

# RIVERSIDE LAWYER

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MAGAZINE

## In This Issue:

The Un-Merry-Go-Round:  
Mental Health and Substance Abuse

Pursuing One Goal Through Mental  
Health Court

Mentally Disordered Offenders  
and Civil Commitments

Special Needs Trusts

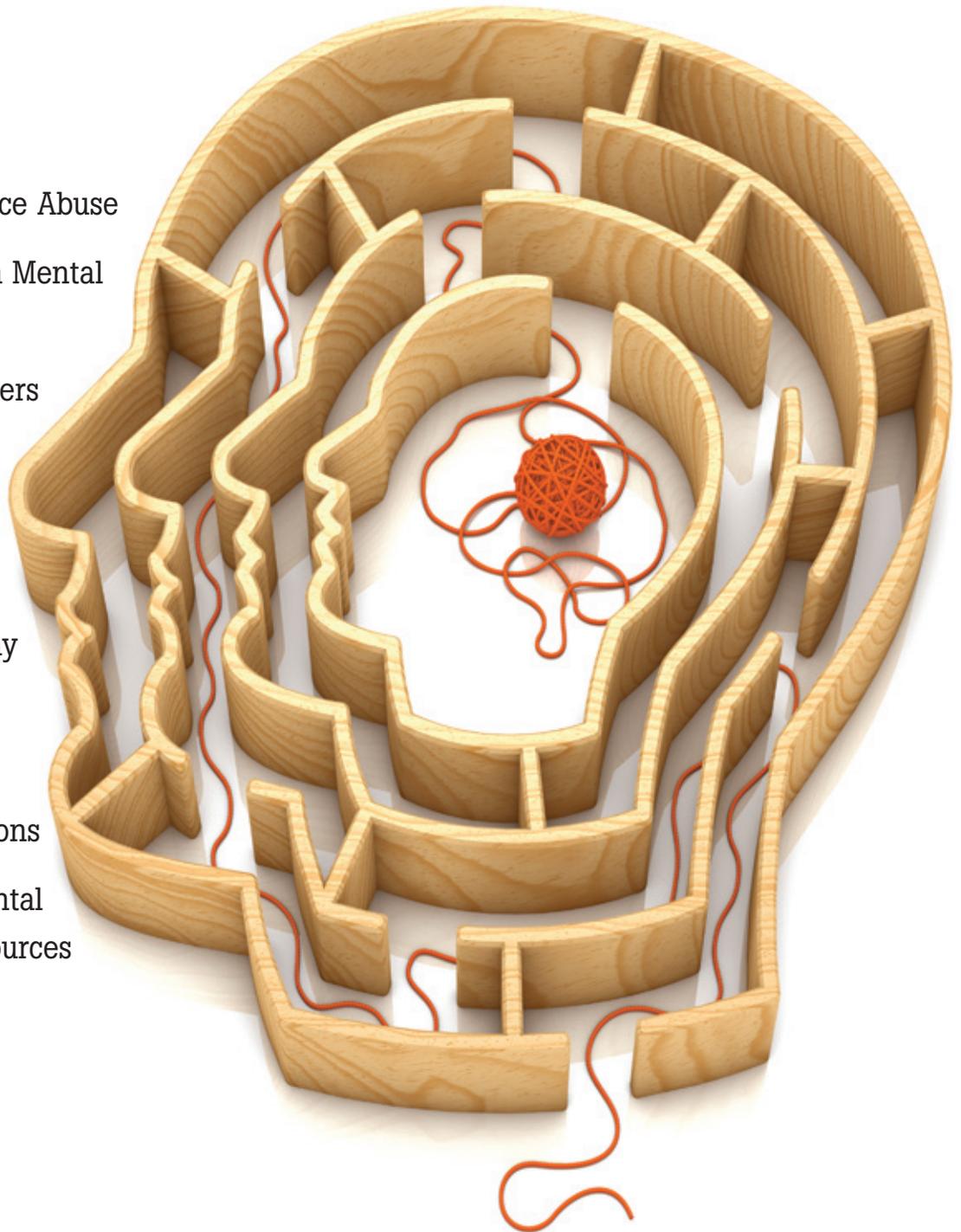
Veterans' Court

Stressed Out? Step Your Way  
into Less Stress

A Crisis in Our Schools

Protecting Challenged Persons

Navigating the Maze of Mental  
Health Services: Basic Resources



The official publication of the Riverside County Bar Association

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# RIVERSIDE LAWYER

MAGAZINE

## C O N T E N T S

### Columns:

3 ..... **President's Message** *by Robyn A. Lewis*  
 6 ..... **Barristers President's Message** *by Scott H. Talkov*

### COVER STORIES:

7 ..... **The Un-Merry-Go-Round:  
 Mental Health and Substance Abuse**  
*by Kirby Palmer, LCSW*

8 ..... **Pursuing One Goal Through Mental Health Court**  
*by Monica Nguyen*

10 ..... **Mentally Disordered Offenders and Civil Commitments**  
*by Richard Quintino*

12 ..... **Special Needs Trusts**  
*by Pamela Valencia*

15 ..... **Veterans' Court**  
*by Brian Cosgrove*

16 ..... **Navigating the Maze of Mental Health Services:  
 Basic Resources**  
*by Wayne Henkelmann, MS, MFT*

17 ..... **Protecting Challenged Persons**  
*by Dennis Boyer*

18 ..... **Stressed Out? Step Your Way into Less Stress**  
*by David Cannon, Ph.D.*

20 ..... **A Crisis in Our Schools**  
*by Abraham Apraku*

### Features:

21 ..... **High School Mock Trial Competitions 2012**  
*by Judge Helios J. Hernandez*  
*by Judge Becky L. Dugan*

22 ..... **Federal Bar Association, Inland Empire Chapter  
 President's Report**  
*by Magistrate Judge Sheri Pym*

24 ..... **Nominees for RCBA Board of Directors, 2012-2013**

28 ..... **Judicial Profile: Judge John M. Davis**  
*by Donna Thierbach*

30 ..... **Opposing Counsel: Brian G. Cosgrove**  
*by L. Alexandra Fong*

32 ..... **Project Graduate**  
*by Brian Unitt*

### Departments:

Calendar ..... 2      Membership ..... 32  
 Classified Ads ..... 32

# MISSION STATEMENT

## Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

## RCBA Mission Statement

The mission of the Riverside County Bar Association is:  
To serve our members, our communities and our legal system.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), 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 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.*

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

## MAY

### 5 (Saturday) Law Day at the Plaza

Riverside Plaza – 10:00 a.m. – 6:00 p.m.

### 8 Civil Litigation Section Meeting

RCBA – John Gabbert Gallery – Noon

“Evidentiary Issues: (Insert Snappy title Here)”

Speaker: Judge Jackson Lucky

MCLE

### PSLC Board of Directors Meeting

RCBA Boardroom – Noon

### RCBA Board of Directors Meeting

RCBA – 5:00 p.m.

Landlord/Tenant Section

Napoli Italian Restaurant, Loma Linda

“Substance Abuse Issues”

Speaker: Greg Dorst

MCLE

### 10 Continuing Legal Education Committee Meeting

Noon – RCBA Boardroom

### 15 Family Law Section Meeting

RCBA – John Gabbert Gallery- Noon

### Federal Bar Association – Inland Empire Chapter

Twelfth Annual Constitutional Law Forum

Noon – 1:30 p.m. at the San Bernardino Hilton

Speaker: Professor Erwin Chemerinsky

Contact Emily Montgomery (951.328.2245) for

more information.

### 16 Estate Planning, Probate & Elder Law Section

RCBA John Gabbert Gallery – Noon – 1:15 p.m.

“Interactions of the Probate Court and the Public Administrator”

Speaker: Linda Samson, Assistant Public Administrator

MCLE

### 17 Interested in Becoming a Judge?

Presented by Riverside and San Bernardino

County Superior Courts – 3:30 – 5:30 p.m.

Riverside Historic Superior Courthouse, Dept. 1

Registration Fee: \$25

Speakers: Josh Groban (Senior Advisor for Policy & Appts), Lara Krieger (JNE Vice Chair), Presiding Judge Sherrill Ellsworth (Riverside) and Presiding Judge Ronald Christianson (San Bernardino)

RSVP mstallone@sb-court.org or (909)708-

8756. Space is limited.

### 18 General Membership Meeting

RCBA Gabbert Gallery – Noon

“Expedited Trials Are Here: Are You Ready?”

Speakers: The Honorable Gloria Trask, Jay Korn, Esq., Jesse Marr, Esq. and Eric Traut, Esq.  
MCLE



by Robyn A. Lewis

This is an exciting edition of the *Riverside Lawyer*, as it presents to you, our members, the candidates for election to the Board of Directors for the Riverside County Bar Association.

The RCBA is one of the oldest in the State of California, having been founded in 1894. It is also one of the most fiscally sound bar associations in the state, due in large part to the thoughtful and wise leadership of our past presidents and the hard work of all of the members, past and present, of our board of directors.

