

RIVERSIDE LAWYER

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MAGAZINE

IN THIS ISSUE:

Reviewing Homelessness

Legal Nurse Consultant

Resident's Rights

Who is Taking Care of Grandma?



The official publication of the Riverside County Bar Association

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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 its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

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

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

CALENDAR

JANUARY

- 19 CLE Brown Bag Series**
“New Civil Developments”
Speaker: Judge Gloria Trask, Riverside Superior Court
RCBA 3rd Floor – Noon
MCLE
- 21 California Women Lawyer**
“So, You Want to be a Judge?”
Mission Inn, 3649 Mission Inn Ave., Riverside
8:00 am – 4:00 p.m.
MCLE
- 25 Estate Planning, Probate & Trust Law Section**
RCBA 3rd Floor – Noon
MCLE
- 26 CLE Brown Bag Series**
“Life in the Fast Lane: How SPEED Affects Lawyers”
Speaker: Helena Rouhe Hadden, New Directions for Women
RCBA 3rd Floor – Noon
MCLE (Substance Abuse)
- 30 RCBA/SBCBA Construction Defect Section**
Paulson Reporting, Riverside
4:00 p.m.

FEBRUARY

- 1 Bar Publications Committee**
RCBA – Noon
- 2 Mock Trial Scoring Attorney Orientation**
RCBA 3rd Floor – Noon
MCLE
- 7 Joint RCBA/SBCBA Environmental Law Section**
RCBA 3rd Floor – Noon
MCLE
- 8 Mock Trial Steering Committee**
RCBA – Noon
- Barristers**
Cask ‘n Cleaver, 6:00 p.m.
MCLE
- 13 HOLIDAY**





President's Message

by Theresa Han Savage

Happy New Year! At the beginning of each year, I, like many of you, have ideas about what I can do to better myself. You guessed correctly, I am referring to New Year's resolutions. We make them every year; are diligent about "sticking with it this year" . . . for about a week; forget what we resolved to do by mid-year; and start thinking about new ones toward the end of the year. To make it easier on myself, I have decided to make just a single resolution this year – to be a calmer person (i.e., to refrain from screaming at my children). I will let you know about my progress in June; that is, if I can remember my resolution.

On a more serious note, what can we, as members of the RCBA, do this year to improve our community? Support Senate Bill 56 (S.B. 56) – a bill authorizing the creation of new judicial positions in California. As many of you know, the Inland Empire is in dire need of new judges. Since 2000, Riverside County's population has increased by 20 percent; the court grew by one judge. Currently, Riverside has 69 judges and commissioners. Our caseload, however, justifies 137.5 judicial officers. The average caseload per judge in Riverside is approximately 6,400.

What does a shortage of judges mean? Delay in getting cases through our courts. In December 2005, the Riverside Superior Court declared a moratorium on civil trials for six weeks. This is the second moratorium on civil trials; there was a previous moratorium in June 2004. In both instances, the court had to declare the moratorium in order to hear criminal cases that face possible dismissal if they fail to start within 10 days of a trial date being set. Interestingly, although San Bernardino also copes with a shortage of judges (caseload of 6,200 per judge), it has not had to

suspend civil trials. One of the main differences between the two counties is the number of felony jury trials. In the 2003-2004 fiscal year, Riverside County had 314 felony jury trials while San Bernardino County had 188.

What can you do to help? You can help by supporting S.B. 56. S.B. 56 authorizes the creation of 150 new judicial positions in California over a three-year period; Riverside would get 19 new judges, and San Bernardino would get 23 new judges. Although this is a far cry from the number of judges the Inland Empire actually needs, it is a good start. The RCBA will be sending out a letter soliciting your support for S.B. 56 – please be on the look out for it. We will be working with the San Bernardino County Bar Association and other local bar associations to drum up support for S.B. 56 in the Legislature. If you know any legislators or others involved in the political process, please call them and let them know how important the passage of S.B. 56 is – not only for the legal community, but for the community in general. Please contact me if you have any other ideas about how we can reach out to the Legislature.

On a final note, on behalf of the RBCA, I would like to express our deepest sympathies on the passing of one of Riverside's pre-eminent attorneys, Donald Powell, in December. He will be greatly missed.

Theresa Han Savage, president of the Riverside County Bar Association, is a research attorney at the Court of Appeal, Fourth Appellate District, Division Two.



BARRISTERS

By Robyn Beilin-Lewis, Barristers President

Barristers celebrated the end of 2005 with a wonderful holiday party that it co-hosted along with the Riverside County Bar Association and the Riverside judiciary. The event raised over \$600 in donations to the RCBA Elves program. To those who made donations, we thank you for your generosity. I would also like to extend a special thank you to Judge Waters, David Bristow, Georgina Flores of County Facilities Management, Susie Slaughter, Shane Collins (Catering by Shane), and Charlotte Butt for all of your help in making this a successful event.

At our November meeting, Barristers was pleased to present J. Dana MitchellWeiler of the Law Office of J. Dana MitchellWeiler, who joined us as our guest speaker. Dana educated us on contested wills and trusts. I don't know about you, but as soon as someone finds out that I am an attorney, I am always asked questions about estate planning and wills. Unfortunately, my area of practice does not include that type of law, so I am stuck dusting off whatever I have retained from law school. It was most appreciated to now have a working knowledge of what goes on in a contested estate case for whenever those types of questions are posed to me again! On behalf of the Barristers Board and all of our members, I would like to thank Dana again for taking time out of his busy schedule to come and speak to our group. It was a pleasure having you there!

In addition to Dana MitchellWeiler, Judy Davis of VIP Mentors also spoke at our meeting. Judy was joined by Jessica, a recent parolee, who has clearly benefited from this rewarding program as the mentee of a former public defender. Jessica's story was inspiring and reminded us all of how we can all make a difference in our community.

We are pleased to announce the following schedule of speakers for the upcoming months:

February: "Consideration of Criminal Law Implications in Civil Cases," with Chris Harmon (Harmon & Harmon) and Chad Firetag (Law Offices of Paul Grech).

March: "A Practice Guide to Filing Documents with the Court," with Inga McElyea, Executive Officer/Clerk of the Riverside Superior Court.

April: "Environmental Law," with Steve Anderson (Best Best & Krieger).

May and June: To be announced.

For those of you unfamiliar with Barristers, it is an organization designed for newer attorneys in our legal community to have the opportunity to meet other new attorneys and to sit in on MCLE lectures from esteemed members of our local judiciary and bar association, who give practice tips and pointers that are of special interest to less seasoned associates. We encourage all new attorneys to join us, no matter where you may practice – not just civil litigators, but also new deputy district attorneys, deputy public defenders, other criminal defense attorneys, and deputies from the City Attorney's office.

Although the definition of a "new" attorney is an attorney less than 37 years of age or with under seven years of practice, we also welcome all members of the Riverside County and San Bernardino County Bar Associations. I think we can all agree that, even though you may no longer consider yourself a "new" or "young" attorney, we can never stop learning new things in life, especially in our profession. Barristers is blessed to have fantastic speakers month after month, and we all should take advantage of them. Plus, it is always an advantage for everyone, regardless of what point you are at in your career, to get to know other members of your profession.

If you would like more information regarding Barristers, you can contact me at (951) 686-8848 or at beilinro@yahoo.com.



JUDICIAL PROFILE: COMMISSIONER CHARLES KOOSÉD

by Donna Thierbach

Whenever I meet local attorneys, commissioners and judges, there are two questions I am always curious about: (1) why did they decide to become attorneys and (2) how did they come to practice in Riverside County?

It seems Commissioner Koosed has some very interesting answers.

Commissioner Koosed developed an interest in and appreciation of law when he became involved in student government in junior high as his class representative. He enjoyed the student government process and thought that the practice of law would be equally rewarding. In pursuit of his goal to become an attorney, he was able to pay his way through undergraduate school by getting a real estate license and selling mortgages. After graduating from UCLA in December 1990, he had an interest in sports, so he chose Southwestern School of Law in Los Angeles, because they had sports law classes and an internship program. He had the privilege of interning one semester with the L.A. Raiders when they were based in El Segundo. Although he did not learn as much as he had hoped, he retained his desire to practice sports law and wrote a number of letters to various teams during his last years of law school. He did not have much success in his letter-writing campaign, but many of the teams responded with very nice letters, which he has kept to this day.

In his last years of law school, Commissioner Koosed clerked for a small firm in Encino, California. However, when he graduated, he quit to devote his full time to studying for the bar. He grew up in Torrance, San Pedro and West Los Angeles, but while he was in law school, his mother moved to Palm Springs. Commissioner Koosed, being a starving, broke, deeply in debt recent law school graduate, made the decision to move in with his mother while he waited for the bar results. Once he moved to the desert, he truly began to enjoy the area and decided he would seek employment in Indio.

