Quotes, p. 31.

<sup>20</sup> Frequently, the cars needed to be taken to another location and the car owners entrusted the travel bureau to find responsible drivers to do so. Or the bureaus helped drivers find passengers to share gas money and driving duties. For example, promoting "Travel Opportunities," a classified ad in an April 1940 *San Bernardino County Sun* stated: Travel Information. To all cities in the United States, private car, share expense plan, save time, save money. Ph. 653-52. Auto Travel Bureau, RS4 Court St. (Private car owners, see us for passengers). Another ad: "NEGRO leaving for Detroit Saturday, take 2. Phone 613-52. GOING to St. Louis Monday, '30 Plymouth, take 3. Sh. Exp. Ph. 292-58. Sun." See <http://www.celldomcars.com/2014/04/the-travel-bureaus-that-put-jack.html>.

<sup>21</sup> See Brinkley Lecture.



A sign at City Lights Bookstore points the direction to the Beat Literature Section and Poetry Room.



San Francisco's Beat Museum is located across the street from the famous City Lights Bookstore.

Neal/Dean and Kerouac/Sal also take a 1937 Ford Sedan to Mexico. Both they and the car barely survive the trip. At the end of their stay in Mexico, Kerouac becomes very sick with dysentery. Quixotically, Neal leaves the feverish Kerouac behind and takes the car back to Lake Charles, Louisiana, telling his buddy that he's "gotta get back to my life." "Yes, yes, yes, I've got to go now," Neal says.<sup>22</sup> Neal pushes the old Ford to its limits and, by the time he gets to Lake Charles, Kerouac relates that the car's "rear-end finally dropped on the road as he always knew it would."<sup>23</sup>

The third identifiable car is a 1949 Hudson Commodore, the most luxurious automobile produced by the Hudson

<sup>22</sup> Original Scroll, p. 404.

<sup>23</sup> Original Scroll, p. 404.

Motor Car Company before a merger in 1954 that created the American Motors Corporation.<sup>24</sup> In the Christmas of 1948, Kerouac had been staying with his sister at her home in North Carolina when Neal shows up with the car. They travel to New Orleans, first, and then to San Francisco. "AH, man! That Hudson goes!" said Dean about the car, which decades later is considered by many enthusiasts to be one of Detroit's gems.<sup>25</sup> Unfortunately, after it "goes, goes, goes," like all cars in Neal's hands it "went, went, went." Today, other than in Kerouac's *Road*, there is no record of what happened to the actual car after Neal was through with it.<sup>26</sup>

A movie version of *On the Road*, produced by Francis Ford Coppola et al., was released finally in 2012. It stars Garrett Hedlund as Neal Cassady, and Sam Riley as Kerouac. It features a 1949 Hudson, too. The car used in the movie was donated to and is on display at the Beat Museum in San Francisco. With no tangible evidence of the original car's existence, tongue in cheek the museum speculates that it "might be rusting away in some junkyard in Mexico."<sup>27</sup> John Allen Cassady, the real Neal's son, has opined that "(i)t's probably at the bottom of some ravine in the hills of California."<sup>28</sup>

24 See generally, *Hudson Motor Car Company* - Wikipedia.  
 25 John Hanc, "Hudsons to Swoon Over," The New York Times, October 24, 2007, retrieved at: <https://www.nytimes.com/2007/10/24/automobiles/autospecial/24HUDSON.html>. The story notes that the car was famous for its patented step-down design, "so-called because passengers actually stepped down into their seats, as the floor was surrounded by the perimeter of the car's frame" giving the car a "stylish, streamlined profile."  
 26 See "The '49 Hudson Comes to the Beat Museum," December 13, 2011, retrieved at <https://www.kerouac.com/49-hudson-arrives/>.  
 27 *Id.*  
 28 *Id.*

Apparently, cars and people can survive only so long on the road.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. 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. Photographs were taken by the author using an iPhone 7 camera.




Founded in 1953, City Lights Bookstore in San Francisco's North Beach became a gathering spot for Beat writers.

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# “But Officer, I Wasn’t Driving!” Autonomous Vehicles and the Need for Legislative Clarity

by Michael H. Patterson, Esq.

While grabbing coffee at a convenience store, officers notice a man staggering out of the bar across the street. After fumbling with his keys, the man enters the car and exits the lot. The officers pursue and pull the vehicle over less than a mile from the bar. The officers approach and tap on the driver’s side window, but to their surprise, no one is occupying the driver’s seat. Instead, their suspect is sound asleep in the back seat. The law that governs this situation is unclear and will likely remain ambiguous until the legislature adapts to the arrival of this fast-developing technology.

In 2019, the California Department of Motor Vehicles reported 88,043 DUI convictions throughout the state. And tragically, 48% of California crash fatalities in 2020 were DUI-involved.<sup>1</sup> It is for this reason that Mothers Against Drunk Driving (MADD) began advocating for self-driving cars, or autonomous vehicles (AV), as the “ultimate way to end drunk driving and other behavioral-related traffic deaths.”<sup>2</sup> While this may be the case eventually, lawmakers will first have to confront this new technology head-on and evolve the legal framework around DUIs. As technology advances and self-driving cars become ubiquitous, lawmakers must keep up with these innovations to provide a fair, just, and safety-promoting legal framework surrounding DUIs.