I attribute the longevity and the success of our bar association to the structure of its leadership, which is provided for in our by-laws. My predecessors on the RCBA Board of Directors, when drafting its by-laws, contemplated that passing on the executive positions of President, President-Elect, Vice-President, and Chief Financial Officer in “lock-step” fashion would ensure stability and continuity for the organization, as well as providing much-needed experience in those executive positions.

My predecessors also contemplated the benefit of ensuring that candidates for election to the RCBA Board of Directors were qualified and well-suited for the board. It was for that reason that our by-laws created a nominating committee to select candidates for election. The nominating committee is chaired each year by the President-Elect. Chairs from each of the sections of the bar association, as well as past presidents of the RCBA and other esteemed members of the legal community, are asked to discuss and evaluate potential candidates to run for the positions of Directors at Large. The nominees who are selected are thus well-vetted.

The RCBA by-laws also provide that potential candidates not selected by the nominating committee can choose to circulate a petition to

run for election, which requires four signatures from other RCBA members in good standing.

I know how busy you all are, but I would ask that you give careful consideration to the nominees as well as the candidates running by petition, who have provided biographies that are included in this edition. Be sure to vote and participate in the decision as to who will serve you for the upcoming term on the RCBA Board of Directors.

I also wanted to mention the RCBA Dispute Resolution Services (DRS) this month and to ask the question – if you are not using DRS as your ADR service provider, why not? Oftentimes, when faced with selecting a private mediator or arbitrator, some of the larger and more well-known firms come immediately to mind. But what are the advantages of using DRS?

The first thing to know about DRS is that it has an amazing panel of mediators and arbitrators who are well-known in the field of ADR, as well as in their selected areas of practice. Truly, the panel reads like a “Who’s Who” of attorneys in our legal community.

Second, each and every case that is submitted to DRS is screened and is referred to an attorney or a retired judge who is actually familiar with the area of law that your case involves. Moreover, sessions are scheduled quickly and are even scheduled for evenings and weekends, which is something that other ADR providers do not offer.

Third, and importantly, the cost of using DRS is significantly lower than the average cost of mediation. For \$300 per hour for up to four parties (not per party), you can have your case mediated or arbitrated by an experienced neutral. Given the high cost of ADR, this is really something that you should consider for the benefit of your clients.

I do want to briefly address the notion that perhaps you “get what you pay for.” It is human nature to want to pay more for something because somehow you think that means that it is better. I know, because I do it all of the time, much to the chagrin of my husband. But when you look at the caliber of the neutrals on the DRS panel, you will realize that you are not sacrificing quality, despite paying a lower price for ADR services. If you have never used DRS before, I challenge you to consider submitting one of your cases for resolution before one of its panelists. I know you will be pleasantly surprised and will soon become a regular DRS patron.

Finally, I wanted to mention that the RCBA Board of Directors is currently accepting nominations for the annual E. Aurora Hughes Memorial Award for Service. For those of you who did not have the privilege of knowing Aurora, she was a past president of the RCBA and a long-time

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supporter of and participant in many of its activities. Sadly, Aurora lost her fight with ALS in 2011, but her legacy continues. In her honor, the RCBA Board of Directors established an annual award, which will be presented to its recipient on the night of the Installation Dinner.

Candidates for the award must demonstrate a commitment to dedicated service to the RCBA. In particular, those considered for the award must (1) be lawyers, inactive lawyers, or judicial officers (2) who are serving or have served in Riverside County and (3) who, over their lifetime, have accumulated an outstanding record of service to or achievement in the RCBA. Please note that current members of the RCBA Board of Directors are ineligible.

If you would like to submit a nomination, please send me an email at [rlewislaw@yahoo.com](mailto:rlewislaw@yahoo.com) or contact Charlene Nelson at the RCBA at (951) 682-1015.

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*Robyn Lewis, president of the Riverside County Bar Association, is with the firm of J. Lewis and Associates.*



# VOLUNTEERS NEEDED

**Experienced Family Law and  
Criminal Law Attorneys  
are needed to volunteer their services  
as arbitrators on the  
RCBA Fee Arbitration Program.**

**If you are a member of the RCBA and  
can help, or for more info,  
please contact Lisa  
at (951) 682-1015  
or [fearb@riversidecountybar.com](mailto:fearb@riversidecountybar.com).**

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# BARRISTERS PRESIDENT'S MESSAGE

by Scott H. Talkov



## Barristers and the Future of Our Legal Community

In the past few weeks, many Barristers have approached me with the same question: "Should I run for the Barristers board?" My answer to every young attorney has been an enthusiastic "Yes."

Many young attorneys are unaware of the changes that were instituted by the recent amendments to the Barristers Bylaws. Notably, every position on the

board is elected by the membership each June, with the obvious exception of the past-president. Any Barrister is eligible to put his or her name on the ballot for any position, with the exception of president, which is limited to existing board members. To be a Barrister, an attorney must be a member of the RCBA and either under 37 years of age or in his or her first seven years of practice. To vote in the June election, a Barrister also must have attended two Barristers meetings since July of the prior year and must be present at the June election meeting, at which ballots are distributed.

Previously, Barristers operated through a nominating committee that automatically nominated each board member to be promoted through the ranks each year. The committee was also charged with limiting the candidates who could be selected for the board for any open

position. With the recent amendments, this committee has been eliminated, ensuring that you decide who is best. This should resolve any possible perception of cronyism. Perhaps there is a connection between this and the explosive growth in participation at monthly meetings. What this means for you is that leadership opportunities abound in Barristers for those who have worked hard, stayed active and developed continued support among their colleagues.

There are many reasons to run for office, but most importantly, it will prepare you for future leadership positions in our legal community. Indeed, numerous former Barristers presidents have risen to become well-known leaders in our legal community, in positions ranging from law firm partners to judges. In fact, our current RCBA President was Barristers President just six years before taking office. Even last year's Barristers President, Jean-Simon Serrano, is now on the ballot to become RCBA Secretary and, should he be elected, presumably he will be on the ballot for the office of President just five years later.

Nominations for the Barristers board must be provided to me in writing by the end of the May 15, 2012 Barristers meeting. Feel free to email your nominations to [stalkov@rhlaw.com](mailto:stalkov@rhlaw.com). To answer your next question: Yes, feel free to nominate yourself.

Our May meeting will feature experienced civil litigator Terry Bridges discussing civility in the legal community. Following his discussion, our next RCBA President, Chris Harmon, will explain the inner workings of the RCBA and how you can get more involved in the various sections and committees.

*Scott Talkov is the 2011-12 President of Barristers as well as an attorney with Reid & Hellyer, where he practices real estate and business litigation.*



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# THE UN-MERRY-GO-ROUND: MENTAL HEALTH AND SUBSTANCE ABUSE

by Kirby Palmer, LCSW

Many of us, in our lifetimes, have encountered a friend or a relative who seems to struggle with chronic dissatisfaction, sadness, malaise, or irritability. You may have noticed that some of these people may also drink to excess, and you do not understand what may be fueling this challenge.

Much of the literature suggests that 60% of those who battle mental health issues are also battling substance abuse. Additionally, 37% of alcohol abusers and 53% of drug abusers also have at least one serious mental illness, such as depression or bipolar disorder. For attorneys, the addiction rate is 15 to 18% higher than the general population. According to an article in the *Journal of Occupational Medicine*, the rate of depression in attorneys is four times that of all other occupations. In short, whether it be mental illness or substance abuse, having one makes a person more vulnerable to the other.

It is especially important to address these issues with attorneys, because it is estimated that 60% of disciplinary cases involve alcoholism. Solo practitioners are particularly at risk of discipline related to substance abuse or mental health problems, because they are isolated and do not have the social and administrative supports that are provided to attorneys in large firms.

The merry-go-round referred to in the title of this article is driven by a variety of factors: a person's medical and psychological history, family history and history of substance use or abuse. Substances increase the underlying risk for mental disorders. Conversely, alcohol and drug abuse can make symptoms of mental health problems much worse.

Either slowing or getting off the merry-go-round should involve a thorough assessment by a professional, such as an MD, social worker, or psychologist. This process can be aided by looking at one's family history. If there is a family history of depression in the absence of substance abuse, then depression is more likely to be just that and not the result of substance abuse or dependence. One should also consider one's sensitivity to alcohol or drugs. Have you noticed a relationship between substance abuse and your mental health? For example, do you experience sadness and hopelessness after you have stopped using a stimulant like methamphetamine? Or have you experienced the same sadness after using alcohol?

An assessment should also include a thoughtful and complete medical workup. This is important, as some prescribed medications and medical conditions can cause or mimic



James O. Heiting, Kirby Palmer, and Frank Tetley at the March RCBA general membership meeting where Mr. Palmer spoke on the merry-go-round of mental illness and substance abuse.

mental health conditions. Some years ago, a patient of mine, in his late 50s, developed signs of acute psychosis. Psychosis involves loss of contact with reality and may be marked by delusions, hallucinations or distorted perceptions. This patient had no history of these kinds of symptoms. It was later determined that the symptoms this patient experienced were caused by a steroid cream that had been prescribed by a physician. Similar symptoms of psychosis can be caused by chronic use of methamphetamine.