In December 1994, he interviewed for both the Riverside County District Attorney's and Public Defender's Indio offices, but neither was hiring at that time. Then, in January 1995, he had his big break. A friend asked Commissioner Koosed to make an appearance for him in a criminal matter in Indio court. It was the Commissioner's first paying job as an attorney, and he earned a whole \$75! He had never been in a courtroom before, so he had to ask what he was supposed to do. He arrived early, gave the clerk his card and explained why he was there. He took a seat and waited, and waited and waited. The case was never called that morn-

ing (it turned out the client had not been transported by the sheriff). However, while he was waiting he met Pat Lahti and Barbara Brand of the conflict defense panel. They struck up a conversation, and by the end of the day, he had been offered a position as a motion attorney, earning \$25 per hour. Thereafter, he began stalking the conflict attorneys to see if they needed any motions written; he learned the value of bringing donuts to secretaries. Then, after six months, the conflict panel offered him a contract as a trial attorney. Initially, he interviewed his clients in the law library and he had just a P.O. box and a voice mail phone.

Also during this time, he met his wife. A mutual friend had been trying to set up a meeting between them, but it just never worked out. Then one evening, just by chance, they all ran into each other! He and his wife have now been married seven years and have two preschool boys. His wife previously was the Director for Revenue for Marriott. However, she retired when they decided to start a family and is now a full-time mother and homemaker. When asked about his good luck in meeting Pat and Barbara of the conflict panel in an Indio courtroom and meeting his future wife by chance, Commissioner Koosed chalked it up to "kismet."

Commissioner Koosed enjoys golfing and spending time with his family. His sons love computer games and wrestling. He and his wife love to travel and hope to do some more extensive traveling once their boys are older. Since becoming a commissioner on June 22, 2005, Commissioner Koosed has been doing a lot of traveling on the Interstate 10, in that he commutes to Riverside from Indian Wells each day.

Commissioner Koosed loved trials, but trial work required a lot of long hours, and that he does not miss. He does miss his fellow Indio conflict panel attorneys, though. Not only did they have lunch together every day and provide a lot of support, they are very good friends. As a trial attorney, one of his greatest successes was a recent trial in February 2005, in which he obtained a full acquittal for his client, Richard Walker, in a death penalty case.

Since Commissioner Koosed had practiced primarily criminal law, he said he had a lot to learn in his first assignment as a commissioner, which is unlawful detainers and small claims. However, he is enjoying the assignment and the camaraderie of the civil judges and commissioners.



Commissioner Charles Koosed



OPPOSING COUNSEL: VICTOR MARSHALL

Victor Marshall was inspired to become an attorney by another attorney – and another Marshall – Thurgood. In fact, it was Thurgood Marshall School of Law in Houston that gave Victor his law degree. Born, raised, and educated in Chicago, he was drawn to the law at an early age as a means of redressing social injustice. Consequently, Victor received his practical training in the San Bernardino Public Defender's Office, where he tried more cases than any other lawyer while employed there, and at the district attorney's office, before coming to Riverside, where he set up shop as a criminal defense attorney about seven years ago. In the eleven years that he has practiced law, Victor has found time to skydive, hang glide, ski, golf, jog, play basketball, enter bodybuilding competitions, and is a husband and father of three children.



Victor Marshall

Victor's community activities include volunteering with the Inland Empire Latino Lawyers Association and the San Bernardino Chapter of the NAACP. He received a special commendation from Mayor Loveridge for exceptional work as one of the first lawyers in Volunteers in Parole and has also aided the indigent at Inland Counties Legal Services. Prior to that, he worked for legal aid in Los Angeles. Victor had the privilege of giving a televised public speech by the statue of Dr. Martin Luther King, Jr. here in Riverside. He also has the honor of being an adjunct professor at Loma Linda University.

Victor's practice is based at his office on Magnolia Avenue overlooking White Park (the occasional free concert is one of the park's perks). Apart from Thurgood Marshall's inspiring example, it was Victor's uncle, Ehalid Dinkane, who encouraged him to dive into jurisprudence, but it was the campus unrest at Victor's *alma mater* Eastern Illinois University that made him want to speak out against discrimination. The best avenue for that was criminal law. It has been an education. "I've never learned more than from practicing law," observed Victor. "The beauty of trying cases with D.A.'s is developing a trust relationship that allows you to resolve issues outside the courtroom."

Sitting as a judge pro tem has given him enhanced empathy with the judges before whom he appears. Most of Victor's courtroom experiences have been positive ones: "For the most part, judges have been good to work with." Victor also appreciates the collegiality that he enjoys with prosecutors, though professional camaraderie is, occasionally, tested by irony. In one instance, Victor had to put one district attorney on the stand to destroy another district attorney's case: the first D.A. testified that the "victim" allegedly assaulted by Victor's client had, in fact, no bruises, much to the dismay of the second D.A. Nevertheless, the incident made for a good story to tell at social gatherings.

With respect to trial work, Victor learned from the best, including Gerry Spence's Trial Lawyers College and the National Criminal Defense College. He credits most of his training to his mentor, Grover Porter.

Despite his easy-going approach to life, Victor is concerned about the high mortality rate among attorneys. However, Victor, anything but sedentary at age forty, should have the luxury of deferring such concerns for quite a few years.



BOOK REVIEW

by Bruce E. Todd

“Let No Guilty Man Escape”

The Judicial Biography of “Hanging Judge” Isaac C. Parker

By Roger H. Tuller

University of Oklahoma Press (April 2001), 210 pp.

ISBN 0-8061-3306-6

In the old Wild West, he was responsible for the deaths of more men and women than Billy the Kid, Jesse James, John Wesley Hardin, Wyatt Earp, or Wild Bill Hickok. Yet he never shot, stabbed or bludgeoned anyone to death. His method of execution was the rope. His name was Isaac Charles Parker, but he was more commonly known as the original “Hanging Judge.”

Parker was born on October 15, 1938, and he died (of dropsy) on November 17, 1886. In between his birth and death, he was responsible for sentencing 161 convicted criminals to their deaths. Of that number, 79 were actually hanged.

This excellent biography of Isaac Parker was written by Roger Tuller, who is an instructor of history at SUNY College in Cortland, New York. Tuller presents an interesting account of Parker’s rise to become the “law of the land” as U.S. District Judge for the Western District of Arkansas, located in Fort Smith.

Although he grew up on a farm, Parker disliked hard labor, and instead developed an interest in books, history, and literature. At age 17, he decided to pursue a career in law, which was a logical choice, given his interests. Back in Parker’s time, there were only 13 law schools in the country, and many attorneys did not attend a formal law school. Legal training often consisted of a combination of apprenticeship and self-directed study of legal classics such as “Greenleaf on Evidence” and Blackstone’s “Commentaries on the Laws of England.” Tuller mentions that passing a formal bar examination, as we know it today, often was not a requirement. He describes one incident in which an Ohio jurist, after a cursory five-minute examination of a successful candidate, exclaimed “Oh, hell, that fellow can take care of himself. Let’s go get liquor.”

Parker passed his “examination” in 1859 at age 21. His early career included a position, starting in 1861, as City Attorney for St. Joseph, Missouri. His duties included prosecution of violators of local ordinances. In one instance, he was involved in obtaining a conviction

of Joseph Robideaux – the founder of St. Joe – for public drunkenness.

He first became a judge in 1868, when he won a six-year term on the Twelfth Missouri Circuit. In March of 1875, he was appointed by President Ulysses S. Grant to preside over the Western District of Arkansas. Prior to this appointment, the Western District had been subject to corruption and malfeasance by Parker’s predecessor (William Story). Court sessions were rarely held and punishment of law-breakers was virtually nonexistent. Parker’s regime brought about an almost immediate change when, on September 7, 1875, six convicted murders were lined up on the gallows. With 5,000 spectators looking on, Parker’s executioner George Maledon moved to the left of the platform, grasped a lever and opened the trap. It was now clear that Parker, unlike his corrupt and lenient predecessor, had no qualms about punishing criminals.

This execution and the ones that followed over the next 20 years firmly established Parker’s lasting image as “the Hanging Judge.” The Fort Smith gallows could handle up to 12 people at one time. During a time when most hangings were carried out behind closed walls, Parker’s hangings were public displays, which became mass outings for families living as far as 50 miles away. Although a solemn occasion, these hangings provided a picnic-like atmosphere and presented an opportunity for frontier settlers who were separated by many miles to get together. Whiskey vendors and other hawkers circulated throughout the crowd. News of the hangings was published in newspapers across the country.

It should be noted that the Western District covered 74,000 square miles, sprawling across 18 counties and the entire Indian Territory (which included the Five Civilized Tribes: the Choctaw, Chickasaw, Cherokee, Creek, and Seminole). Indian courts governed their own people and Parker’s court handled cases involving U.S. citizens and disputes between the tribes. The rugged territory was a haven for criminals. Federal statutes were upheld by a small force of federal marshals. To illustrate the danger presented to these marshals in covering this territory, statistics reveal that at least 20 deputy marshals were killed there between 1881 and 1886. It was for this reason, among others, that Parker felt the need to establish law and order in this wild territory.

(continued on page 17)

WHO IS TAKING CARE OF GRANDMA????

by Harlan B. Kistler

The purpose of this article is to acquaint attorneys with actions against skilled nursing facilities for neglect and abuse of their patients or residents. For purposes of this article, a skilled nursing facility or convalescent hospital is one that provides 24-hour skilled nursing care, unlike a residential care facility, which provides basic care to independent elders who do not require medical care.