## The Current Law

California Vehicle Code section 23152, subsection (a), states, “It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.”<sup>3</sup> Section 305 of the same code defines a driver as “a person who drives or is in *actual physical control of a vehicle*.”<sup>4</sup>

To secure a DUI conviction under California Vehicle Code section 23152, subsection (a), the prosecution has the burden of proving two elements beyond a reasonable doubt:

Element 1: The defendant drove a vehicle; and

Element 2: When they drove, the defendant was under the influence of an alcoholic beverage, a drug, or a combination of the two.

Traditionally, courts have insisted on evidence of “actual physical control” over the vehicle to establish the act of driving. The relevant jury instruction clarifies, “A person *drives*

a vehicle when he or she intentionally causes it to move by exercising actual physical control over it. The person must cause the vehicle to move, but the movement may be slight.”<sup>5</sup>

What it means to “exercise actual physical control” over a vehicle is not always clear. In a 1993 case, *In re Queen T.*, the Court of Appeals held that a minor sitting in her father’s lap was “driving” when she steered the vehicle, even though her father was sitting in the driver’s seat operating the accelerator and brake.<sup>6</sup> Moreover, in *People v. Hernandez*, the court held that the defendant was “driving” because he was “seated in the driver’s seat steering or controlling the truck while it was still moving, even though the engine was no longer running.”<sup>7</sup>

However, these legal precedents assume physical control is necessary to operate a vehicle. No case law defines what it means to exercise physical control over a car that drives itself.

## Autonomous Vehicles

SAE International, a global standards development and professional association of automotive engineers and technical experts, defined six automation levels for cars ranging from no automation at level 0 to a fully automated vehicle at level 5.

Level 0: No automation.

Level 1: The vehicle can control either speed or steering, but not simultaneously. Think cruise control and lane assist technology.

Level 2: The vehicle can control both speed and steering at the same time under certain conditions. The driver must be vigilant to monitor the surroundings and be ready to take over driving. Think parking assistance technology.

Level 3: Known as “conditional automation.” The vehicle can control speed and steering at the same time, as well as monitor its surroundings. The driver still needs to pay attention to take over in some circumstances.

Level 4: The vehicle is highly automated and self-driving in most normal conditions.

Level 5: The vehicle is fully automated and can drive itself in all conditions.

In a level 0 through 2 vehicle, the car requires a human operator, even if the driver’s feet are off the pedals and the

1 *DUI Summary Statistics*, California DMV, <https://www.dmv.ca.gov/portal/dmv-research-reports/research-development-data-dashboards/dui-management-information-system-dashboards/dui-summary-statistics/> (last visited Jan. 21, 2024)

2 *Advanced Drunk Driving Prevention Technology*, MADD, <https://madd.org/drunken-driving/secure-the-future/#av> (last visited Jan. 21, 2024).

3 Cal. Veh. Code § 23152 (West)

4 Cal. Veh. Code § 305 (West)

5 CALCRIM No. 2241

6 *In re Queen T.* (1993) 14 Cal.App.4th 1143, 1145 [17 Cal.Rptr.2d 922]

7 *People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1184 [269 Cal.Rptr. 21]

wheel. The “automated” features, such as lane centering and adaptive cruise control, are “driver support” features requiring an individual’s care and attention. At level 3, a driver must still be present to take over if the feature requests. In a level 4 or 5 vehicle, automated features would not require a driver to take over controls, and pedals and steering wheel may or may not be included in the vehicle.<sup>8</sup>

Currently, most cars equipped with automated features fall within levels 1 or 2. For instance, Tesla’s autopilot feature is classified as a level 2 technology.<sup>9</sup> The operation of vehicles at these levels reasonably fits within the existing legal frameworks. Drivers of level 1 or 2 vehicles are still mandated to remain vigilant and ready to assume control when necessary, allowing courts to utilize the established analysis of actual physical control. As vehicles inevitably gravitate toward levels 4 and 5, the current legal framework will be ill-equipped to grapple with these novel situations.

Imagine again a level 5 self-driving car transporting an intoxicated person. If pulled over under current laws, the police would confront an unfamiliar situation, leaving a jury to decide whether the defendant was a drunk driver or an innocent, inebriated passenger. Determining whether the defendant was driving involves answering nuanced questions regarding access to vehicle controls, the vehicle’s autonomous features, and the rider’s seat position. The uncertainty will inevitably yield inconsistent results and foment an upsurge in appellate litigation.

Informed and proactive legislative intervention is imperative to mitigate the challenges ahead. If autonomous vehicles prove to be safer than intoxicated drivers, they should be incentivized as a practical solution to curb the devastating effects of driving under the influence. That is, people should have the option to ride home safely as the passenger in a self-driving car without the looming threat of a DUI conviction. This requires a clear delineation of the criteria that would safely exempt AV passengers from DUI arrests. To that end, collaboration with manufacturers to ensure that self-driving cars align with set safety guidelines is essential.

Our laws must advance alongside technology. The time to act concerning autonomous vehicles is now. With no GPS to help navigate the road ahead, it is vital to contemplate in advance whether existing laws will justly handle DUI cases involving self-driving cars. Nevertheless, the hopeful destination is clear: a future where DUIs are a relic of the past.