It can be useful for family and friends to have some awareness of the difference between signs of drug abuse and signs of a mental health condition. Typical signs of drug abuse or addiction include feeling that you should cut down on your drinking or drug use, trying to cut back but being unable to, and lying about how much or how often you use. Signs of depression include feelings of helplessness, loss of interest in daily activities, fatigue, irritability, and inability to experience pleasure. Symptoms of mania include grandiose beliefs, euphoria, decreased need for sleep, increased energy, and rapid speech.

Through all this, there is great hope of finding our way off the merry-go-round. Medications for depression, bipolar disorder and psychosis are much more sophisticated, and administering a combination of antidepressant medications and mood stabilizers as well as antipsychotics in certain cases has proven to be effective. Additionally, medications to help people safely detoxify from drugs of abuse provide a degree of hope and comfort to those facing this challenge. Other treatment approaches, such as cognitive behavioral therapy, have been demonstrated to be effective. Support and 12-step groups, such as AA, NA or MA, should also be included in a variety of interventions. For attorneys, the Other Bar is a safe and confidential place to seek support from others who have experienced drug or alcohol problems or mental health challenges. Finally, the State Bar offers the Lawyer Assistance Program, which is designed to assist attorneys with either substance abuse or mental health issues. Having facts and knowing resources can give you or your colleagues, friends or family a running start at jumping off the merry-go-round.

*Kirby Palmer is a Psychotherapist in private practice in Claremont, CA and has been a Group Facilitator for the State Bar's Lawyer Assistance Program for seven years.*



# PURSuing ONE GOAL THROUGH MENTAL HEALTH COURT

by *Monica Nguyen*

The adversarial nature of criminal law dictates that opposing parties pursue opposing goals, with scarce opportunity for all parties to prevail. Mental Health Court is one arena where this paradigm does not always hold. All parties in Mental Health Court pursue the same goal of treating mentally ill offenders. All parties in Mental Health Court succeed when a previously untreated mentally ill offender complies with treatment and stops committing crime.

## The Population of Mental Health Court Participants Is Created by Widespread, Untreated Mental Illness

According to the World Health Organization, mental illness produces a larger population of disabled citizens in developed countries than any other group of illnesses, including cancer and heart disease.<sup>1</sup> According to the Center for Disease Control and Prevention, approximately one-fourth of adults in the United States have a mental illness, and nearly half will develop at least one mental illness during their lifetimes.<sup>2</sup> Sadly, mental illness is frequently left untreated<sup>3</sup> because of a pervasive stigma attached to mental illness.

It's difficult to imagine not treating large populations of cancer or diabetes sufferers. That generally doesn't happen, because we don't blame cancer or diabetes patients for their disease. We approach those diseases as emergencies that must be treated immediately to prevent further harm.

1 World Health Organization, Promoting Mental Health: Concepts, Emerging Evidence, Practice: Summary Report (2004); available at [who.int/mental\\_health/evidence/en/promoting\\_mhh.pdf](http://who.int/mental_health/evidence/en/promoting_mhh.pdf) (as of April 4, 2012).

2 Center for Disease Control and Prevention, Mental Illness Surveillance Among Adults in the United States (2011); available at [cdc.gov/mmwr/preview/mmwrhtml/su6003a1.htm](http://cdc.gov/mmwr/preview/mmwrhtml/su6003a1.htm) (as of April 4, 2012).

3 In 2010, the National Institute of Mental Health (NIMH) estimated that 40% of adults with schizophrenia and 51% of individuals with severe bipolar disorder receive no treatment in a one-year period. The NIMH also estimated that there are 2.6 million adults with schizophrenia (1.1% of the adult population) and 5.1 million adults with severe bipolar disorder (2.2% of the adult population). Thus, there are 3.5 million adults with schizophrenia or bipolar disorder not being treated in the US on any given day. ([nimh.nih.gov/statistics/smi\\_aasr.shtml](http://nimh.nih.gov/statistics/smi_aasr.shtml); [nimh.nih.gov/statistics/1schiz.shtml](http://nimh.nih.gov/statistics/1schiz.shtml); [nimh.nih.gov/statistics/1bipolar\\_adult.shtml](http://nimh.nih.gov/statistics/1bipolar_adult.shtml); [nimh.nih.gov/statistics/1mdd\\_adult.shtml](http://nimh.nih.gov/statistics/1mdd_adult.shtml); all as of April 4, 2012.)

In contrast, persons suffering from mental illness are frequently blamed for their affliction. They have been told by teachers, friends, and family that they need to "learn how to act right" or "get with the program." They have ingrained in themselves that their problem lies in a significant character flaw that they could remedy, if they were only strong enough. They would like nothing more than to cure their problem without assistance. They may live in an untreated state of crisis for years, or they may make desperate attempts at self-medication.

Combining untreated mental illness with poverty, poor education and lack of family support can lay the perfect foundation for crime.<sup>4</sup> Untreated mentally ill citizens come to Mental Health Court in their darkest hour. They have usually suffered for years. They have committed a crime and are often in custody. They are frightened at the possibility of going to prison while as sick as they are. They are ashamed of their behavior, of their lack of control, and of their illness. They carry immense guilt for shaming their families. They want help, but many have never known how to get it.

## Only Those Suffering from Severe and Persistent Mental Illness Qualify to Participate

That is when I meet them. That is my opportunity to educate them about their mental illness and offer them treatment. Often, participants' treatment through Mental Health Court is their first opportunity to learn about their illness and work on a treatment plan. Only those who are eligible for probation and suffer from severe and persistent mental illness are accepted into the program. The second requirement ensures that only the most mentally ill accused are allowed access to the program.

The typical participant suffers from one of the following mental health disorders: schizophrenia, a depressive disorder, or a mood disorder, such as bipolar disorder.<sup>5</sup> There is no shortage of participants. Mental Health Court reviews anywhere from eight to eighteen participants in a single day, Tuesday through Friday.

In the time that I have served as the lead Mental Health Court attorney, I have observed patterns between

4 The NIMH estimated that 64.2% of local jail inmates suffered from mental illness, and that fewer than half of those inmates had ever received treatment for their illness. ([nimh.nih.gov/statistics/1doj.shtml](http://nimh.nih.gov/statistics/1doj.shtml), as of April 4, 2012.)

5 This is not an exhaustive list, but it does represent the most common diagnoses treated through MHC.

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types of crimes and specific mental illnesses. Here are a few: (1) the participant who suffers from bipolar disorder and consequently cannot control stealing during a manic state; (2) the participant who suffers from schizophrenia and commits a crime when acting on a delusion; and (3) a severely depressed participant who self-medicates with alcohol or drugs and subsequently drives under the influence of alcohol or drugs, is found in possession of a controlled substance, or steals to maintain a drug habit.

Each of these examples presents an opportunity to treat a mentally ill person and set him or her on a crime-free path. We do this by offering a treatment plan designed to address each participant's specific needs. Each treatment plan requires regular doctor visits and medication. The treatment plan is incorporated into the participant's terms of probation. Each participant is monitored closely by a behavioral health specialist, a probation officer, and a doctor.

Each participant attends quarterly progress hearings, where the attorneys and judge review his or her progress. Furthermore, the judge and counsel support participants by congratulating them when they do well and addressing any area of the treatment plan that they are struggling in. After a year of satisfactory progress hearings, the participant graduates from the program.

## Proven Success

Recent statistics reported by the Riverside County Department of Mental Health show that the program works. The recidivism rate of Riverside County Mental Health Court participants was a mere 18.2% for 2007 through 2010.<sup>6</sup> In contrast, the recidivism rate amongst general felony probationers was 40%, and amongst state parolees exceeded 50%.

## Mental Health Court Benefits All Residents of Riverside County

It has been my privilege to participate in a collaborative court that offers treatment to qualifying mentally ill offenders who desire it. It is rewarding to help each participant through the journey of accepting his or her

mental illness and succeeding in treatment. It is inspiring to watch each participant transform into the person who he or she always dreamed of being.

Some participants' dreams are as simple as having a place to live. At a recent graduation ceremony, one participant, with a history of thefts and drug-related crimes, recounted that she had been homeless for most of her adult life. Through her tears, she stated that it was her treatment through Mental Health Court that finally gave her the tools to settle into her own apartment. She was proud to finally have a place of her own in the world and to show that she is no longer a victim of her illness. Consequently, she is no longer creating victims of her crimes or using county resources to house her in custody. Her children now have a capable mother to help them navigate through life. Her story is just one of many examples of the transformation that treatment can provide.

By providing treatment to Riverside County's mentally ill offenders, we Mental Health Court officers not only assist the participants, but we assist everyone connected to the participants. We assist their families and their communities. Everyone benefits when a mentally ill person is in control of his or her disease. That is the service that we endeavor to provide to Riverside County, and, when we succeed, we all rejoice.

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*Monica Nguyen has been a deputy public defender with the Law Offices of the Riverside County Public Defender since March 2007. She has been assigned to Mental Health Court since November 2010.*



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<sup>6</sup> D. Johnson, 2011 CSAC Challenge Awards: Call for Entries, available at [counties.org/images/users/1/Riverside%20291.pdf](http://counties.org/images/users/1/Riverside%20291.pdf), as of April 4, 2012.