The legislature has provided enhanced remedies on tort claims against nursing homes to motivate plaintiff attorneys to represent the elderly. Prior to the legislative enactments, it was difficult for the elderly to obtain representation because they did not fit the typical plaintiff model, in which the injured party is disabled due to the consequence of the injury, with significant lost wages or medical expenses. Rather, the nursing home client has pre-existing illnesses, rendering him or her frail, sick and jobless, not to mention a poor quality of life and a short life expectancy. Nevertheless, recent changes in the law have made this type of litigation worth pursuing, considering that the 65-year-plus and subset 85-year-plus population are both growing rapidly in the United States. Also, a substantial percentage of California nursing homes have been cited continuously for very serious quality-of-care problems or substandard care.

Litigating nursing home cases is similar to litigating other personal injury cases in some respects, yet critically different in many ways. Nursing home cases are governed by Welfare and Institutions Code, section 15600 et seq. (hereinafter referred to as the "Elder Abuse Act"), and are completely different from cases concerning the medical negligence of physicians and hospitals, commonly referred to as medical malpractice cases, which are governed by MICRA legislation. The Elder Abuse Act was enacted to protect the elderly and dependent adults from abuse and neglect. The legislature determined that the elderly have special needs and are very vulnerable to the risk of abuse, neglect and abandonment. These statutes create civil remedies against individuals and entities that commit elder abuse.

Generally, elder abuse is defined as "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental

suffering." (Welf. & Inst. Code, § 15610.07, subd. (a).) Importantly, abuse is also defined by the code as the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. (Welf. & Inst. Code, § 15610.07, subd. (b).) Neglect is defined as the failure to assist in personal hygiene, to protect from health and safety hazards, to provide adequate nutrition, medical care, or hydration, or to prevent malnutrition. (Welf. & Inst. Code, § 15610.57, subd. (b).) As you can see, abuse is a broad term encompassing physical abuse, neglect or fiduciary abuse as a basis for a civil cause of action for statutory elder abuse.

Enhanced remedies are provided under the Elder Abuse Act if abuse or neglect is proven in a cause of action for statutory elder abuse pursuant to Welfare and Institutions Code section 15657. A review of BAJI 7.40 sets forth the elements required to prove such a case. First, the injured party must be residing in California and be over the age of 65. Second, you must prove abuse by showing either neglect, physical abuse or fiduciary abuse. Third, you must also show that the defendant is a care custodian or has custody or care of the elder. Fourth, you must prove by clear and convincing evidence that, when the abuse occurred, the defendant acted with recklessness, oppression, fraud or malice.

In addition to proving that the defendant committed the acts recklessly, fraudulently, oppressively or maliciously by clear and convincing evidence, a plaintiff must prove ratification by the employer under the standards set forth in Civil Code section 3294, subdivision (b). That is, it must be shown that the employer either had advance knowledge of the unfitness of the employee or with conscious disregard ratified, authorized, or approved the conduct by a managing agent, officer or director, or the employer was personally guilty of oppression, fraud, or malice before the enhanced damages are allowed.

Elder Abuse Remedies

The legislature provides enhanced remedies for an elder abuse cause of action pursuant to Welfare and Institutions Code section 15657 as an incentive for plaintiff attorneys to accept such cases. These elder abuse remedies are "in addition to all other remedies provided by law." They include reasonable attorney fees and costs, plus general damages for decedent's pain and suffering, in an amount no greater than \$250,000. In tort actions,

Code of Civil Procedure section 377.34 excludes damages for a decedent's pain and suffering upon decedent's death. However, the legislature created an exception to that rule in the Elder Abuse Act. These remedies can be found in BAJI 7.46.

Interplay Between MICRA and Elder Abuse

It is important to understand the distinction and interplay between MICRA and the Elder Abuse Act when handling nursing home cases. A nursing home is considered a health care provider under MICRA, which governs medical negligence or medical malpractice cases, as defined in Civil Code section 3333.1, subdivision (c). Therefore, if you fail to establish the elements discussed above for the enhanced remedies under the Elder Abuse Act, then MICRA will apply and drastically reduce the value of your client's case. For example, in a wrongful death case, the application of MICRA would limit the heirs' recovery to \$250,000. On the other hand, upon establishing the elements necessary under the Elder Abuse Act, there would be no cap on non-economic damages. Further, the decedent's pain and suffering would be included, up to \$250,000, in addition to the heir's recovery, and the plaintiff's attorney fees would be included in the award. Lastly, the plaintiff would be allowed punitive damages according to proof.

Evaluation of Elder Abuse Cases

Given the fact that the definition of elder abuse is quite broad, there are many types of elder abuse cases. Elder abuse cases can include physical abuse, sexual abuse, neglect, fiduciary exploitation and abandonment. Common elder abuse cases relative to skilled nursing homes involve decubitus ulcers, dehydration leading to death, malnutrition, falls and various other injuries caused by inadequate nursing care or neglect.

In handling nursing home cases, I try to use the same guidelines that I use in medical malpractice cases. First, one has to consider the potential recovery. As in medical malpractice cases, you typically need death or serious injury to support the expenditure of costs associated with these types of cases. Most elder abuse cases are both document-intensive and expert-intensive. The quantum of work is enormous and akin to handling five medical malpractice cases. One elder abuse case I handled required close to 10,000 trial exhibits, 27 depositions, with 18 or more videotaped, and several experts to opine on life expectancy and nursing home care issues. The costs reached close to \$100,000 as this case proceeded to a five-week jury trial.

From a settlement perspective, one important lesson I learned from that particular elder abuse case is that the jury will closely scrutinize the children or other heirs.

They want to know who it is that will ultimately receive compensation by way of their verdict. It is very important in an elder abuse/wrongful death case that the family members are actively involved in the elder's life and make good witnesses.

Be sure also to evaluate the length of time your client resided in the nursing home. The longer the elder resided in the nursing home, the more documentation will be produced in these cases, in part because the nurses document three shifts per day. Therefore, avoid cases where the pattern of neglect encompasses a ten-year stay in the nursing home and the case requires extensive documentation to link up causation issues that extend intermittently over an extended period of time.

Attorneys should avoid the temptation to accept cases involving significant damages but questionable liability. I always make sure that the issue of neglect is so clear that a recitation of the facts would make a reasonable juror conclude that the injury could not have happened to the resident except by some reckless act or pattern of negligent conduct.

Finally, be sure to evaluate whether your case is going to be a medical malpractice case or an elder abuse case. It is a good idea to determine the life expectancy of the elder before taking an elder abuse case, as I learned in the past by making the mistake of relying on the facts provided by my client. This issue can serve as a factor in substantially limiting your client's recovery.

I always obtain the DHS "deficiency," or review of the nursing care that your client claims is substandard. Once the DHS investigates your client's complaint about substandard nursing care, the DHS will issue a deficiency setting forth the violations of state and federal standards of nursing care. The DHS standard of deficiency is a public record, which is very useful in proving instances of neglect and resident mistreatment.

Proving Liability – Be a Work Horse

It is very important to perform a thorough investigation before filing an elder abuse action against a nursing home. Aside from observations and allegations of family members, you need to focus on the nature of your client's injuries and review the relevant nursing records. I always use a nurse expert at this juncture to correlate nursing standards of care with the alleged injuries. Just because family members tell you that Grandma received substandard care doesn't always mean that she did. Jurors are very visual, and fortunately there are a lot of tools for proving liability. For example, a blow-up of the resident's death certificate showing the cause of death, such as death by infection due to decubitus ulcers, supports the inference that the resident died of neglect rather than old

age. Therefore, you should obtain a complete set of medical records from the facility and review them with your expert right away. The resident's care plan is another very important document, as it sets forth the resident's medical vulnerabilities and the specific nursing care required to avoid injury to the resident. The MDS and RAP are federally mandated forms that will provide you with a great deal of information regarding the type of nursing care necessary for the particular patient. Reviewing and analyzing nursing records and nutrition records can be crucial in showing that the nursing home failed to provide consistent and adequate nursing care.

Nursing homes providing long-term care as 24-hour health care facilities in California are highly regulated by state and federal regulations and are required to comply with all regulations concerning licensing, operation, management, maintenance, and administration of services. (See 42 U.S.C. §§ 1395i-3 et seq.; 42 C.F.R. §§ 483 et seq.; Cal. Code of Regs., tit. 22, §§ 72000 et seq.; Health & Saf. Code, §§ 1250 et seq.) These state and federal regulations are a powerful tool for a plaintiff attorney to frame the relevant liability issues at trial and show grounds for a claim of negligence per se against the facility.

In a claim for negligence per se, you show the jurors that the facility failed to comply with a nursing regulation and that this failure was a substantial factor in causing the injuries suffered by the elder. A claim for negligence per se puts the focus on whether the facility violated nursing care regulations rather than on a defense attempt to cloud the standard of care issues in the case.

For instance, under federal regulations, nursing homes must ensure that residents do not develop bed sores. Also, if a resident develops pressure sores, the facility must provide the necessary treatment and services to promote healing and prevent infections. (42 C.F.R. § 483.15(h)(6).) Pressure sores are easily preventable and usually occur in facilities that are understaffed. Pressure sores, if untreated, are very painful and can lead to death for an elderly person. Nursing homes are notoriously understaffed, yet the regulations require that they must provide sufficient staffing to take care of the particular needs of each resident as set forth in the resident's care plan as assessed upon his or her admission into the facility.