*Michael Patterson is a deputy public defender with Riverside County. He graduated from University of San Diego School of Law in 2021 with a concentration in criminal litigation. Any opinions expressed in this article are his opinions only.*



<sup>8</sup> SAE Levels of Driving Automation™ Refined for Clarity and International Audience, SAE Blog, <https://www.sae.org/blog/sae-j3016-update> (last visited Jan. 21, 2024).

<sup>9</sup> SAE Self-Driving Levels 0 to 5 for Automation – What They Mean, Autopilot Review, <https://www.autopilotreview.com/self-driving-cars-sae-levels/> (last visited Jan. 21, 2024).

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# Insurance Defense Counsel

by Boyd Jensen

If one invites the aid of artificial intelligence, via the internet, in .26 seconds 1,070,000,000 search results will produce 24 types of insurance. While all types of insurance utilize capable legal counsel, certain types of insurance provide legal counsel as a specific policy benefit, to defend their insureds and minimize the potential losses. The life, health, and disability categories are intended to primarily provide *personal enhancements*; while auto, business and homeowners coverages include provisions for counsel to aid and defend against *liability challenges*. This article is intended to address the role of the "insurance defense lawyer" who protects insureds and companies from liability challenges, when incidents occur, and financial recoveries are sought. The insurance defense lawyers chosen by the insurance company are capable, and even specialized in the activity for which one obtains insurance, because insurance companies prosper when claims are handled efficiently and successfully for their insureds.

## Categories of Insurance Defense Counsel

There are generally 4 categories of insurance defense counsel. In-house insurance defense counsel are members of a "Law Division," and are employees of the insurance company. "In-house counsel for an insurer may represent insureds in litigation without violating the prohibition against aiding the unauthorized practice of law set forth in rule *California State Bar Rules of Professional Conduct* 3-101(A)." "Insurance Companies will have the right to assign individual cases either to the Law Division or to outside counsel...with more complex cases being assigned to outside firms." (*Introduction & Conclusion, FORMAL OPINION NO. 1987-91.*)

"Outside counsel" are members of their own independent law firms, to whom insurance companies refer claims and lawsuits for the representation of their insureds. "Representation of an insured by an attorney hired by the insurer is a common litigation event... In such a situation, the attorney has two clients whose primary, overlapping and common interest is the speedy and successful resolution of the claim and litigation." *California State Bar FORMAL OPINION NO. 1995-139.* Though not required, outside counsel should seek to have "(1) at least five years of civil litigation practice which includes substantial defense experience in the subject at issue in the litigation, and (2) errors and omissions coverage." *Cal Civ Code § 2860 (c) (2012).*

The third category of insurance defense counsel are independent lawyers hired by the insured businesses or individuals who have "self-insured-retentions." These provisions require the insured to bear a portion of a loss otherwise covered by the policy. Self-insured-retentions include defense costs and settlements of claims or law-

suits. These are normally desired by businesses, who because of their higher loss potential and specialization, desire their own employees to manage claims and their chosen and experienced counsel to work closely with their claim departments towards resolution. Self-insured-retentions will generally range from \$50,000 to \$1,000,000 per claim. For example, Disneyland's 500-acre property in Anaheim, California with hotels, restaurants, parking lots, and two major amusement parks, would easily benefit by a claims department at the premises and access to immediate counsel for aid depending upon the need.

The final category or subcategory of insurance defense counsel are those lawyers who represent insurance companies, who carry "excess" or "umbrella" liability insurance. Those insurance defense counsel are similar to the other categories, but normally do not become involved in the claim or litigation process unless the seriousness of the claim would exceed the limits of the insureds primary insurance coverage.<sup>1</sup> Insurance companies can also be sued for bad faith by insureds or claimants. In-house insurance counsel are generally involved, as well as the other categories of counsel referred to herein.

## Insurance Defense Counsel

This author commenced his career towards becoming an insurance defense counsel, in 1978, as a "certified" law clerk, later codified in *California Rules of Court* Rule 9.42 as "certified law student." Taking the depositions of two witnesses to an automobile accident was an unforgettable assignment, though the task was made palpable by being provided witness statements, merely needing confirmation. Some 45 years later after 5000+ depositions, 4000+ litigated cases, 250+ arbitrations, 50+ jury trials and 25+ civil appeals and writs, perhaps one could distill some practice pointers for those seeking the role of an insurance defense counsel.

For context, the author's background commenced as *outside insurance defense counsel* with automobile insurance and general liability cases on behalf of thousands of drivers, businesses, and homeowners. These produced numerous opportunities for taking depositions, appearing at law and motion, settlement conference calendars, arbitrations, jury trials, and multiple appeals. It included working with numerous and excellent *insurance in-house lawyers*, with judges, court staff, and even opposing lawyers representing plaintiffs, who have since become respected friends. Subsequently, the author was asked to represent businesses with self-insured-retentions, such as water parks, family entertainment centers, and later companies

<sup>1</sup> A good case to read about the intricacies of these several types of coverages including specifically "self-insured-retentions" and "umbrella"/"excess" is *Deere & Co. v. Allstate Ins. Co.*, 32 Cal.App.5th 499 (2019).

with very public profiles, such as Knott's Berry Farm, Six Flags, California State and County Fairs, the Boy Scouts of America, and in legislative matters almost all amusement venues in California, including Universal Studios and Disneyland.