# MENTALLY DISORDERED OFFENDERS AND CIVIL COMMITMENTS

*by Richard Quintino*

Penal Code sections 2962-2972 deal with the “mentally disordered offender” (MDO). This is a defendant who has committed a specified violent crime that was caused in part by a severe mental disorder (SMD). The qualifying crimes are defined in Penal Code section 2962, subdivisions (e)(2)(A)-(Q), and include voluntary manslaughter, mayhem, robbery with a deadly weapon, kidnapping, carjacking, rape, sodomy by force, oral copulation by force, arson, any felony in which the defendant used force or violence or caused serious bodily injury, as defined in Penal Code section 243, subdivision (f)(4), and any crime involving an express or implied threat to use force or violence likely to cause substantial physical harm.

After the MDO’s determinate sentence has been served, he (and most, if not all, are males) is deemed too dangerous to be paroled into the community. Instead, he is committed to a state mental hospital for a year. As that year comes to an end, if the treatment staff opines that the SMD is not in remission, or cannot be kept in remission without involuntary treatment, they send a declaration to the district attorney of the county in which the offense was committed, requesting that a petition be filed with the superior court to extend the commitment for another year. This one-year extension procedure can be repeated indefinitely, as long as the defendant meets the criteria of Penal Code section 2970: he has an SMD, which is not in remission, or cannot be kept in remission without treatment, and he poses a substantial danger of physical harm to others.

The MDO may, at some point, qualify for outpatient treatment. The treatment team at the state mental hospital (Patton, Norwalk, Coalinga, or Atascadero State Hospital) can refer the defendant to the Conditional Release Program (CONREP) in the county in which the offense was committed. Once the defendant is released to outpatient treatment, the one-year commitment period is tolled. Outpatient treatment is controlled by Penal Code sections 1600-1620. Either the treatment team or the district attorney can petition to terminate outpatient treatment if they feel the defendant poses a danger to the community as an outpatient. There are five phases to outpatient treatment. If the defendant reaches the fifth phase, CONREP may recommend unconditional release. The district attorney can oppose this and force the defendant

back to the state hospital while the defendant challenges his continued commitment by way of jury or court trial.

MDO commitments are considered civil commitments, yet the burden is on the district attorney to prove the elements of the recommitment petition beyond a reasonable doubt, and a unanimous jury verdict is required. There is no Fifth Amendment privilege at trial.

Practical advice to the practitioner who might have a client who may become an MDO: Be careful in declaring the client incompetent to stand trial under Penal Code section 1368, which would mean that the client does not have a rational and factual understanding of the charges and the nature and purpose of the proceedings, cannot comprehend his or her status and condition in reference to the criminal proceedings, and is unable to assist his or her attorney in conducting the defense.

Once the defendant’s mental condition is put into play, and he is convicted of a qualifying violent felony and sent to prison, the defendant could face an MDO proceeding at the time of parole. Try your best to dispose of a case involving a client with mental issues and a violent felony without a prison commitment. Refer the matter to Mental Health Court for a possible probation/treatment resolution. If your client is a veteran, refer the matter to Veterans Court and seek to obtain a non-prison disposition.

You can request the court to order a confidential evaluation of your client pursuant to Penal Code section 2970 and Evidence Code section 1017. Make sure the doctor you select from the panel is qualified to do a Penal Code section 2970 evaluation. Also make sure the minute order allows the doctor to review the defendant’s medical records at the state hospital, or obtain a HIPAA release and request copies of the records.

In essence, once a defendant is labeled “MDO,” he will serve a life sentence, one year at a time, in a state mental hospital. Those with an SMD rarely have their symptoms resolve, even with psychotropic medication and “treatment.” Most have to have the medications forced into their systems. As they age, their symptoms worsen. A few will qualify for outpatient treatment. Rarely are they released unconditionally.

There is a specific procedure the medical staff must follow before they can force psychotropic medication into

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a patient. This is usually for a 30-day period. Thereafter, a court order must be obtained, after a hearing, to continue forced medication. Forced medication of an MDO actually may help the patient stabilize, reducing the district attorney's proof of the "substantial danger" element on a trial of the recommitment petition. However, forced medication in the context of a Penal Code section 1368 proceeding exposes the defendant to reinstatement of criminal proceedings, and a possible prison sentence if he is determined competent to stand trial.

The SMDs that qualify under Penal Code section 2962 are found in the *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision* (DSM-IV-TR). Most SMDs begin to manifest in the late teens to early adulthood. Many MDOs will have a history of Welfare and Institutions Code section 5150 commitments. These are 72-hour commitments that occur when a person, as a result of a mental disorder, is considered a danger to others or himself or is gravely disabled. A peace officer is authorized to take the person into custody if he has probable cause to believe the person poses a danger.

SMDs can include schizophrenia, psychotic disorders, bipolar disorders, and depressive disorders. Most SMDs involve delusions, hallucinations (either auditory or visual), and disorganized thought. Many of the indi-

viduals who become MDOs have had an extensive history of mental problems since childhood.

Personality disorders (e.g., antisocial personality disorder) and mental retardation do not qualify as SMDs. Individuals who have committed qualifying crimes and who are mentally retarded are referred to the Inland Regional Center. Commitment of these individuals is pursuant to Welfare and Institutions Code section 6500. As with MDOs, these are one-year commitments, usually to Porterville State Hospital. Eventually, these individuals may be placed in a less restrictive confinement, similar to CONREP for MDOs. However, most are not able to be placed in outpatient treatment. They remain committed for a year at a time, after which the district attorney may file a Welfare and Institutions Code section 6500 petition to recommit.

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*Richard Quintino is a deputy public defender for the County of Riverside. He has practiced criminal law with the Law Offices of the Public Defender, Riverside County for 10 years. Prior to entering the field of criminal law, he practiced for 25 years as a civil litigator in private practice. For the past four years, he has handled MDO, Welfare and Institutions Code section 6500 and sexually violent predator civil commitment cases for the Public Defender.*



# SPECIAL NEEDS TRUSTS

*by Pamela Valencia*

**Background:** John is 48; he lived with his parents until they turned him out. Diagnosed with bipolar disease, he fulfilled the federal definition of “disabled” in that: (1) he had a mental impairment expected to last for a year, and (2) he was unable to engage in “substantial gainful activity.” He collected SSI, which allowed him to access Medi-Cal for health insurance. Medi-Cal provided the medications he needed for emotional stability, but he couldn’t discipline himself to their daily use. John was bright and made friends easily, but always lost them when he was off his meds. His frequent stints in jail and on the street seemed likely to kill him.

His father died intestate, leaving John \$80,000. Since SSI and Medi-Cal are means-tested programs, with asset limitations of \$2,000 plus certain “exempt” assets, John’s small windfall would also cause him to lose his small but stable income and health care. There were several options open to John: (1) spend the inherited funds until no more than \$2,000 remained, (2) purchase “exempt” assets that neither program would count against his eligibility (a car, a home, a prepaid burial plot, or even a prepaid contract for a caretaker under some circumstances), or (3) put the inheritance into a special needs trust. John focused on the third option.

**Basic Categories of SNTs:** A special needs trust (SNT) is a trust most commonly used to allow a “disabled” person to become eligible for (or retain eligibility for) means-tested public benefits. There are two categories of SNTs: a first-party trust, in which a person sets aside his or her own funds as trust assets, and a third-party trust, in which someone other than the special needs person sets aside assets for the benefit of the special needs person. Parents of special needs children can include a third-party SNT in their estate plan, instead of leaving an inheritance directly to the child.

John’s father could have created either an inter vivos or testamentary third-party SNT for John. The SNT assets could have been used for John during his lifetime, and at John’s death, any remaining assets could be left to other persons, such as John’s siblings. Instead, John inherited the funds directly. His only option for retaining the use of the inherited funds while retaining his SSI and Medi-Cal was a first-party trust. The unfortunate difference (for John’s family) of using the first-party trust is that assets remaining in the trust at John’s death must be paid to Medi-Cal, up to the amount of benefits John received. John hopes to use up the trust assets (and he dislikes his siblings), so the thought of losing the remainder at his death doesn’t trouble him.

**Creation of First-Party SNT:** A first-party SNT can be established for a disabled person under age 65 by the

person’s parent, grandparent, or guardian or a court. (42 U.S.C. § 1396p(d)(4)(A).) If parents or grandparents are unavailable, then court involvement will be necessary. Even if a parent or grandparent is willing and able to establish the SNT, there must be a petition for court establishment if the disabled person lacks the mental capacity to transfer his or her funds into the trust. In California, the petition may be brought under Probate Code section 3600 et seq., if the assets were distributed to the disabled person as the result of a court action, including a probate administration or litigation settlement. Otherwise, the petition should be brought under Probate Code section 4500 et seq. by the disabled person’s agent under a power of attorney. If the person lacks capacity to appoint an agent, and there was no court action or settlement involved, a guardian ad litem may be appointed to bring the petition. California Rules of Court, rule 7.903 requires that a court-established trust remain subject to court supervision, which will include annual or biennial accounts, restrictions on investment plans, and restrictions on who can act as trustee. In short, California law treats SNTs similarly to conservatorships.