In one case, I was able to prove understaffing by questioning the charge nurse on her daily activities and the time it took to complete those activities during her shift. The testimony obtained showed that she had about five seconds to care for each of her numerous and highly disabled residents.

Governmental agencies like the Department of Health Services (DHS) act as watchdogs to ensure that nursing

homes are complying with the regulations concerning patient care. When a resident complaint is made, the DHS will investigate the nursing care issues pertaining to the patient and respond by filing a notice of deficiency, which sets forth the regulation violated by the facility. The facility has an opportunity to respond by filing a plan of correction to prevent the same conduct from occurring again. By obtaining the nursing home's file from the DHS, containing deficiencies and citations against the nursing home, an attorney has a record of how the nursing home has been performing with regard to patient care. This public record becomes an invaluable tool in showing a pattern of neglect/abuse towards residents and the nursing home's unwillingness to correct the situation over time.

Witnesses play another key part in proving liability in nursing homes cases. Former employees and staff nurses will provide evidence regarding issues of inadequate nursing care, information on the facility and its failures to train or respond to emergent conditions affecting the residents, as well as its failures to prevent known risks to particularly vulnerable residents. I believe that the depositions of key witnesses should always be videotaped in these types of cases.

In terms of nursing staff competence and adequate staffing, make sure you evaluate the nursing home's resident acuity. When a nursing home accepts more residents, it must measure the impact they will have on the nursing staff. For example, residents who need assistance with feeding, or those prone to skin problems who need to be turned or repositioned regularly, will require more staffing hours. A nursing home's pursuit of increasing profits can sometimes lead to its failure to account for acuity, which in turn can overburden the actual care providers and lead to bedsores, weight loss, dehydration, avoidable injuries and even death.

Concluding Remarks

I don't believe there is a better practice area than nursing home litigation when it comes to providing an opening statement. If extensive discovery has been completed, the evidence usually provides a very compelling and riveting story to the jurors, who are apt to draw their own conclusions at that time. The same rules apply as to giving any opening statement. It should be a short story with a theme that ties in all the key facts and witnesses and a reason why a verdict for the nursing home patient is so important. In nursing home cases, you can take your most compelling theme directly from the federal nursing home regulation itself, namely "dignity." Federal regulations require nursing homes to care for residents

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GROKSTER AND NAPSTER: WHEN IS SOMEONE LIABLE FOR INDUCING OR CONTRIBUTING TO THE INFRINGEMENT OF A COPYRIGHT?

by Michael H. Trenholm

The Internet now provides a nearly effortless means for individuals to transmit content, such as music, software, motion pictures, and articles, to one another. However, the ease with which one can copy or download content via the Internet has also resulted in rampant copyright infringement. The Internet sites of *Napster* and *Grokster* each provided a vehicle through which people copied and exchanged literally billions of copyrighted songs and other content, without paying any compensation to copyright owners. Of course, the act of copying or making reproductions of copyrighted subject matter constitutes copyright infringement. (See 35 U.S.C. § 106.) The issue in the *Napster* and *Grokster* cases involved inducing or contributing to copyright infringement. That is, those cases posed the question: to what extent should an entity be liable for copyright infringement when it does not itself engage in prohibited copying, but instead merely furnishes the means for others to infringe copyrights?

This is not a new issue for courts in the United States. Back in the early 1980's, the United States Supreme Court addressed a similar issue in connection with videocassette recorders in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). In the *Sony* case, the U.S. Supreme Court acknowledged a safe harbor for entities that manufacture devices that can be used by others to commit copyright infringement.

Specifically, in the *Sony* case, the copyright infringement arguably occurred when a VCR owner taped a television broadcast in order to watch it at some later time, a practice to which the Court referred as "time-shifting." *Sony*, of course, was not copying the copyrighted content, but it was providing a device or means – a VCR – through which other individuals could engage in copyright infringement. The U.S. Supreme Court ruled that, while there may be potential infringing uses for VCR's, there was also a substantial non-infringing use for those devices. According, the court held, *Sony* was not liable for contributing to, or inducing others to commit, copyright infringement.

The substantially non-infringing use that the Supreme Court identified in the *Sony* case was time-shifting; it concluded that time-shifting falls within the "fair use" defense. "Fair use" involves the weighing of a variety of factors, including the commercial impact of the copying on the value of the copyrighted work. An individual who records a television show to watch at a later time, of course, has considerably less impact on the commercial value of the

television show than one who posts a digital copy of a copyrighted song on the Internet for millions of people to download for free. In view of this precedent, and the advent of the Internet, the Ninth Circuit and the U.S. Supreme Court were called upon to address the issue of when entities like *Napster* and *Grokster* should be held liable for providing a means through which others may infringe copyrights.

In *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001), the Ninth Circuit found the *Napster* file-sharing service liable for inducing or contributing to copyright infringement. One dispositive fact in the *Napster* case was that *Napster* itself maintained a central index of the files available for sharing on its system. *Napster* argued that there was a substantially non-infringing use of its system, because its system allowed individuals to download non-copyrighted songs. However, the plaintiffs in the *Napster* case were able to establish that the vast majority of the songs listed in *Napster's* index and downloaded by individuals were, in fact, copyrighted songs and that *Napster* was well aware of the illegal downloading of copyrighted songs because *Napster* maintained the index. The Ninth Circuit was thus willing to impose liability on *Napster* for the infringement by others.

In response to the *Napster* decision, *Grokster*, *Gnutella*, and others decided to eliminate the dispositive fact from their new file-sharing systems. The systems that replaced *Napster* no longer maintained a central index of songs. Instead, they were decentralized systems in which searches for particular songs or other content were broadcast through other computers running the *Grokster*-type program to find the requested content. In this way, *Grokster* and others could maintain that they had no knowledge of their users' downloading of any specific copyrighted material, and, thus, they argued that they could not be found liable under the secondary theories of copyright liability upon which the *Napster* court had relied. In fact, the *Grokster* defendants succeeded with that argument in the district court and at the Ninth Circuit.

The *Grokster* defendants did not fare so well at the Supreme Court. In a unanimous decision, the Court in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, ___ U.S. ___ [125 S.Ct. 2764] (2005) vacated the lower courts' rulings and articulated a new active inducement theory for secondary liability for copyright infringement. The Court held that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster

infringement, is liable for the resulting acts of infringement by third parties.”

The evidence in the record suggested that the defendants in the *Grokster* case had intentionally marketed their systems to former Napster users as alternative to Napster, and the defendants had even modified their systems to be compatible with the Napster system. The evidence further suggested that the business models adopted by the defendants in *Grokster* were directed toward having individuals download copyrighted songs. Finally, there was no evidence that the *Grokster* defendants made any attempt to filter out or otherwise to prevent their users from downloading copyrighted songs.

In light of this evidence, the Supreme Court was willing to conclude that a basis existed for finding the *Grokster* defendants liable for secondary infringement. The Supreme Court did not overrule the safe harbor aspect of the *Sony* case; rather, it found that liability could be imposed when the defendant took active steps to induce copyright infringement. An open question still remains regarding what conduct is sufficient to constitute active inducement. Simply creating file-sharing software apparently is not enough, but ignoring widespread copyright infringement and refraining from taking steps to prevent extensive copyright infringement may result in a finding of active inducement.

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Who Is Taking Care of Grandma????

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in a manner that “maintains and enhances the resident’s dignity.” (42 C.F.R. § 483.15(a).)

The nursing home betrays the resident and breaks the law (state and federal) when it allows its resident to become riddled with bedsores and to lie in his or her own feces or urine for many hours or even days. The jurors may determine that the nursing home’s action or inaction caused not only the loss of life but the loss of dignity to the patient. Upon learning about who the nursing home patient was, a reasonable juror is going to want to punish the nursing home and deter similar future behavior, especially if the resident dies in an undignified manner. This is true when it can be shown to the jurors that the particular nursing home had a deplorable record of mistreating residents, as evidenced by the records of the DHS. Moreover, depositions will bear out that, despite notice of substandard nursing care from the DHS and significant profits, and despite repeated requests from charge nurses and other actual care givers, the budget for nursing care was never increased.

Once you start taking depositions, it becomes clear that you should never attack the nurses, who are simply overworked and underpaid. Try as they might, they may be just too overworked to care for the residents within the budget constraints placed upon them. Nursing home employees will admit that, if they had more help, they could do a much better job. Similarly, DHS employees are just too understaffed to make any difference at all with regard to policing nursing homes. Investigators for the DHS respond only to the most egregious cases of abuse, due to limited resources. Thus, it becomes the job or duty of the jury, through plaintiff attorneys, to protect the elderly in this great community.