## Counsel from a Defense Counsel

1. **The insured must come first.** The purpose of insurance defense counsel is to aid and benefit the insured. Insureds may not want to be involved, "Can't the insurance company just handle this?" Understand their lives and aspirations are very important, and they can almost always be assured that cooperation with their insurance defense counsel will benefit them in many ways. I learned from insureds and developed life-long friendships with some. Insurance companies are paying the legal bills, but over time the insurance companies will respect those and want them part of their insurance defense counsel panel.

That may mean you take positions, which are not what the insurance claims representatives prefer, or provide the counsel which they desire to hear. There are consequences to litigation, not just in the consumption of time paid for in billable hours, but also in the lives of each insured. Carriers and counsel see accident and injury claims daily. Insureds see them very infrequently, and they may represent the worst event in their lives. Doing the right thing means ensuring the client has an advocate, which respects the insurance company, the law and the consequences in the lives of insureds.

2. Respectfully, but without reservation, litigation rests at the apex of the practice of law. In the processes of litigation, our most singular goal of seeking justice, through almost all aspects of the legal landscape may be achieved. Become an expert in litigation, which means being **totally transparent and prepared with your facts and the applicable law**. Coming from a one high-school town in Utah, one can feel out-of-place in California, with its commercial and social variety. The 100-person jury pools, which showed up for juror selection in the counties of Los Angeles, Orange, Riverside, and San Bernardino, may have been unlike the wonderful people in my home town, but it was easy to learn

that they shared much in common. Regardless of race, religion, cultural, or sexual orientation, all of them had better things to do that day, than wait around the courthouse while lawyers pontificated. And they all knew they would be victimized by sales pitches. Jury trials can be won in all of those places and even Compton, California, if one learns that **integrity** isn't conditioned upon race, religion, cultural or sexual orientations.

3. In the process of working at litigation, one learned that relationships with the insurance company and their customers may be improved, by **thinking outside the box**. In the early 1990s, internet accounts were rare and motorcycle gangs would use fax machines to bars or clubs to invite travel to entertainment venues such as Knott's Berry Farm. Grand Avenue from Beach Boulevard travels through the eastern section of the park, and there are shops on both sides of the street. That street was a public street, and the ability of a private party, like Knott's Berry Farm, to control what occurred was in question. With client approval, California Penal Code section 490.6 (1996) was drafted and became law. It stated that if an employee of an "amusement park has probable cause to believe the person to be detained is violating lawful amusement park rules" they can "detain a person" and "conduct an investigation." That legislation was popular with other amusement venues throughout the state such as the Santa Cruz Boardwalk, which has the public Santa Cruz Beach Train running essentially through their venue. It also was the basis for the formation of the *California Attractions & Park Association*, the country's largest state amusement organization, which required frequent trips to Sacramento and public testimony before both Assembly and Senate Committees, for amusement and insurance clients and the largest amusement entities in California.<sup>2</sup>

## Conclusion

The ultimate goal in any litigation is credibility. Credibility as the advocate, the insurance carrier, and the credibility of the client, will bring productive results. Credibility is not just what is said, but may also be what is unstated, as we are contemplating – even outside the box. Insurance defense counsel enjoy regular relationships and largely predictable assignments. They have the opportunity of being exemplary examples of California lawyers, who are skilled to successfully defend litigated matters.

*Boyd F. Jensen, II, a member of the RCBA Bar Publications Committee, is with the firm of Jensen & Garrett in Riverside.*



<sup>2</sup> These efforts dealt largely with amusement industry interests surrounding multiple issues including *Amusement Ride Safety Bill* (CA Senate Bill No. 783) 2007 and California Labor Code §§ 7916-7919 & amending 7912, 7914 & 7915.

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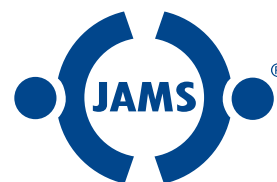
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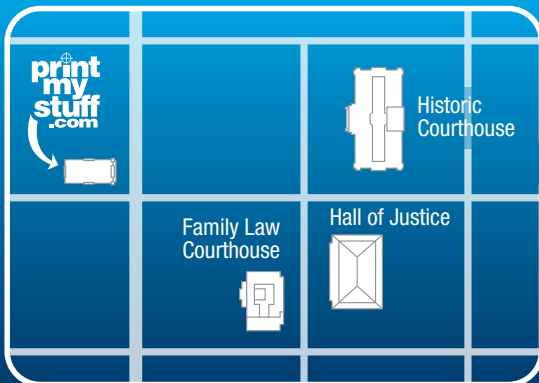
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# Judicial Profile: Commissioner Elizabeth Tucker

by Mary Gilstrap

Ever since she was a little girl, Commissioner Elizabeth Tucker wanted to be in a courtroom. It was, as she described, "a childhood dream." That dream to be in a courtroom became reality when she was hired right out of law school by the Riverside County District Attorney's office in 1995. For nearly 23 years thereafter, Commissioner Tucker prosecuted a wide variety of criminal cases, including violent felonies, child abuse, domestic violence and juvenile cases in Indio before becoming a court commissioner in 2018.