**Distribution Rules:** The trust, whether first or third-party, is a “fully discretionary” trust, meaning that access to trust assets is at the absolute discretion of the trustee. However, the trustee has a fiduciary duty to be watchful and reasonable about distributing funds for the beneficiary. If a beneficiary receives means-tested public benefits (generally, SSI and/or Medi-Cal), the SNT trustee must understand the rules that determine eligibility for the public benefits. For example, if a trustee distributes cash to a SNT beneficiary, SSI benefits for the month of distribution will be diminished dollar-for-dollar. If the cash distribution causes the entire SSI payment to be eliminated, the beneficiary stands to lose his or her Medi-Cal benefits as well, because, for many SSI recipients, Medi-Cal eligibility is contingent upon SSI eligibility.

Instead of cash distributions, the trustee should purchase goods or services for the beneficiary. However, trust assets are not supposed to be used to purchase food or shelter. SSI payments are diminished dollar-for-dollar by SNT funds used to provide food or shelter. Such purchases may be acceptable under some circumstances. John, for example, wants to live in his own studio apartment. His SSI is not enough for him to afford anything more than a double-occupancy room in a boarding house. John’s SSI payments will be diminished dollar-for-dollar for rent payments from the SNT, but there is a cap of approximately \$244 per month on the penalty/diminution. If the trustee were to pay, say,

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\$400 of John's studio rent, at a "cost" of a \$244 per month diminution of John's SSI payment, the benefit may far outweigh the cost to John each month.

**Non-Public Benefit Usefulness:** John is one of over 43 million Americans who have one or more physical or mental disabilities. Not all disabled persons will need or qualify for an SNT. Persons with the early onset of a disability, for example, will sometimes qualify for Social Security Disability Insurance (SSDI) payments based on the work record of a retired, disabled or predeceased parent. SSDI eligibility is not means-tested, and an inheritance or settlement will not disturb those benefits. If John's bipolar disease had been diagnosed when he was a child, he might have qualified for SSDI payments when his father died.

Public benefits aside, an SNT may greatly benefit a disabled person by providing much-needed stability that families often lack. A professional trustee can provide a neutral level of attention and perhaps even leverage the assets to entice the beneficiary toward positive actions. If John's family had controlled his inheritance, it seems likely he would have continued his destructive behavior. With a neutral trustee, the funds provide an incentive for him to stabilize on his medications. In short, an SNT can provide tools and a safety net that can exponentially increase quality of life for a disabled beneficiary.

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by Brian Cosgrove

On January 3, 2012, Riverside County established a consolidated court in Department 31 of the Hall of Justice, encompassing matters involving mental health, mentally disordered offenders, sexually violent predators, and trial competency, as well as a newly formed Veterans' Court. Veterans' Court is heard on Thursday afternoons at 1:30 p.m. before Judge Mark Johnson, himself an Army veteran.

The purpose behind Veterans' Court is to assist military veterans who suffer from a mental illness related to their military service. Commonly, veterans who have been diagnosed with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), or other mental health problems will qualify for Veterans' Court. Drug and alcohol abuse are also qualifying conditions.

While participation in combat or in any particular conflict is not a requirement for the program, it has been reported that as many as one out of eight military veterans of Iraq and Afghanistan suffer symptoms of PTSD. Additionally, traumatic brain injury often stems from exposure to improvised explosive devices, common in both conflicts.

Under Penal Code section 1170.9, the court may take into consideration a service-connected mental health problem when it has a nexus to a current crime. That code provision states that if the court determines that the defendant suffers from a qualifying condition and is probation-eligible, it may order him or her into local, state, federal or nonprofit treatment in lieu of incarceration.

Studies have shown that those who suffer from PTSD are often more prone to aggressive behavior and will act inappropriately when confronted with a real or perceived threat. Similarly, TBI sufferers have been linked to more violent behavior and criminal activity than those in the general population. Even when a mental health condition does not amount to a complete legal defense, the purpose behind Penal Code section 1170.9 is to acknowledge the military service connection and to provide focused treatment and supervision.

Veterans' Court takes that premise and adds a set procedure for those who qualify. A veteran who meets

the criteria described above can be set for consideration in Veterans' Court on any Thursday afternoon. Once the case is briefed to the Veterans' Court Team, the defendant veteran will be evaluated over a one-to-two-week period by representatives of the Veteran's Administration at Loma Linda for eligibility and suitability for the program.

Once the case is returned to the court, the Veterans' Court Team will again be briefed on the full status of the case and the veteran. The ultimate decision whether or not an individual is accepted into the program rests with Judge Johnson.

If accepted, the defendant veteran will enter a plea to a probation-eligible crime. He or she will then be placed on formal probation and released into treatment by the Veteran's Administration, supervised by the Probation Department. Treatment and supervision will consist of group counseling, drug and alcohol testing, mental health treatment, support meetings, and regular progress hearings in court.

The program is divided into four phases of treatment, ending with a graduation ceremony. The full process is intended to last 18 months, with the final goal of restoring the defendant veteran to a productive place in society.

Current staffing and funding levels will cap the program at 35 individuals. To date, approximately one dozen veterans have been considered for and/or placed in the program, with great success. The program will eventually expand to include a mentorship program and other related services via nonprofit veteran organizations.

*Brian Cosgrove has been a deputy public defender with the Law Offices of the Public Defender (Riverside County) since 2002. He served in the United States Marine Corps from 1991 to 2008 and attained the rank of Lieutenant Colonel. While in the Marines, Mr. Cosgrove served as judge advocate in a variety of assignments, including as a prosecutor and separately as defense counsel. In 2006, Mr. Cosgrove was mobilized to serve as defense counsel for Marines accused of murder and kidnapping in both Haditha and Hamdania, Iraq. He is currently assigned to Department 31 as a deputy public defender as part of the Veterans' Court Team.*



# NAVIGATING THE MAZE OF MENTAL HEALTH SERVICES: BASIC RESOURCES

by Wayne Henkelmann, MS, MFT

Navigating the world of mental health services (now called “behavioral health” services in some counties) and options can seem to those involved like a maze. Families with loved ones acting out towards themselves or others find themselves caught in a frightening and often frustrating experience. Lawyers encountering, or being assigned, clients who seem clearly unable to act in their own best interest can be at a loss. Even neighbors worried about the “strange” behaviors of persons living next door can become confused as to the best option. These are but a few of the scenarios that may lead people to seek information, resources or just support for someone with mental health needs.

Especially since the passage of Proposition 63 (the Mental Health Service Act, or so-called “Millionaires Tax”) in 2004, new programs and ideas have been generated in California county mental health systems to serve those in need. Unfortunately, the economic difficulties of the state and counties have simultaneously impacted negatively on the same system, with greater numbers of individuals with greater stresses and concerns expressing an increased need for services. The result has been that services have at times become increasingly targeted at select populations of people in need (those with Social Security and Medi-Cal, for example, as they fit the definition of dependent adults) and, overall, stretched quite thin – adding to the overall confusion and frustration.

When looking for services and resources for someone suffering with mental health issues, it’s helpful to realize that most counties have Access numbers (Los Angeles: (800) 854-7771, San Bernardino: (888)743-1478, and Riverside: (800) 706-7500) that persons can call to identify clinics, hospitals, faith-based organizations and such. In the Inland Empire, there is a 211 number (analogous to the 411 information number) sponsored by the United Way that acts as a referral source for a wide variety of service organizations ([www.211us.org](http://www.211us.org)). Adult Protective Services not only serves the elderly with mental health issues, but also responds to concerns about disabled adults suffering from mental illness (APS Hotline: (877) 565-2020). Our own office, the San Bernardino Superior Court Mental Health Counselors Office, (909) 498-2296, assists callers on a regular basis in identifying options and resources.

Also helpful to keep in mind is that there are two broad paths (voluntary and involuntary) through the maze of services and organizations that exist. One path is navigated when a person is aware that he or she is in need of help and willing to accept help. The resources noted above are probably most important to and for these individuals. Sadly, many mental illnesses have as a common symptom a lack of insight and judgment into the illness itself. Often, individuals may need involuntary assessment and treatment. This path can be even more difficult and painful for persons to navigate, and often law enforcement plays an important role in this avenue to services. Many counties have implemented training for law enforcement specific to mental health issues, and some counties have crisis teams that provide law enforcement support.

The Welfare and Institutions Code contains the relevant processes for involuntary holds and treatment. There are many “checks and balances” in these laws protecting individual rights, including a range of court processes. In San Bernardino County, the Mental Health Counselors Office coordinates many of these hearings, and staff is available for consultations with individuals and agencies, as well as hospitals, regarding these processes. Important in reducing confusion is the realization that processes (including LPS and probate conservatorships) are implemented differently from county to county.