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THE LEGAL NURSE CONSULTANT IN ELDER ABUSE

by Penny Watkins and Wilma Bradley

Are you asking yourself . . . What is a Legal Nurse Consultant (LNC) and why would I want to utilize one? The legal nurse consultant is a registered nurse who assists attorneys in navigating smoothly through the convoluted and confusing health care system. Whether the settings are acute care hospitals, outpatient settings/clinics, extended care skilled nursing centers, residential care centers, or physician offices, the LNC can accurately and thoroughly review, interpret and analyze the information as to the standard of care, omissions, errors and the appropriateness of care provided and can impart an opinion to the attorney. This article will highlight certain aspects of the role of the LNC, provide a rudimentary overview of the LNC in elder abuse cases and answer the two questions posed.

LNC Qualifications

The two main qualifications for the LNC are that he or she must be a Registered Nurse with at least three to five years of clinical experience. It is not essential that the LNC have experience in the legal arena, but it can be helpful. The attorney seeks the assistance of the LNC because of the registered nursing and healthcare experience that gives the LNC the ability to determine whether a breach of the standard of care has occurred. The LNC needs to be knowledgeable in the standard of care, the nurse scope of practice and the Nursing Practice Act, as well as the state and federal laws and regulations specific to the healthcare setting in which the alleged injury occurred. The LNC should be capable of providing the

attorney with a succinct definition of the standard of care as well as his or her source(s) for that definition.

Types of Cases

An LNC can be utilized in any case where health, injury and illness are at issue. A few examples where LNC services have been utilized are, of course, medical/nursing malpractice, personal injury, Worker's Compensation, IME/DME, employment law and product liability.

Services of the LNC

The LNC can be utilized as a consultant, working behind the scenes, or as an expert witness. Some of the typical services the LNC provides, either as a consultant or an expert witness, are medical record review, medical record organization, and analysis of the medical record content and the care provided. The LNC can determine whether the entire record has been secured, whether additional records are needed and whether the standard of care was met. The LNC consultant can generate reports as directed by the attorney. These reports range from medical and/or pharmacology chronologies to graphs and timelines. The LNC consultant can also assist in formulating interrogatory and deposition questions, identifying experts needed, and obtaining the experts. The expert witness LNC opines regarding the standard of care for deposition and trial, if necessary. Generally, the LNC expert witness does not produce a written report for the attorney.

Communication

Communication is an integral part of the LNC's duty. When contacted by an attorney, the LNC asks what is the case about, what are the

attorney's needs related to the case, whether the attorney requires the LNC's services as an expert witness or consultant, if a written or oral report is expected, the amount of time to be spent for the initial review and the deadline for submission of the work product/opinion. The LNC's fees are discussed and decided at this point. Once a review of the records has occurred, the LNC clearly and succinctly presents the facts of the case and his or her findings and opinions regarding the case to the attorney and often requests additional records and documents for review to further test these findings and opinions.

The services of the LNC are essential in the area of elder abuse. This litigation usually falls outside of MICRA and can be quite costly to all parties involved. The medical records may be voluminous, as they can come from a multiple of healthcare settings and can cover an extended period of time. Long-term care facilities are subject to a tremendous amount of regulations that dictate their necessary documentation and cause the medical records to be complicated and very lengthy. The LNC, who is acquainted with the regulations, can efficiently review and assess whether the standard of care, the Nursing Practice Act, or the state and federal laws and regulations were or were not breached. The LNC can save the attorney time and money by utilizing his or her experience and knowledge to competently perform the medical record review and analysis of the care provided, thereby allowing the attorney and the attorney's staff the time to practice law.

Elder Abuse

As registered nurses practicing within the realm of healthcare, we, along with the other professions within healthcare, are designated as mandated reporters of elder abuse. In fact, many healthcare facilities require the employee to sign a statement that indicates the employee is aware of his or her role as a mandated reporter. We have been the “champions of the elderly” as the advocates of this group of patients. However, increasingly, nursing and other healthcare professionals, along with healthcare and community care facilities, have come under scrutiny by families and the legal profession making allegations of elder abuse. These allegations are aimed at those individuals and facilities that historically have been seen as the advocates for the elderly.

It is important to understand that the basic service provided by the acute care hospital and the skilled nursing facility is skilled nursing care. Nursing care is provided in addition to the medical services required by the person admitted as a patient in an acute care hospital or resident in a skilled nursing facility. Therefore, issues of negligence and the standard of care within the hospital or skilled nursing facility generally encompass the nursing care and services provided to the client. Registered nurses and the LNC are the best qualified to speak to the nursing standard of care. The seasoned LNC knows the scope within which he or she can opine and stays within the scope of nursing. Allegations of malpractice committed by other healthcare professionals need to be addressed by experts in that specific profession and not by the LNC.

The following information provides the basics for analyzing claims of elder abuse, including definitions of specific terms related to elder abuse and steps for the review of a potential case.

Definitions

It is essential for the plaintiff or defense attorney and the LNC, working either as a consultant or expert witness, to have a working knowledge of the definitions related to elder abuse in the healthcare/community care facility. These definitions are taken from the Welfare and Institutions Code, sections 15610-15610.65.

Elder (Welf. & Inst. Code, § 15610.27): *“any person residing in this state, 65 years of age or older.”*

Elder abuse (Welf. & Inst. Code, § 15610.07): There are many forms of elder abuse, but for purposes of this article, the definition we are working from is found in the Welfare and Institutions Code, section 15610.07, subdivision (b), *“The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”*

Care custodian (Welf. & Inst. Code, § 15610.17): The definition of a care custodian includes *“an administrator or an employee of [specified] public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff ...”* This is important, as an allegation of elder abuse can permeate through the entire healthcare/community care facility. Within the healthcare facility that provides skilled nursing services and medical services is the nursing staff, comprised of registered nurses, licensed vocational nurses and certified nurse aides/nurse aides.

Collectively, these three categories encompass what society knows as nursing. Each category has a different level of education within nursing, and the registered nurse, in the lead, is legally responsible for the actions of the licensed vocational nurse and the certified nurse aide/nurse aide. The support staff within the healthcare facility also includes social services, nutritional services, rehabilitation services, administrative services and maintenance services.

Facilities (Welf. & Inst. Code, § 15610.17, subs. (a)-(u)): Although 21 types of facilities are identified, the two of focus for this article are *“[t]wenty-four hour health facilities”* (Welf. & Inst. Code, § 15610.17, subd. (a)) and *“[c]ommunity care facilities ... and residential care facilities for the elderly”* (Welf. & Inst. Code, § 15610.17, subd. (j)).

Goods and services (Welf. & Inst. Code, § 15610.35, subs. (a)-(g)): These are expected to be provided by the care custodians and include, but are not limited to, *“[t]he provision of medical care for physical and mental health needs,” “[a]ssistance in personal hygiene,” “[a]dequate clothing,” “[a]dequately heated and ventilated shelter,” “[p]rotection from health and safety hazards,” “[p]rotection from malnutrition,”* and finally, *“[t]ransportation and assistance necessary to secure”* any of the other specified goods and services.

Mental suffering (Welf. & Inst. Code, § 15610.53): *“fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to*

agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult."

Neglect (Welf. & Inst. Code, § 15610.57, subs. (a)(1)-(2), (b)(1)-(5)): Neglect is defined as "[t]he negligent failure of any person having the care or custody of an elder . . . to exercise that degree of care that a reasonable person in a like position would exercise." Types of neglect include the following: failure to assist with personal hygiene, failure to provide medical care for physical and mental health needs, failure to protect from health and safety hazards, and failure to prevent malnutrition and dehydration.

Armed with these definitions as the foundation for the allegation of elder abuse, the plaintiff or defense attorney and the LNC can mount an analysis of the medical records to determine the merits of the allegation.

Analysis of Elder Abuse Claims for the Plaintiff Attorney

The first step is to secure as much information from the potential client as possible prior to ordering any medical records. Medical records for the elderly patient are usually voluminous, simply because the geriatric patient generally has a multitude of medical issues directly related to the process of aging and chronic illness. When speaking with the potential client, the attorney will be faced with someone who has a story to tell. The attorney can speak with the potential client or have the LNC contact the potential client. Being able to manage the conversation to secure the pertinent information required necessitates a pre-written list of questions to ask, which may include: type of injury, date of injury, name, address and phone number of the facility, name of the person to whom the injury occurred, relationship to the caller

and the length of stay in the facility. This list is not inclusive, but offers the basics.

If the information provided suggests further investigation, then the next step is to secure the medical records from the facility where the alleged injury occurred. The facility may be an acute care hospital, a skilled nursing facility or a community care facility. Oftentimes the potential client already has some records, usually incomplete, but a start. Once the LNC has reviewed the records for merit, he or she will notify the attorney of the findings. The findings should address whether or not the allegations of elder abuse meet the requirements of the Welfare and Institutions Code. If the review indicates merit to the allegations, then the LNC should provide the attorney with a request for any other necessary and additional records for review, which can include previous admissions to other facilities, physician office visits, death certificates and/or autopsy reports, if applicable, prior to generation of the complaint. Once those records have been reviewed, the LNC should be able to provide the attorney with specific failures of the standard of care and those failures unique to the elder abuse statutes. It is from these failures that the attorney should have the foundation for the complaint.