Engaging and direct with a great sense of humor, Commissioner Tucker is passionate about her work with juveniles, describing her legal career as being "youth-centric." During her career as a prosecutor, Commissioner Tucker had extensive experience in juvenile justice and juvenile diversion programs, collaborative court proceedings, drug court, youth court and mental health proceedings. "Juvenile has been my calling," Commissioner Tucker said with a smile. She finds juvenile dependency proceedings, her latest assignment for the past four months, challenging at times, but very fulfilling.

Commissioner Tucker has another dream in the making: becoming a Superior Court judge. She is currently running in the primary election against two other opponents for an open judicial seat in Riverside Superior Court on March 5, 2024. As part of her campaign, Commissioner Tucker stresses her extensive experience as a prosecutor and court commissioner for 28 years, along with her significant involvement with alternative and collaborative legal programs. She prides herself on both her broad experience and her fairness and integrity, all of which has been noticed and appreciated by those in the defense bar.

Criminal defense attorney Angela Friedrichs, who has a long history of working with Commissioner Tucker when she was a district attorney, admires her. "She gets it," Friedrichs said, referring both to Commissioner Tucker's ability to see the whole picture and that Commissioner Tucker understood that one of her job functions was to promote and administer justice. "She sees all sides. I've always thought she would be a great judge one day," Friedrichs said.

One of the alternative programs that Commissioner Tucker volunteered for as a district attorney was the County's Youth



*Commissioner Elizabeth Tucker*

Court. That program is intended as an early intervention process for first-time youthful offenders of non-violent misdemeanor crimes. Those who are eligible will have their case heard in a real courtroom by their peers, who act as prosecuting and defense attorneys, court clerks, bailiffs and jurors. As a district attorney, Commissioner Tucker coached and assisted the youthful prosecutors with their case. When the process is completed, the youth's case will be closed and no criminal charges will be filed in the traditional juvenile system, eliminating a court record. These proceedings, while holding youths accountable for their behavior by a jury of their peers, are intended to and

hopefully do steer these soon-to-be adults in the right direction.

Besides her professional duties, Commissioner Tucker also has a long history of community service involving teens. She has acted as a mock trial coach for many years, first at Indio High School and then at Palm Desert High School, where she also presided as the "judge" in a mock trial, making another dream of hers come true. One of her favorite mock trial anecdotes is that several of the students that she coached for local mock trial competitions have appeared in front of her as practicing attorneys and one of those former students is actually a co-coach with her now for the same mock trial team. She has also acted as a volunteer team coach, scorer, and "judge" for the Riverside County Office of Education Mock Trial Competition for the past 27 years.

Commissioner Tucker has acted as a youth mentor to high school students as part of the Women Leaders Forum of the Coachella Valley, which among other things awards

college scholarships to young women; has worked with the Youth in Government program and continues to be involved with a number of collaborative judicial and legal processes involving teens and younger children. Additionally, she has been involved with the Rotary Club of Indio for the past 12 years, where she has served as a board member and president, as well as the National Charity League of the Coachella Valley, where she has acted as a member and board member for six years. If that wasn't



*Commissioner Tucker in her courtroom with toys for children in court during juvenile dependency proceedings.*

enough, Commissioner Tucker is also a Girl Scout Troop leader and has been for the past 11 years.

Commissioner Tucker, who has a twin brother, grew up in Orange County. She attended UC Santa Barbara, obtaining a B.A. degree with honors in law and society, followed by a J.D. from University of California College of Law, San Francisco (formerly Hastings College of Law). She has two children: a daughter who is a senior at Palm Desert High School, graduating this spring, and a son at UC Berkeley who is a double major in cognitive science and philosophy, a nod to Commissioner Tucker's father, who also was a philosophy major.

Besides the law, Commissioner Tucker also loves the outdoors. She is an avid hiker and has expanded her love for trekking in the wilderness to include backpacking adventures in more remote locales, such as the Teton Crest Trail in Wyoming, the North Cascades National Park in Washington, and Catalina Island. She is a long-distance runner and has completed numerous races, including the New York City and Chicago marathons.

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



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# Opposing Counsel: Michael Geller

by Betty Fracisco

Have you ever met a person whom you'd describe as a "jack of all trades?" Riverside attorney Michael Geller definitely fits that description, and as a result he's lived a very interesting life.

Michael was born in Los Angeles, the son of a psychiatrist father and a mother who became a marriage and family counselor. He had an older brother and sister, and a younger brother. His parents divorced when he was five. He had several distinguished grandparents, including a grandfather who was the executive director of the Jewish National Fund in New York, a grandmother who was a major fashion buyer in New York, and another grandfather who was the Deputy Fire Marshal of New York who went in the Navy during World War II and stayed as a career. Growing up, Michael spent all his free time working, doing jobs at school, working at his dad's clinic in Watts five days a week, and when he got older, installing telephones and intercoms. Somehow there didn't seem to be any sports or playing in the neighborhood in his childhood.