For families struggling with finding options, the decisions involved can be difficult, especially when involuntary options are being considered. One organization that can be helpful to families in these situations is the National Alliance for the Mentally Ill (NAMI), (909) 252-4018, which provides local educational and support groups for families and individuals dealing with mental illness. Oftentimes, the stigma of mental illness and confusion about best options lead to a sense of aloneness, isolation, and anxiety for all involved, which can be offset by sharing with others who’ve gone through similar difficulties.

*Wayne Henkelmann, MS, MFT is a California licensed Marriage and Family Therapist who is Supervisor of the San Bernardino Superior Court Mental Health Counselors Office and a Senior Adjunct Professor teaching psychology at the University of La Verne. The court office contact number is (909) 498-2296.*



# PROTECTING CHALLENGED PERSONS

by Dennis Boyer

Every year, our court system adheres to the “law” regarding the care and finances of incompetent, disabled, or otherwise handicapped persons who seek protection under that law. However, as in every instance of law, there are no clear dictates on how to administer the current dictates of the legislature or court.

I have extreme personal experience with navigating the court system that was intended to protect the life, health, and finances of those incapable of doing so themselves. My son, Ronnie, born in 1963, suffered abuse by his genetic parents. He was dyslexic and reclusive, and he seemed “slow” to his parents. In 1979, when Ronnie, after announcing to his mother that he was gay, was a struggling teen, I took him in as a special project for the University of California, Riverside. Without going into detail about the progression of his life, I will move to when he was 28.

For nearly four years, I had noticed a difference in Ronnie’s perception of reality. I had gone through many interviews, challenges, and direct confrontations with authorities about his mental health. He was a savant. He could not read without extreme difficulty, yet if you read to him, he could remember facts with ease. He seemed to be in his own world. At 28, he had his first of many psychotic breaks. He was diagnosed with adult-onset schizophrenia. I had no idea what that was or what it would bring in the future.

In 1991, I began a journey through the judicial system to have my son declared incompetent and to administer his affairs. The only reason for this request was to assure his safety and health. He was diagnosed with AIDS in 1993, which complicated the process.

Coming before the court in probate, which heard the matter, at that juncture in time, his double diagnosis was more condemned than recognized. I personally filed for guardian ad litem status and presented the court with what I believed to be evidence of his illnesses. I was denied that appointment, as the judge sitting at the time took Ronnie into his chambers and performed an in camera evaluation of his abilities. At the moment that was done, Ronnie would have seemed capable and normal to most people. His episodes were often obscured.

Despite my presentation of Ronnie’s mental health record, the court decided in his favor by denying me any

type of control for health or safety. Two days later, off his medication, he stepped onto a bridge crossing the 10 Freeway in San Bernardino and threatened to jump. The freeway was closed as authorities contacted me to assist in getting him down. He spent his tenth stay in the county mental facility.

It would take many trials over time to get him into a stable environment. A battle with the court in 2010 would prove to be the last, as he died in September 2010. After many confrontations by and between the court and the county services concerning his health and well-being, he was finally put under the control of a guardian, albeit one other than me. The court appointed a guardian from the county, who administered his money, drugs and life, but not until he was on the street, without money or assistance. While the court is designed to rescue people like my son, it is the slowness that makes the difference. Had the court, in conjunction with the county, been able to identify the inevitable, Ronnie would still be a joy in my life.

*Dennis Boyer is an ABA paralegal who also has life teaching credentials for K-12, community college and adult education and currently teaches Legal Research/Lexis at UCR Extension. He is also the authorized trainer for Case Management/Electronic Case Filing (CM/ECF) in the Central District. He has over 11 years of intense experience working with Younger Law Corp. and Sabbah & MacKoul in civil litigation.*



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# STRESSED OUT? STEP YOUR WAY INTO LESS STRESS

by David Cannon, Ph.D.

The rewards are great in the legal system, but so are the costs. Attorneys typically have more than their fair share of mental health issues because they are in a particularly demanding profession. Let's face the obvious – the legal profession is extremely stressful. The hours are long, and the demands are high. What can you do about it? Think of the legal field as a marathon. Like a marathon, being a successful attorney requires endurance but also requires an awareness of one's own limits. Pace yourself and keep your stress in check.

Now for the bad news . . . reducing stress isn't easy. That's why we are all so stressed out. Even though it isn't easy, you will find that it is worth the effort. Following are a series of steps you can take to help yourself out in the long term.

## Step One: Diagnose the Problem

What is causing your stress? Really? Think again. Really think about it. This is actually one of the hardest steps, because even the brightest people still have difficulty reading and understanding themselves. It is much easier to see problematic behaviors in others, while we are often blind to our own.

People tend to blame others for their stress. This often isn't helpful. You have no control over other people. Frame your problem in a way that gives you control. For instance, if your problem is your client, what is it about the way *you* interact with your client that may contribute to that problem? What is it about the way *you* feel and think about this client? What can you do to change the boundaries or improve the communication with this person?

## Step Two: Face Stressors Head On

Many people handle stress by avoiding it, and this only amplifies the damage that stress can cause in our lives. Avoidance gives us less control by letting a problem or stressor play out without our input. By tackling a stressor head on, you are taking control of it. Big payouts come with hard work. Drinking in excess, staying in bed all weekend, or overeating alleviate symptoms only temporarily, only to aggravate stressors shortly afterwards.

## Step Three: Don't Make Excuses

People almost always know what they need to do, but they don't do it. That is why advice often means so little. Take obesity as an example. Look at the obesity rates in a country where almost everyone understands that they *should* eat a healthy diet and exercise. We know what to do, but we make excuses for why we can't do it now. I'll do things differently, starting tomorrow . . . or the next day. I just don't have time right now.

## Step Four: Live in the Here and Now

Unfortunately, there are no guarantees that any of us will have a tomorrow. The present is all we have, so we may as well make the most of it. Even when we are at our busiest, we have to find time for ourselves to keep us healthy and motivated. Look forward to the future, but don't live for the future.

## Step Five: Don't Be So Hard on Yourself

You can't change the past. You only have control of the present. Are you second-guessing yourself? The law requires judgment. Sometimes in hindsight, you may feel as if you should have done something differently. By lamenting what you "should" have done, you will only create more stress and guilt. Guilt and stress feed off one another and often lead to avoidance. Learn from your past and move on.

## Step Six: Set Boundaries

Make time for yourself and stick with it, even if you schedule only 30 minutes a day. Remember when you never called someone on their home line after 10 in the evening? With smartphones, emails, and social networking sites, communications are now 24 hours a day. Untether yourself. Give yourself permission to be out of reach, guilt-free, for a predetermined amount of time each day. Put your phone down.

## Step Seven: Take Care of Yourself

Stress is both mental and physical, so stressors take a huge toll on your body. Exercise! Research shows that exercise can be as effective as medication for the treatment of mild to moderate depression. Explore biofeedback and meditation to get in touch with yourself and your body, even if only for a few moments. Work to be comfortable in your own mind and body, and try to do so in the absence of distractions.

## Step Eight: Change Your Thinking and Change Your World

The most effective mental health therapies focus on changing the way someone thinks, and this changes how they feel about themselves and others. Negative self-talk handicaps us more than we imagine. Why are you stressed out? When you are stressed out, what is going through your mind? What are you thinking? What are you telling yourself? Change it.

*David Cannon, Ph.D. is trained in clinical psychology and law and works as a trial consultant at Trial Innovations. He is based in the greater Los Angeles area. Please direct any questions to David at [David@Trialinnovations.com](mailto:David@Trialinnovations.com).*



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# A CRISIS IN OUR SCHOOLS

*by Abraham Apraku*

Since 1984, the state of California has mandated that counties provide educationally related mental health services (ERMHS) for children receiving special education services in schools. Such A.B. 3632 services, named for the original Assembly Bill that provided for them, included crisis counseling, case and medication management, and residential placement for students with severe mental health issues. But in October 2010, then-Governor Schwarzenegger vetoed the mandate for these critical mental health services, leaving nearly 20,000 students across the state in limbo as school districts scrambled to determine who was now responsible for providing services and how they were to be funded.

One student precipitously cut off from care was “Andy,” a 17-year-old client of Mental Health Advocacy Services (MHAS), a 501(c)(3) nonprofit organization dedicated to protecting and advancing the legal rights of children and adults with mental disabilities. Andy was adopted from the foster care system when he was 2, following exposure to fetal alcohol and drugs. In his teens, he was hospitalized after multiple suicide attempts. Appropriate services for Andy had been arranged through the Los Angeles County Department of Mental Health (DMH), but when the mandate for those services was vetoed, Andy was left to languish in juvenile hall with no mental health treatment.

Lawsuits were quickly brought by various entities with an interest in the issue. A coalition including MHAS and public interest law firms Public Counsel, Disability Rights California, and Disability Rights Legal Center as well as pro bono partner Gibson, Dunn & Crutcher brought a statewide class action, *A.C., et al. v. Schwarzenegger, et al.* (later *A.C., et al. v. Brown, et al.*), against the governor and various state and local defendants. Temporary injunctions provided some continuity of services, allowing the parties involved to negotiate longer-term solutions.

Unfortunately, in the next budget cycle, the legislature and the governor permanently transferred all responsibility for ERMHS from the counties to the school districts.