The LNC reviews the medical records looking for breaches in the nursing standard of care. Although the Welfare and Institutions Code provides the direction for elder abuse claims, the LNC utilizes a number of resources to determine failures of the nursing standard of care, which can include, but are not limited to: the Nursing Practice Act, standards of practice specific to the facility and type of nursing area involved, state and federal laws and regulations applicable to the facility where the alleged injury occurred, and professional journals. The LNC analyzes the

nursing care provided to determine whether or not the allegations rise to the level of elder abuse, and if not, whether nursing negligence or gross negligence exists. To accomplish this task, the LNC scrutinizes the following sections of the resident's or patient's medical record: medical history and physical, MD orders, nurse aide notes, MDS/RAP, care plan, nurses' notes, vital/weight records, intake and output records and ancillary services records. The content is compared to the sections of the Welfare and Institutions Code that define the specifics of elder abuse.

After the complaint is filed, the LNC can continue to assist the attorney, either as an expert witness or consultant. As an expert witness, the LNC opines regarding the nursing standard of care; thus, the LNC may generate a declaration, be deposed and testify at trial. As a consultant, the LNC can generate written reports listing strengths and weakness of the case, identify other experts who may be necessary to address the standard of care for other healthcare professions, assist in requests for production, assist with deposition questions and attend mediation sessions and arbitration hearings.

Analysis of Elder Abuse Claims for the Defense Attorney

The LNC can be brought on by the defense attorney even prior to a complaint being filed by the plaintiff, but generally comes on board after the complaint has been filed. The LNC can be utilized as an expert witness or a consultant. The LNC compares the medical records with the complaint to determine whether or not the complaint is accurate in its allegations of elder abuse. The defense LNC utilizes the same resources as the plaintiff LNC to determine the validity of the elder abuse allegations and to formulate opinions.

Conclusion

LNC services may be utilized by the attorney for any case in which health, injury, illness or death is an issue. The LNC is an adjunct to the services of an attorney and can save the attorney time and money. This article focused on utilization of the LNC in the practice area of nursing malpractice specific to elder abuse. Elder abuse is a complex practice area and the services of an experienced LNC can be beneficial to the plaintiff and defense attorney.

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Book Review (continued from page 8)

During Parker's service in the Western District, records reveal that the average murder trial in his court lasted three days. One of the more common offenses was peddling whiskey to Indians. Over 4,000 defendants were prosecuted for this offense between 1875 and 1886. The average conviction earned six months in jail. The conditions of the jail were deplorable when Parker was first appointed. Parker himself sought to improve the jail conditions. It was often referred to as "Parker's Hotel."

Although Parker has been referred to as "the Hanging Judge," it should be noted that then-existing Federal statutes often gave him no leeway regarding the sentence once a person was convicted. There were various occasions when Parker himself petitioned his superiors for a reduced sentence following a conviction, based on what he believed to be mitigating factual circumstances. Generally, these requests were denied and the execution was then carried out.

Tuller's account of Judge Parker makes interesting reading. His story tends to focus more on Parker's professional life, and the reader is sometimes left wishing for more information about Parker's day-to-day private life. All in all, however, this book will be quite enjoyable for anyone with an interest in law, justice and/or the Old West.

For the record, the last man to die on Judge Parker's gallows was James Casharego, who was hanged on July 30, 1896.

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RESIDENT RIGHTS IN LICENSED SKILLED NURSING FACILITIES AND RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

by Robert P. Manos

As our population ages, growing numbers of seniors are in need of assistance in performing the everyday tasks that are often taken for granted. With the passage of time, dressing, bathing, food preparation and medication dosing may become increasingly difficult for some due to physical or mental infirmities. Approximately 5% of the senior population age 60 and above will at some time be admitted to a Skilled Nursing Facility or a Residential Care Facility for the Elderly in order to receive the assistance they need.

Skilled Nursing Facilities (SNFs), often referred to as nursing homes, and Residential Care Facilities for the Elderly (RCFEs), also referred to frequently as “assisted living” facilities or “board and care” facilities, are examples of institutions that provide needed assistance to seniors in the performance of ADLs (activities of daily living). Both types of facilities are licensed in the State of California pursuant to the Health and Safety Code. Skilled Nursing Facilities are licensed by the California Department of Health Services, Licensing and Certification Division. Residential Care Facilities for the Elderly are licensed by the California Department of Social Services, Community Care Licensing Division. Both agencies not only license the facilities, but also perform routine inspections, or “surveys,” of the facilities and have primary responsibility for investigating complaints filed against the facilities.

Skilled Nursing Facilities not only provide help with ADLs, but, unlike Residential Care Facilities for the Elderly, are required to employ licensed and/or certified health care professionals to address the medical needs of their residents. Nursing homes have on staff a physician medical director, registered nurses (RNs), licensed vocational nurses (LVNs) and CNAs (certified nursing assistants). Skilled Nursing Facilities not only provide help with ADLs but also actively address the medical needs of their residents, as those needs are determined by each resident’s personal physician.

Residential Care Facilities for the Elderly are non-medical facilities that are not mandated to provide any type of medical care to residents. There are no requirements that any staff members be licensed in the healing arts. Their primary mission is to provide to the senior

population help with the ordinary functions of life. Most residents of RCFEs are over 60 years of age. Most need only minimal care and supervision.

Both types of facilities are mandated to provide a home-like setting for their residents. In order to more fully accomplish this and ensure that residents, who are often frail or vulnerable, are assured appropriate accommodations and have avenues to express any dissatisfaction, the legislature and the state Departments of Health and Social Services have enacted statutes and adopted regulations that specify residents’ basic personal rights.

Personal rights of residents in RCFEs are enumerated in California Code of Regulations, section 87572. This section sets forth eighteen personal rights of residents but is not intended to be all-inclusive. Among the rights found in this regulation are the following:

The right to be accorded dignity and respect in his/her personal relationships with staff, residents, and other persons.

The right to be accorded safe, healthful and comfortable accommodations, furnishings and equipment.

The right to be free from corporal or unusual punishment, humiliation, intimidation, mental abuse or actions of a punitive nature.

The right to be informed by the licensee of the provisions of law regarding complaints and of procedures for confidentially registering complaints, including, but not limited to, the address and telephone number of the complaint-receiving unit of the licensing agency.

The right to leave or depart the facility at any time and not to be locked into any room or building.

The right to have visitors, including ombudspersons and advocacy representatives, and to be allowed to visit with these persons in private.

The regulations pertaining to Skilled Nursing Facilities also provide for the personal rights of residents. Among the most important of these rights (many of which parallel the rights of residents in RCFEs) are:

The right to be fully informed of any medical condition, the appropriate and recommended course of treatment and the possible risks of pursuing such treatment.

The right to accept or refuse any medical treatment.

The right not to have restraints used except upon the fulfillment of certain specific conditions and never to have restraints of a physical or chemical nature used for the convenience of the staff.

If any of these rights are infringed, or if other problems or concerns arise, the facility must have in place a procedure for residents to express their concerns, to have the facility give appropriate consideration to the concerns and to have the matters resolved.

Residents also have other avenues to follow to have any complaints investigated. The licensing agencies, the Department of Health Services, in the case of nursing homes, or the Department of Social Services will investigate any complaints and report the results of the investigation to the complainant upon completion.

The Office of the State Long-Term Care Ombudsman, under the authority of Welfare and Institutions Code, sections 9700-9741, also has the power to investigate complaints made by, or on behalf of, residents in either Skilled Nursing Facilities or Residential Care Facilities for the Elderly. Both types of facilities must post a state-approved and printed ombudsman poster in a conspicuous location. This poster provides information regarding the ombudsman program and supplies both local and toll-free telephone numbers for the complaint investigation division.

Although numerous agencies are empowered to help residents of long-term care facilities resolve complaints, it is important for prospective residents and their family members to visit each facility under consideration before selecting one in order to avoid dissatisfaction after admission. It is highly recommended that during these pre-admission visits current residents be interviewed. No one knows the day-to-day functioning of the facility better than a current resident. Current residents and their visitors can inform you about the food service, the staffing levels, the activities and other important aspects of life in the facility.

The Long-Term Care Ombudsman Program in Riverside County can be con-

tacted for further information or for filing a formal complaint against a licensed long-term care facility by telephoning (951) 686-4402 or (800) 464-1123.

Robert P. Manos practiced law for twenty years in the State of Washington before moving back to his home in Southern California. He was a State-Certified Ombudsman in Riverside County for two years and is currently employed by the California Department of Social Services, Community Care Licensing Division as a Licensing Program Analyst.



REVIEWING HOMELESSNESS

by Joan Thirkettle

'Tis the season to think and feel for the homeless. Yearly, the holidays put giving and caring on the top of people's "to do" lists. Yet the homeless are with every community year-round. They have faces and stories that go way beyond sleeping in doorways, panhandling for money, and encampments along the freeways, river bottoms, and empty lots. The homeless are grandparents, moms and dads, children, runaways, throwaways, college educated, and family members.

In January 2005, the Department of Housing and Urban Development (HUD) directed cities across the county to do a homeless census count. The County of Riverside Department of Public Social Services and the Institute for Urban Research and Development conducted a point-in-time homeless count. The count found that there were 4,785 people who are homeless on any given day in the County of Riverside. Almost half (44%) of the homeless population in Riverside County can be found in the Western/Metropolitan region. Women and children make up almost half of the homeless population (46.6%) in the county; one in five (23%) are children; and one in four (29%) are under the age of 25. Two out of every three homeless men (66%) are over 40. Only one-third (33.9%) of the homeless reside in shelters and temporary housing facilities. In addition, the count found that the homeless population included 5% seniors, defined as 60 years or older.