Michael attended high school at University High School in West LA, an upscale school where his classes included print shop and photography, and his activities included computers and programming and doing a layout for a magazine. In his senior year he spent half his time working on a job in construction with his uncle. After graduation, instead of going on to college immediately, he decided to work full-time in a variety of jobs, from installing telephone equipment, to arcade work, to clerking in an electronic rental store in Hollywood where he met a number of stars.

Eventually Michael took five years to graduate from Cal State Northridge with a degree in business administration, fitting all his classes into two days a week, so he could work full-time. He made the Dean's List and found the work "easy." He was working at a computer company programming when he received a call from his uncle regarding starting up a computer business. Unfortunately, this evolved into a business dispute that ended in a lawsuit. His uncle died in 1980, so during Michael's last semester of college he began working for Giuliano's Deli, a huge business in Carson where he used his computer background while attending school four nights a week. After earning his degree, he remained with Giuliano's for three years, advancing to Chief Financial Officer, which allowed him to buy a condo in Long Beach.

In 1983, Michael bought a house in Moreno Valley where he and his then wife started a computer business helping small and medium companies. He ended up doing a lot of legal work in representing business acquaintances himself, and he realized he thought he could do this professionally. So, he attended Western State University for a year before transferring to California Southern College of Law for the last three years. He found law school relatively easy, placing third or fourth in his class. After taking a Bar Review course and continuing to work during his Bar prep time, he was one of a small number of people who typed his Bar Exam (this was long before laptops or tablets). He passed the Bar, but knew he was



Michael Geller

destined to be a solo practitioner, because he was never going to work for someone else.

Although he had some clients waiting, Michael continued to work in his computer business. During fifteen years, before, during, and after law school, he served as a Reserve Deputy Sheriff for Riverside County, working nights and weekends. It took five years for him to quit his computer business. He added a law partner, because he didn't want to try cases. He added an additional suite to his computer business, because he had people working for him, so he rented a virtual office in which he could meet clients. When he left the computer business, he built a building in Moreno Valley in 2004/2005 and was able to sell it before the real estate crash of 2008. One of his clients, Raceway Ford, ended up with a lot of empty

space during that down period, so Michael took over the entire second floor of the main building, looking out on the auto showroom from his office. He remained there for seven to eight years before renting space in an industrial building in Riverside, and then seven years ago moved into his current office on Arlington Avenue.

You might be wondering, what type of law Michael practices. His primary practice is auto dealer fraud, representing either plaintiff or defendant. He defends auto dealers against all types of consumer claims and prosecutes dealers for similar violations. Auto dealers are highly regulated, and they have many agencies harassing them. Michael does some Lemon Law, but he's not beyond an odometer rollback, a dealer selling a totaled vehicle as a salvaged vehicle, a VIN swap on a stolen vehicle, failure to disclose any number of things, or illegal policies, for example. As he says, he's seen it all, every case is a new experience. Ninety-nine% of the cases are settled, but if they go to trial, he wins most trials. His second practice area is business or contract disputes, with which he has a world of experience. Overall, he has a very busy solo practice with a part-time bookkeeper and two legal assistants.

So, what does Michael Geller do these days with his free time? Since 2005 he has been involved in the training of service dogs for Canine Companions. He's currently training his sixteenth dog. Canine Companions selects labs, retrievers, and mixes, and Michael usually trains each dog for sixteen to eighteen months. Between dogs, Michael loves to travel, especially cruising. Most recently he cruised from Rome to Dubai, and in May he's off to Japan. He's spent time in the Caribbean, and twice he's cruised across the Atlantic. While at home he does some offroad riding. In his past he was a private pilot, learning to fly at eighteen.

It would be hard to find another attorney with such an interesting background as Michael Geller. Another Riverside County original.

*Betty Fracisco is an attorney at Garrett & Jensen in Riverside, a member of the RCBA Publications Committee and a longtime member of the Board of Governors of California Women Lawyer.*



# The RCBA Christmas Elves Program 2023 – Another Record Year

by Brian C. Percy, aka Head Elf

On December 24, 2023, the RCBA's Elves Program concluded its twenty-second annual program of bringing holiday joy to needy families throughout Riverside County. While we can't say exactly why, perhaps it was a moderate economy, perhaps our program is becoming more widely known (or both), it was a record year with another significant increase in families served. The RCBA Elves provided Christmas gifts, a holiday dinner and gas cards to 113 families (335 children and 123 adults), nearly double the amount from two years ago! This year the Wrapping Elves once again had the opportunity to wrap and socialize at the RCBA building, while we still provided those who wished to wrap at home or their office the opportunity to do so.

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, their families, clients, and friends. This year, we worked with the following organizations to identify families in need: Supervising Probation Officers in Riverside; My Learning Studio Outreach; Norton Younglove Community Center; Jamboree Program; Be Part of Change Ministries; the SAFE Family Justice Centers in Riverside, Temecula, Hemet, Murrieta, and Indio; the Victim Services Division of the Riverside County District Attorney's office; the Riverside County Probation Department; and the Lighthouse Social Services organization.

Now for some recognition.