Federal law requires that ERMHS be provided in order to allow children with mental disabilities to succeed in school. But due to ongoing funding shortages

in education generally, there is widespread concern that school districts are failing to provide appropriate services to eligible children. Temporary agreements in most school districts have thus far continued the partnership between the districts and the county-level mental health departments. In June, however, transitional funding provided by the state to facilitate this realignment of responsibility will run out, and the school districts will be solely responsible.

Our biggest fear is that children previously found eligible for ERMHS will essentially be punished for their mental health disabilities. Termination of services could lead to many suspensions and expulsions for behaviors that result from untreated disabilities. For children who have never received ERMHS, one concern is that they will not even be properly assessed for eligibility.

MHAS has already seen a number of cases in which school districts refused to implement recommendations from the DMH. Through vigorous advocacy, MHAS was able to get children assessed and placed in programs meeting their mental health and overall educational needs. In the coming months, however, the situation will change when DMH is no longer involved. Greater outreach and additional resources to litigate the more difficult cases will be needed.

MHAS and other local legal aid organizations are preparing for these challenges. An increase in the number of individual children who need legal representation to fight denials of ERMHS is to be expected. MHAS is reaching out to parents, educators and mental health providers to make them aware of children’s rights and to dispel common myths about the availability of services.

This is a critical juncture for the 20,000 children in California who are relying on ERMHS. If these children are to have the chance they deserve to succeed and achieve their fullest potential, their advocates must be wholly committed to obtaining the services to which they are entitled.

For more information on ERMHS, visit [mhas-la.org](http://mhas-la.org).

*Abraham Apraku is a staff attorney for Mental Health Advocacy Services, Inc. in Los Angeles.*



# HIGH SCHOOL MOCK TRIAL COMPETITIONS – 2012

by Judge Helios J. Hernandez

SACRAMENTO -- The California State High School Mock Trial Competition took place in Sacramento, Ca., March 23 -25. The winner, for the second year in a row, was La Reina High School (Ventura County). Second place was Dos Pueblos High School (Santa Barbara County).

Thirty-two counties sent schools to the competition. The Riverside County entrant was Riverside Poly. They were 3-1, and just barely missed out on making the finals. The team they lost to was Dos Pueblos. Poly pre-trial attorney Alexander Hackworth won the award as Outstanding Pre-Trial Attorney (Defense).

Attorney Mark Easter, Best, Best, & Krieger, and Donna Hecht, Research Attorney, 4th District Court of Appeals, Div. 2, were in attendance and volunteered to score and/or preside over all rounds. Judge Helios Hernandez was also present and judged four rounds and was one of the scorers for the final round. There were ten super teams, including Poly and Redlands, any one of which could have won the competition. Telling point: After the final round, the scorers each make a few comments. After I made my comments, the La Reina pre-trial attorney said, "We remember you. You presided over two finals rounds." They had watched the DVD of many prior finals. This is doing your homework.

The first four rounds were at Sacramento Superior Court. The final round was in the Federal District Court Bldg. Presiding was Federal District Court Judge William Shubb. Before becoming a judge, he had been an attorney coach for mock trial in the Sacramento area.



by Judge Becky L. Dugan

It was opening night for Riverside County's Mock Trial competition. The nervous energy coursing through the halls of the courthouse, abuzz with hundreds of teenagers in their best attire, parents, coaches, scoring attorneys, and volunteers, was electric.

In Department 41, it was five minutes before the start of the battle, Round One, due to start at 6 p.m. As the judge peered through the back door of the courtroom, anxious to start on time, it appeared only one side had made it in. Very much as at a wedding, the supporters of each team were divided by the aisle, and one side was already jammed, standing room only. On the other side, three or four students milled. "Must have gotten stuck in the elevator," the judge thought.

Promptly at 6 p.m., the bailiff indicated to the judge that all were ready to proceed with the traditional, "All rise, Superior Court is now in session." As the judge sat down, looking over the courtroom, only two people sat on the right side, not counting the six students appearing for that school. While the people on the left side of the courtroom squirmed to shove more in, the emptiness of the other side was even more apparent.

Masking any look of dismay, the judge began the trial. What happened over the next two hours was 100% predictable and should never happen again. A team with the full support of four coaches, scores of parents and numerous supporters proceeded to slaughter a team with no attorney coach and one parent sitting in the courtroom.

To the credit of the powerhouse team, they were polite, strove not to object to everything they could have, and did their best not to embarrass the other team. That team held their heads high, fought through difficult, incomprehensible material, and never gave up. One could see that, with a bit of coaching, they had much potential.

Today, I read in the *Riverside Lawyer* all the wonderful articles from students and coaches on Mock Trial's positive effects on our kids. I could not agree more. But as a former coach and a judge of Mock Trial for over two decades, I am imploring the Riverside County Bar Association to develop a pool of coaches to be available to these schools that have no help. How one school has four coaches and another has none is a mystery to me and a real injustice to kids fighting hard against incredible odds in often difficult family situations. These kids deserve all the attention and support described in those articles.

Please do not let another year pass without addressing this deplorable injustice.



# FEDERAL BAR ASSOCIATION, INLAND EMPIRE CHAPTER

## PRESIDENT'S REPORT

*by Magistrate Judge Sheri Pym*

The Inland Empire Chapter of the Federal Bar Association has continued its tradition this year of presenting educational programs focused on federal legal issues that may be of interest, both to litigators who regularly appear in federal court and to attorneys who are just contemplating federal practice. Whatever your level of experience and area of expertise, we encourage you to attend any of our programs that interest you. For example, would you like to gain insight into the Supreme Court's latest decisions from one of the nation's foremost constitutional law professors? Then read on to learn more.

The Inland Empire Chapter kicked off its year on February 9, 2012, with its annual dinner honoring the judges of the Central District of California. The dinner, held at the Mission Inn, featured Loyola Law School Professor Laurie L. Levenson as the keynote speaker. She energetically and entertainingly shared her thoughts on "Judicial Independence: Challenges for Judges in an Election Year." Chief District Judge Audrey B. Collins also reported on the state of the district, including the challenges the court faces due to budget cuts, unfilled judicial seats, and the threat that the court may lose its temporary judgeship in 2013.

Also at the February 9th dinner, before speaking on the state of the district, Chief Judge Collins installed the Inland Empire Chapter's new officers and board members. The new officers are: Magistrate Judge Sheri Pym, President; District Judge Virginia A. Phillips, President-Elect; Antoine F. "Tony" Raphael, Treasurer; and James E. "Jeb" Brown, Secretary. The regular board members are: Jacqueline Carey-Wilson; Charles S. Doskow; Stefanie Field; John W. Holcomb; Kendall H. MacVey; Emile M. Mullick; Kay Otani; Daniel S. Roberts; Mark C. Schnitzer; Richard L. Scott; and Dennis E. Wagner. The honorary board members are: Jesus Bernal; Magistrate Judge David T. Bristow; Bankruptcy Judge Meredith A. Jury; Magistrate Judge Oswald Parada; District Judge Robert J. Timlin; and Administrative Law Judge John C. Tobin.

The chapter presented a lunchtime program at the federal courthouse on March 9, 2012 on "Riding the Inland Empire Foreclosure Tsunami: Foreclosure Litigation in Federal Court." The program's panelists were plaintiff's class action attorney Richard D. McCune, of McCune Wright in Redlands, and Charles L. Pernicka, senior counsel with Allen Matkins in San Diego, who represents residential lenders in foreclosure and loan-related litiga-

tion. The panelists gave an informative primer on the foreclosure process and claims, including pointing out common pitfalls, and discussed some of the larger cases pending nationwide.

On April 18, 2012, the chapter presented its annual Federal Civil Practice Seminar at the Riverside federal courthouse. This year's panelists included District Judge Virginia A. Phillips, District Judge Philip S. Gutierrez, Chief Magistrate Judge Suzanne H. Segal, and Magistrate Judge Oswald Parada. The judges discussed a variety of topics, including their personal preferences and tips for litigators. Judge Segal also discussed the Magistrate Judge Consent program, which may be of particular benefit to litigators in the Inland Empire who face a shortage of local district judges. You may visit the court's website at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov) for more information. Although seasoned federal practitioners regularly attend this annual program, it is a particularly good introduction for young lawyers who are considering practicing in federal court. If you missed this year's program, I encourage you to attend next year.

Coming up on May 15, 2012 is the Chapter's Twelfth Annual Constitutional Law Forum, which will be held at noon at the San Bernardino Hilton. UC Irvine School of Law Dean and Distinguished Professor Erwin Chemerinsky has generously agreed to speak once again about recent decisions by the U.S. Supreme Court. Dean Chemerinsky's not-to-be-missed discussion is always insightful and informative. During the program, the chapter will present the 2012 Erwin Chemerinsky Defender of the Constitution Award to Dale K. Galipo in recognition of his distinguished work as a trial attorney and his other exemplary contributions to the Inland Empire legal community that reflect his commitment to supporting and defending the Constitution of the United States.

For information about this and other upcoming programs, please go to the Inland Empire Chapter page of the Federal Bar Association website at [fedbar.org](http://fedbar.org) or look out for fliers regarding the events.