The story behind the census count is that homelessness is not caused merely by the lack of shelter, but underlying issues such as the high cost of living, lack of income, and limited affordable housing. Other factors that contribute to the increase in the homeless population are domestic violence, substance abuse, mental illness, and institutions releasing people into homelessness because of limited housing and other resources.

While the County of Riverside's homeless count reflects a large number of women and children, it is important to understand that the senior homeless population is largely unseen. They are in the shadows. The growing consensus is that persons aged 50 and over should be included in the "older homeless" category. The homeless from 50-65 years of age frequently fall between the supportive service cracks because they do not qualify for Medicare, but their health may resemble that of a 70-year-old because of poor nutrition and severe living conditions.

Increased homelessness among seniors is caused by grandparent heads of households, isolation from loved ones, loss of home, victimization, lack of affordable housing, and increased poverty among certain segments of the aging. Supplemental Security Income (SSI) does reduce the depth of poverty and hardship for seniors. Still, many are poor and in need of housing assistance. The current maximum monthly SSI benefit is \$579 for an individual well below the poverty line. With less income for the necessities of food, medicine, and health care, this population is vulnerable to homelessness.

Most older homeless persons are entitled to Social Security benefits, but often these are inadequate to cover the cost of housing. A person receiving SSI cannot afford housing at the fair market value anywhere in the county. Even if SSI covers the rent, only a few dollars are left over for other expenses. Some homeless are unaware of their own eligibility for public assistance and face difficulties applying for and receiving benefits. Homeless seniors, like many, need help in navigating the complex application, but lack a support network.

The future will see more homeless seniors in Riverside County. To prevent homelessness among seniors, communities must find ways to provide more low-income housing, income support, and health care services to sustain independent living. Solutions to homelessness are complex, but if solutions are not addressed, seniors will be on the streets in large numbers as the baby boomers age. The pathways to solutions for senior homelessness are:

1. Study and understand the extent of current economic and social issues that cause homelessness.
2. Respond to the knowledge of homelessness through a collaborative effort strategizing on homeless solutions with service providers, health care systems, housing developers, policymakers, governments, and homeless persons.
3. Develop a measurable action plan with policy and funding resources to implement solutions to homelessness.

Joan Thirkettle, principal of Connection Services, has 25 years of experience with the homeless and nonprofit agencies. Connection Services assists agencies with research and development activities, staff training and other services. You can reach Connection Services by email at joanthinkettle@sbcglobal.net.



LITIGATION UPDATE

by Mark A. Mellor

Filing amended complaint after deadline is not necessarily fatal. When a demurrer is sustained with leave to amend, Code of Civil Procedure section 581(f)(2) gives the court discretion to dismiss an amended complaint, if it is filed after the deadline set by the court. Contrary to defendant's contention in *Harlan v. Dept. of Transportation* (2005) 132 Cal.App.4th 868 [33 Cal. Rptr.3d 912, 2005 DJDAR 11340] [Fifth Dist.], dismissal of the late-filed amended complaint is not mandatory.

Note: The *Harlan* court relied in part on an important but sometimes overlooked statute. Code of Civil Procedure section 475 requires a court to "disregard any error, improper ruling, instruction, or defect in the pleadings or proceedings which, in the opinion of the court, does not affect the substantial rights of the parties."

The mysteries of DNA evidence revealed. Although it is not a new case, we recently encountered *U.S. v. Trala* (D.Del. 2001) 162 F.Supp.2d 336, as quoted in *People v. Smith* (2003) 107 Cal.App.4th 646, 653-654 [132 Cal. Rptr.2d 230]. In little more than a single page, the District Court in Delaware gives a comprehensive and understandable explanation of DNA evidence and how it may be used, in conjunction with a probability analysis, to identify specific individuals.

Statute of limitations in liability insurance claims. The statute of limitations in a general liability insurance coverage case accrues when the insurer refuses to defend the insured in the underlying litigation. As a result, since the duty to defend is continuing, the statute is tolled until the underlying action is terminated by final judgment. (*Eaton Hydraulics, Inc. v. Continental Cas. Co.* (2005) 132 Cal.App.4th 966 [34 Cal.Rptr.3d 91, 2005 DJDAR 11408] [Second Dist., Div. Eight].) Therefore, although the insured frequently brings an action for declaratory relief upon the insurer's denial of a defense under a liability policy, such an action is not necessary to prevent the running of the statute of limitations.

State regulations of non-consensual towing and storage are not preempted by federal law. Three cases filed within a few days of each other held that state restrictions on certain practices by "rogue towing services" are not barred by federal law. The Federal Aviation Administration Authorization Act (FAAAA; 49 U.S.C. § 14501 et seq.) preempts any state law relating to the "price, route, or service" of any motor carrier. This includes tow truck operators; however, the statute provides that states may

regulate prices charged by towing companies, if such transportation is performed without the prior written consent of the vehicle owner.

The Ninth Circuit held that a Washington state law requiring a signed authorization for the towing of each vehicle did not affect "price, route, or service" and was therefore not preempted by the FAAAA. (*Tillison v. Gregoire* (9th Cir. 2005) 424 F.3d 1093 [2005 DJDAR 11487].) In two other cases, the California Court of Appeal held that this state's statutes limiting storage fees for vehicles towed without the consent of the owner are likewise exempted from the federal statute. (*CPF Agency Corp. v. R&S Towing Service* (2005) 132 Cal.App.4th 1014 [34 Cal.Rptr.3d 106, 2005 DJDAR 11481] [Fourth Dist., Div. One]; *CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034 [34 Cal.Rptr.3d 120, 2005 DJDAR 11507] [Fourth Dist., Div. One].)

Absent a contract to arbitrate, judgment confirming arbitration award must be reversed. Although the superior court granted defendant's motion to compel arbitration, the subsequent judgment confirming the arbitration award was reversed where the contract upon which plaintiff's claim was based did not require arbitration of the dispute. Although courts should indulge every intention to give effect to an arbitration agreement, the petitioner has the burden of establishing the existence of a contractual agreement to submit disputes to arbitration. When defendant failed to do so, the trial court should not have confirmed the arbitration award. (*Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223 [34 Cal.Rptr.3d 281, 2005 DJDAR 11674] [Fourth Dist., Div. Three].)

Sanctions must be imposed for frivolous anti-SLAPP motion. The statute providing for a special motion to strike against plaintiffs who sue in an attempt to punish defendants who exercise their right to free speech and petition (the so-called anti-SLAPP statute, Code Civ. Proc., § 425.16) provides that a defendant whose motion under the statute is granted must be awarded attorney fees. A defendant who is unsuccessful in bringing such a motion is subject to an award of fees against it, however, if the motion is frivolous. (*Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354 [34 Cal.Rptr.3d 354, 2005 DJDAR 11758] [Second Dist., Div. Eight].)

Note: Because of the right to appeal from an order denying an anti-SLAPP motion and the resulting stay

of proceedings, some defendants are tempted to file such motions frivolously, but when they do, courts have not been reluctant to award attorney fees.

Health care contracts must prominently display arbitration clause or they will not be enforced. Health and Safety Code section 1363.1 requires that arbitration clauses in health care service plans be “prominently displayed” and be placed “immediately before the signature line provided.” If the contract does not comply with these requirements, the arbitration clause will not be enforced. (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419 [34 Cal. Rptr.3d 547, 2005 DJDAR 11745] [First Dist., Div. Two].)

Another court weighs in on the application of Proposition 64 to pending cases. The California Supreme Court has granted hearing in all previously published opinions dealing with the application of Proposition 64 (limiting plaintiffs’ ability to bring actions under California’s

Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq.) to pending cases. The lead case in the Supreme Court is *Californians for Disability Rights v. Mervyns, LLC*, case number S131798. Meanwhile, courts have had to resolve the issue in cases now before them. Previously, all but one of the Court of Appeal decisions (*Mervyns*) had held that Proposition 64 applied in cases that had not yet gone to judgment on the effective date of the initiative. *Schwartz v. Visa International Service Assn.* (2005) 132 Cal.App.4th 1452 [34 Cal.Rptr.3d 449, 2005 DJDAR 11801] [First Dist., Div. Two] may be added to this list. It is almost certain that our Supreme Court will grant review in *Schwartz* and hold the case until it decides the *Mervyns* case.

Not every appellate reversal entitles you to a different judge. Code of Civil Procedure section 170.6 provides that when a case is remanded to the trial court by the appellate court for a “new trial,” a party may file an affidavit of disqualification and have the matter heard by another judge. But what is meant by a “new trial”? In *Burdusis v. Superior Court (Rent-A-Center, Inc.)* (2005) 133 Cal.App.4th 88 [34 Cal.Rptr.3d 575, 2005 DJDAR 11997] [Second Dist., Div. Seven], the court held that the reversal of the denial of class-action status and remand to the trial court for reconsideration did not constitute a remand for a “new trial.” The court stated that where a proceeding does not address the merits, there is no right to a peremptory challenge.