## The Money Elves

As always, our funds came from direct donations and monies raised at bar association events held throughout the year. The money raised provided wrapped gifts for each family member, a Stater Brothers gift card to buy food for a

holiday dinner, and a Union 76 gas card to help each family's holiday travels. This year we really had to stretch our fundraising efforts because of the second largest bump in growth of families served. We once again raised more money than at any time in the past, but this year we ended without the usual cushion to use to start for next year. I'd like to thank the following Money Elves for their support: Judge Richard Van Frank, Bratton & Razo, Charity Schiller, Bruce and Lisa Todd, Judge Craig Riemer, Teresa and Arturo Cisneros, Malcom and Cisneros, Aitken Aitken Cohn, Diane Huntley, John L. Michaels, Lord and Brooker APC, Judge David T. Bristow, Brian Unitt, Jacob C. Husen, Judge Jean A. Leonard and Jim Wiley, Marquez Law PC, Attorneys to Go, Christine Renken, David Werner, Judge John Monterosso, Kathleen Peach, Kimberly A. Bryens, Mark Easter, Smith Law Offices, Mike Donaldson, Ward Simmons, Judge William Bailey, Sandra Leer, Lazaro Fernandez, Stream Kim Hicks Wrage & Alfaro, Christina Lee, Clint Jones, Mary Karlson, Amanda Bruscia, Elizabeth Ditfurth, Brittany Reese, Charisse Smith, Cynthia Germano, Ginetta Giovinco, Judge John Vineyard, Judge Jack Lucky, Judge Christopher Harmon, Orquidea Wilcox, Amy Guldner, Melanie Deutsch, George Reyes, Stacey Martinez Marks, Julianna Tillquist, Vicki Broach, Michael Ortiz, Judge Sharon Waters, Neil Okazaki, Judge Jacqueline Jackson, Marty Nicholson, Thomas Chisum, Jo Larick, Sharon Ramirez, Robert Taylor, Erica Alfaro, Judge Kira Klatchko, Eric Ryanen, Nolan Kistler, Glen W. Price, Abram Feuerstein, Leila Parviz, Jeff Jones, Nesa Targhibi, and Judge Cheryl Murphy.

I would also like to provide a very special "Thank You" to Sean Varner and his assistant Carol of Varner & Brandt, who were able once again this year to provide and secure a large donation from their firm in cooperation with Stater Bros. This generous donation covered most of our food card



Marty Nicholson



Jacqueline Carey-Wilson  
& Patricia Cisneros



Mike Donaldson & family



Judge Eric and Darla Keen

needs for the families and allowed much more of the cash raised to go toward gifts. Finally, another huge shout out to Mark Easter. Mark did his usual fantastic job of rallying many of his colleagues at Best Best & Krieger to the cause once again raising some of the largest amounts ever. And a very special thank you to Kirstie Donaldson (spouse of RCBA member Michael Donaldson) and her mother, Jodi Helms and the Helms Christian Pre-School in Murrieta. For several years now Kirstie and Jodi have conducted a toy drive at their school and again this year they donated many boxes of toys for our families.

### **The Shopping Elves**

It was a joy to experience the festive mood of various individuals, firms, and families, put on their Elf hats and used their best bargain-hunting skills to shop and find great deals for our families. This year's Super Shopping Elves were: Jacqueline Carey-Wilson, Patricia Cisneros, Sarah Brommer, Diana Lorenzana, Erica Alfaro and Robert Alfaro, Malvina Ovanezova, Marty Nicholson, Angela Viramontes, Elisabeth Lord & Michelle Brooker and their staff and family members, Jo Larick, Leila Parviz, Nesa Targhibi, Veronica Garcia, Ladda Arceneaux, Cecilia Quinteras, Christopher Ortega, Sophia Choi, Sylvia Choi and family, Nadine Vargas and family, Jesse Male and family, Breanna Eilifritz, EvanRae Easter, Lauren Zane, Judy M., Melvin O., Christine Renken, Mr. Ortega, J. Plume, Mr. Senwick, Cicero Tavakoli, Megan Demshki and family, Layla, Diane Huntley, Ms. Murphy, Mr. Jankowski, Barbie Trent, and also the Bratton and Razo Law Firm provided a very large group of shoppers (+15). Judge Keen and his family along with the Notre Dame Mock Trial team (31+) showed up for shopping which was an enormous help. Also, a big "Thank You" to those who moved carts, emptied them and bagged and tagged several hundred individual family bags including: Charlene Nelson, Bruce Larsen and Christine Sovine, Nadine, Sebastian, Alanna and Landen Vargas, Jeff and Melissa Lee, Lucy Velez Garcia and her husband Pedro, and Anna Gherity. Special thanks to Sebastian Vargas and Bruce Larsen who were able to assist in loading and delivering the hundreds of presents purchased to the RCBA offices in record time.

Walter's Auto Sales & Service once again provided a large hightop Mercedes Sprinter Van to use to transport our purchases from Walmart to the RCBA building for the night. This year we had so much, we barely could get the doors of the van shut.

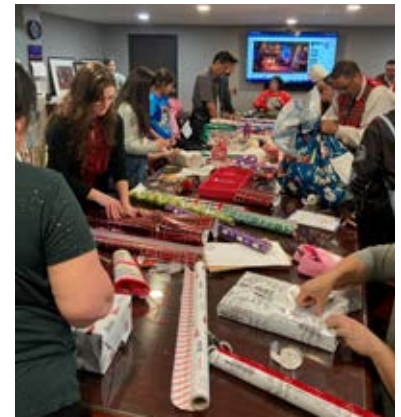
A great big "Thank You" to owner Steve Kienle and his Parts Manager Scott Eisengberger for providing our "sleigh."