Class Action Fairness Act (CAFA) does not apply to cases pending before its effective date. CAFA amended the federal diversity statute, effective last February 18. Among other limitations, the act vests original jurisdiction for class actions in federal court when the amount in controversy exceeds \$5,000,000. The act does not apply to cases pending before the effective date of the statute. (*Bush v. Cheaptickets, Inc.* (9th Cir. 2005) 425 F.3d 683 [2005 DJDAR 12011].)

Mark A. Mellor, Esq., is a partner of The Mellor Law Firm specializing in Real Estate and Business Litigation in the Inland Empire.



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Riverside County Superior Court New Uniform Fee Structure, Fee Increases Take Effect on January 1, 2006

The Judicial Council of California has announced a new court civil filing fee structure in state trial courts as the result of the enactment of the Uniform Civil Fees and Standard Fee Schedule Act, which was approved by the Legislature and the Governor earlier this year.

The new standardized fees will provide for a more simplified fee structure, increase access to the courts, and offer predictability and uniformity for court users. Fees will be uniform statewide, with the exception of Riverside, San Bernardino, and San Francisco counties, which have slightly higher fees due to local courthouse construction surcharges.

The changes in court fees are designed to maintain access and continue public services in the California trial courts. The complexity of and lack of statewide consistency in filing fees created the need for a uniform civil fee structure.

Before this legislation, 89 civil fees were charged differently across the state's 58 counties, including fees for dispute resolution programs and children's waiting rooms and law library fees that ranged from \$3 to \$41.

The new structure remedies many of these issues and will:

- *Streamline and simplify the civil fee structure.* Various surcharges and add-on fees are rolled into one uniform filing fee. Riverside is one of three counties that will have slightly higher fees for some services to accommodate local courthouse construction surcharges.
- *Create uniformity.* For the vast majority of fees, the same fees will be charged for the same services in all 58 counties.
- *Increase access to the courts.* The new structure directs additional funding to equal access programs.
- *Offer predictability.* Court users will know that fees will remain consistent from county to county and will remain unchanged for a minimum of two years.

Riverside County Superior Court will begin collecting the new consolidated fee in applicable court matters effective January 1, 2006. There will be no grace period for filings made on or after this date.

The new statewide fee schedule is posted on the Administrative Office of the Courts' web site at <http://www.courtinfo.ca.gov/courtadmin/civilfees.htm>.

A fee schedule listing specific Riverside Superior Court fees can be found at <http://www.courts.co.riverside.ca.us/pubnotices/06feeschedule.pdf> and is also available in hard copy at all court locations throughout the county.



by Richard Brent Reed

P.O.V. God

The U.S. District Court in Los Angeles is about to settle an academic dispute between Calvary Chapel Christian School in Murrieta and the University of California in *Association of Christian Schools International v. Stearns*. The Calvary student plaintiffs want credit for Christian history classes, claiming that their rights of speech, religion, and association are being violated, as well as their right to equal protection under the law. The University claims that the Christian viewpoint courses fall short of the university's academic standards.

According to Sue Wilbur, U.C. Director of Undergraduate Admissions, "The content of the course outlines submitted for approval is not consistent with the empirical historical knowledge generally accepted in the collegiate community." The students counter that, if Jewish History, American Indian Studies, and African-American Experience I are accepted, courses like "Special Providence: Christianity and the American Republic" should also qualify.

What the University and the Academy are fighting over is not the substance of history, but the spin. Names, dates, and events are not usually disputed among historians, but the significance of the events is a matter of great contention among respected scholars. What is the significance of the Renaissance, the Reformation, the Enlightenment, or the American Revolution? What caused the Dark Ages, and do we even want to call them "the Dark Ages"?

History is full of speculations. We can only guess at what motivated Lincoln to free the slaves, why Napoleon marched into Russia, why Hitler duplicated Napoleon's mistake, or why Queen Elizabeth I never married. Historians can – and do – differ on all of the issues above, as well as: Who discovered Neptune? Did Jefferson and Hamilton fix the election of 1800 in a backroom deal? Was Cleopatra brunette or blond? Did the Vikings explore the Great Lakes? How were the Pyramids constructed? Was the author of Shakespeare's plays really Shakespeare? These

questions represent interpretations of history by which we strive to fill in the blanks of history.

The secular scholar has no greater claim on historical insight than does the religiously inclined educator. The secularist is likely to regard Andrew Carnegie as a mere mouthpiece for Social Darwinism, whereas a sectarian might be tempted to dismiss him as a lost soul, compromised by his own cupidity. Either way, Carnegie the man is lost. One textbook may vilify Nazi Germany and condemn the bombing of Pearl Harbor, where another may lay World War II at the feet of the Treaty of Versailles and excuse both German and Japanese aggression as an attempt to find more living space. Where the theist may see the hand of God in everything, the humanist will more likely see the Invisible Hand of Adam Smith. To the romantic historian, history is the product of inspiration and aspiration, while the Marxist revisionist reduces all human endeavor to economics.

In a Hollywood shooting script, a camera angle that's straight overhead is called "P.O.V. God." History can be viewed from many points of view without altering the content: P.O.V. Darwin; P.O.V. Marx; P.O.V. Adam Smith; or P.O.V. God (the religious perspective). H.G. Wells remarked, in his *Outline of History*, that when historians write about the life of Christ, Jesus always winds up resembling the historian who's writing about him. History is, ultimately, a reflection of how we wish to view ourselves. How should that history be taught? It all depends on your point of view. How should the court rule on the effect of sects on texts? That all depends on P.O.V. judge.

Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside



Trust in Memory of Commissioner Bobby R. Vincent Will Aid Domestic Violence Victims

The Family Law Bar of San Bernardino County has established a charitable trust in memory of Commissioner Bobby R. Vincent, who for more than 25 years was a dominant voice in California family law policy and domestic violence prevention.

The Bobby R. Vincent Memorial Trust will benefit families that are victims of domestic violence by funding charitable services in the justice system to provide assistance to self-represented persons and to ameliorate or prevent the incidence of domestic violence in the first instance.

Commissioner Vincent, who retired with his wife Kathryn to Colorado Springs in 2003 after 26 years on the San Bernardino County bench, died on November 4 in Denver from complications of surgery.

He was widely respected for his commitment to judicial practices that reduced conflict among families attempting to resolve domestic problems and for assuring that all parties, including those who could not afford an attorney, received a fair hearing.

During his long career as a public defender, private attorney, and commissioner, Vincent co-founded several organizations that advanced these causes, including Casa Ramona Legal Aid Services and the San Bernardino County Domestic Violence Coordinating Council.

He chaired the Family Law Committee of the California Judges Association and was president of the California Court Commissioners Association and president of the California Chapter of the Association of Family and

Conciliation Courts. He was a member of the Judicial Council of California from 2000 to 2002.

“Commissioner Vincent’s principles and vision will continue to influence the practice of family law in this county and state far into the future,” said Kathleen Bryan, Commissioner (Ret.), a former colleague from San Bernardino County. “The trust is a wonderful opportunity for California lawyers and judges to honor him and to benefit the San Bernardino community by contributing to a cause to which Commissioner Vincent was extraordinarily dedicated.”

The trust will be inaugurated at a ceremony honoring Commissioner Vincent on Thursday, February 16, 2006, in Department S 14 of the San Bernardino Superior Court, 351 N. Arrowhead Avenue, San Bernardino, California.

Tax-deductible contributions to the Bobby R. Vincent Memorial Trust are welcome and should be sent to Marvin M. Reiter, CPA, 330 North D Street, San Bernardino, CA 92401-1523.



CLASSIFIED ADS

Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance by contacting Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.

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Paralegal opening available in rapidly growing family law firm. Salary depends on experience and skills. Congenial work atmosphere. Free parking. Health benefits available. Email resume to: shari@legalgal.net.



ERRATA

Because the *Riverside Lawyer* endeavors to publish as accurate a magazine as possible, the Bar Publications Committee appreciates being notified of any factual errors in the magazine.

In the December 2005 issue, Kimberly Naucler was incorrectly identified as Shauna Albright. We apologize for the error.



left to right: Kimberly Naucler, Daniel Hantman, Najat Reikes

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective January 30, 2006.

Shaaron A. Bangs – Crawford & Bangs, Riverside

Kristina Beavers – Sole Practitioner, Coachella

Michael C. Conti – Sole Practitioner, Chino Hills

Charles Hunt, Jr. – Sole Practitioner, Irvine

Jesse W. J. Male – Fiore Racobs & Powers, Riverside

Phi Nguyen – Laughlin Falbo Levy & Moresi, San Bernardino

Laura Y. Miranda – Pechanga Tribal Government, Temecula

Michael S. Oswald – The General Counsel, Laguna Niguel

Taunya Quinn – Law Student, Blythe

Charles E. Riggs – Retired Attorney

Jerelynn Sanchez – Law Student, Hemet

Trent Thompson – Sole Practitioner, Hemet

Mindy Zink (A) – Keller Williams Realty, Corona

Nicholas Zovko – Knobbe Martens Olson & Bear, Riverside

(A) Designates Affiliate Member