### **The Wrapping Elves**

After the shopping was finished, all the gifts were delivered to the Bar and filled the RCBA board room. In many instances our Wrapping Elves also became Delivery Elves, making the trip back to the RCBA unnecessary.

A huge thank you to this year's Wrapping Elves: Christine Renken, Sophia Choi and family, Mary Shafizadeh, Nolan Kistler, Megan Demshki, Sarah Brommer, Diana Lorenzana, Betty Fracisco, Nesa Targhibi, Jason Barth, Erica Alfaro, Liz Munoz, Malvina Ovanezova, Leila Hamas, Janet Nichols, Ginger Werner, Sherri Godfrey, Knez Law Firm, Clint Jones, Judith Wilson, Orquidea Wilcox, David Rivera, Jason Barth, the Alfaro family, Goushia Farook, Bridgitte Wilcox, Matt Kugizaki,

Ruth Lecaro, Karl Hicks and Hailey Hicks, Audrey Moran, Destiny Servano, Jaime Poltilla, Veronica Garcia, Andrea Leon, Yara Bojorquez, Barbara Quezada, Marley Castro, Leila Santamaria, Karen Morgan, Judge Kenly Kato, Bethany Balchunas, Chantel Johnson, Katie Tanaka, Raj Shah, Kristine Sands, Lynn Venegas, Verity Bowler, Devin McComber, Elizabeth



*Wrapping Elves*

Miffleton, Veronica Foster, Sophia Contreras, Ceciah Lucero, Isabella Calderon, Isabella Del Villar, Kylie Jordan, John Faren, Summer Devore, Denise Chavez, the RCBA Barristers, the SAFE Family Justice Centers who assisted in wrapping the Murrieta, Temecula, Indio, Hemet and Riverside families, and Tania at the Lighthouse Centers.

### **Delivery Elves**

Our Delivery Elves sprinkled gifts and good cheer throughout Riverside County, including the cities of Riverside, Indio, Coachella, Desert Hot Springs, San Jacinto, Corona, Moreno Valley, Perris, Hemet, Nuevo, Temecula, Murrieta, and Blythe. A special big thank you to our intrepid Delivery Elves who donated their time and fuel before Christmas. These Delivery Elves were: Aniko Felsen, Judge Charles Koosed and family, Angela Viramontes, January Muldrow, Angelica Daniel, Leila Santamaria, Kizzy Moore, Derek Diemer, Dana Fischel, M. Ewing, Tania at Lighthouse, and Katie Perry for Murrieta, Temecula, Indio, Hemet and Riverside SAFE Family Justice Centers (who volunteered and retrieved bags for over 75 families, and then organized wrapping and their delivery) for her much-appreciated organizing efforts.

### **Special Thanks**

Once again, big kudos to the following: the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang (who lent a needed hand in organization and assistance in computer work). This event could not have succeeded without their energy and assistance. Many thanks also to the management of Lighthouse Social Services, SAFE Family Justice Centers, the Probation Department of the Riverside County District Attorney's Office, and Probation Offices in Desert Services Division and Indio for wrapping and delivering as well, it couldn't have been done without you and we are so grateful for your efforts!

Finally, a jumbo sized "Thank you" to all the Elves for making this happen! Your wonderful spirit and camaraderie make this entire endeavor truly rewarding.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for next year.

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

*Photos by Pamela Bratton and Charlene Nelson*



# CALENDAR

## FEBRUARY

- 6** Mock Trial – Round 3  
6:00 PM  
Riverside Hall of Justice
- 7** “Joining the Judiciary:  
The Application Process & What to Expect”  
Speakers: Luis Cespedes, Judge Judith Clark,  
Judge Jacqueline Jackson, Judge Valerie Navarro  
4:30 PM, Riverside Historic Courthouse  
Department One
- 10** Mock Trial – Round 4  
9:00 AM  
Riverside Hall of Justice
- 13** Mock Trial – Elite 8  
6:00 PM  
Riverside Hall of Justice
- 15** Estate Planning, Probate & Elder Law Section  
Meeting  
Noon, RCBA Gabbert Gallery  
Topic: “How to Make Your Estate Planning Intake the Best It  
Can Be”  
Speakers: Herb Chavers and Kevin McKenzie  
MCLE
- 16** General Membership Meeting  
Noon, RCBA Gabbert Gallery  
Topic: “Justice in Plain Sight”  
Speakers: Justice James Ward (Ret.), Dan Bernstein  
MCLE
- 20** Family Law Section Meeting  
Noon, RCBA Gabbert Gallery  
MCLE
- Mock Trial – Semi Finals  
6:00 PM  
Riverside Historic Courthouse,
- 22** Mock Trial – Championship  
6:00 PM  
Riverside Historic Courthouse,

### Events Subject To Change

For the latest calendar information please visit the RCBA’s website at [riversidecountybar.com](http://riversidecountybar.com)

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

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, Reading Day 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 \$30.00 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.



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