*Sheri Pym is the current President of the Inland Empire Chapter of the Federal Bar Association. She has served as a U.S. Magistrate Judge in Riverside since April 2011, and before that was Chief of the Riverside Branch of the U.S. Attorney's Office.*



# 2012 JUDGES APPRECIATION NIGHT AND INSTALLATION OF FBA BOARD

*photos courtesy of Jacqueline Carey-Wilson*



*Michael Marlatt, V. Andre Rekte, John Holcomb*



*Antoine "Tony" Raphael, Judge David Carter, Stephen Larson*



*Katherine Hardy and Judge Virginia Phillips*



*Magistrate Judge David Bristow and FBA National President Fern Bomchill*



*Magistrate Judge Stephen Hillman, Magistrate Judge David Bristow*



*FBA Immediate Past President Dennis Wagner and Jacqueline Carey-Wilson*



*James E. "Jeb" Brown, Doug Smith, John M. Porter*



*Magistrate Judge Oswald Parada, Terry Nafisi, Professor Laurie Levenson, Lana Kauper, Judge Virginia A. Phillips, Magistrate Judge Sheri Pym*



*Kendall MacVey, Margaret Hosking, Daniel Roberts*



*FBA Officers for 2012: President: Magistrate Judge Sheri Pym, President-Elect: Judge Virginia A. Phillips, Secretary: James E. "Jeb" Brown, Treasurer: Antoine "Tony" F. Raphael*

# NOMINEES FOR RCBA BOARD OF DIRECTORS, 2012-2013

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2012. (See the biographies below, which have been submitted by each candidate.) Please watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



**Christopher B. Harmon**  
*President*

As President-Elect for 2011-2012, Mr. Harmon will automatically assume the office of President for 2012-2013.



**Jacqueline Carey-Wilson**  
*President-Elect*

I am a Deputy County Counsel for the County of San Bernardino and represent the Department of Aging and Adult Services, which includes the Public Guardian-Conservator, and the Department of Child Support Services. After graduating from California State University, Fullerton with a Political Science degree, I was a field representative for Congressman George Brown in Colton. I then attended Southwestern University School of Law and was admitted to the bar in 1995. I initially practiced criminal law and worked as a Deputy Public Defender for the County of Riverside. I then specialized in appellate work and was a research attorney at the California Court of Appeal in Riverside. I have been an active member of the RCBA since 1996. In 1997, I joined the Publications Committee of the RCBA as a writer and photographer for the *Riverside Lawyer*, and I am now the editor. As editor, I coordinate each month's publication, recruit writers, and review the content of the magazine. In addition, I was elected to serve as Vice President of the RCBA in 2011. I would be honored to continue to serve the Riverside legal community as President-Elect of the RCBA.



**Chad Firetag**  
*Vice President*

Mr. Firetag is a partner in the law firm of Grech & Firetag. During his time with the office, he has represented numerous clients involving a wide range of criminal matters.

Mr. Firetag graduated Phi Beta Kappa from the University of California at Riverside with a B.A. in Political Science and a minor in History. He received his law degree from the University of California at Davis.

Mr. Firetag has been an active member of the Riverside County Bar Association and the Leo A. Deegan Inn of Court. He currently serves as the Chief Financial Officer for the RCBA and has served as the Co-Chair of the RCBA Criminal Law Section.

Mr. Firetag lives in Riverside with his wife, Victoria, and their two sons, William, age 6, and Nathaniel, age 2.



**Kira Klatchko**  
*Chief Financial Officer*

Kira L. Klatchko is the only Certified Appellate Specialist in Riverside County and is an appellate practitioner at Best Best & Krieger LLP. Ms. Klatchko currently serves as Secretary on the RCBA Board. She was Chair of the RCBA's Appellate Law Section from 2006 thru 2009 and its Co-Chair in 2010. Ms. Klatchko served several terms as a contributing member of the RCBA's CLE Committee and has chaired and organized numerous events for the RCBA, including programs on family law appeals, stays and supersedeas, oral argument, writs, and limited civil appeals. She also presents an annual program on appellate law for new admittees attending Bridging the Gap. Ms. Klatchko is an active supporter of the Mock Trial program; she served five seasons as an attorney coach for Palm Springs High School, and continues to support numerous teams in the county.

Ms. Klatchko is an appointed Member of the California State Bar Standing Committee on Appellate Courts. For four years, she was a member of the Warren E. Slaughter and Richard I. Roemer Chapter of the American Inns of Court, and she is a volunteer mediator at the Fourth Appellate District, Division Two. She conducts private mediations as part of the Riverside County Court's Civil Mediation Panel and recently co-authored a book chapter on California appeals for the ABA's Council of Appellate Lawyers. In 2009, 2010, and 2011 Ms. Klatchko was named to the list of Super Lawyers' "Rising Stars for Southern California." In 2010, the City of Palm Springs, along with Athena International and the Palm Springs Chamber of Commerce, named her Young Professional of the Year in recognition of her professional accomplishments and her work with numerous community-based nonprofits, including the Angel View Crippled Children's Foundation.

Ms. Klatchko was born and raised in Palm Springs and returned home to practice law after graduating from the UC Davis School of Law. She received her B.A. in political science, with distinction, from UC Berkeley. This month, Ms. Klatchko will receive her M.B.A. from the Executive Management Program at the Peter F. Drucker and Masatoshi Ito Graduate School of Management at Claremont Graduate University.



**Richard Ackerman**  
*Secretary*

I have been in practice since 1994. I mainly practice in the areas of civil litigation and constitutional law. I particularly enjoy due process and First Amendment cases, although I have litigated executive powers, free press, separation of powers,

and other constitutional cases throughout the United States. I have been blessed with several published opinions over the years from the California Court of Appeal and the Ninth Circuit Court of Appeals in First Amendment, diversity, and education law cases.

I firmly believe in making positive changes to society and am committed to the promotion of diverse ideas and innovations within the practice of law and in the communities we affect by our practice. I will personally continue to further improvements to the practice of law by being involved in legislative efforts in Sacramento, by drafting and proposing local rule changes that make it easier to practice law effectively, and by being involved in a continuing dialogue between the bench and bar. In the time that I have served the RCBA, I believe that we have made great strides in improving dialogue and bringing resources together for the benefit of both private and governmental practitioners.

As happy father of four great kids, I have a personal commitment to programs between the RCBA and the Riverside County community which foster mentorship, education, and opportunity for children of all walks of life. Since 1994, I have been involved in education as an instructor of philosophy (1994-2003), tutor (1986-1994), volunteer in probation (early 90s), MCLE Committee Member and Chair (2007 to present), Bridging the Gap lecturer (2008-present), and writer for the RCOE's Mock Trial Program (2008-present), Western State University's moot court programs (2009-present), and other projects involving youth, the law, and education.

Active involvement in the wider Riverside community is also very important to me. For several years, I served as the President of the Mt. San Jacinto College Foundation and as a board member. This organization was responsible for providing millions of dollars in scholarship opportunities for Riverside County students. During my leadership tenure, we instituted an annual gala event, developed strong accountability policies, built up a strong board of directors, and increased college employee contributions to the Foundation's programs.

Education is truly the great equalizer and liberator. In furthering this cause, I also served as the Vice-Chair of the Murrieta Valley USD Measure K Bond Oversight Committee, where we assisted in improving two existing high schools and in building Murrieta's newest high school.

As an elected officer of the RCBA, I will continue to fulfill my vocation to education and presenting MCLE programs worthy of regional respect and will provide topics that provoke and educate and that stimulate the advancement of the profession of law in our community and elsewhere. As Secretary of the RCBA, I will work to ensure that our membership has the most recent, clear, and relevant information available to it. Our members are who we are as an organization, and I have the utmost respect for your desire to have a bar association that recognizes and cares about your needs as a practitioner in any area of law.

I sincerely thank you for your votes and look forward to serving another term on the RCBA Board. I have the deepest respect for the profession of law and those who serve it so well. Should you need more information, please feel free to check out my website at AttorneyAckerman.com. Thank you.



**Jean-Simon Serrano**  
*Secretary*

Jean Serrano is an associate with the Riverside law firm Heiting & Irwin, where he has practiced plaintiff's personal injury law since shortly after his admission to the bar in 2006. Jean served one year as Director-at-

Large for the RCBA (2011-2012) and is the Past President of the Riverside County Barristers Association, having previously held positions as Treasurer, Secretary, and Vice-President. Jean has also been a member of the Leo A. Deegan Inn of Court for the past four years and is a member and contributing writer of the RCBA Publications Committee. He has also been named a "Southern California Rising Star" by Super Lawyers.

Having spent two years on the RCBA's Board of Directors (one year as President of Barristers and one year as Director-at-Large), Jean would love the opportunity to continue on as Secretary so that he may be involved in, and give back to, the legal community and the community at large.



**Michael Trenholm**  
*Secretary*

I appreciate the opportunity to stand for the position of Secretary of the RCBA, as I believe that the RCBA plays a significant role in developing the unique legal community that we have in Riverside.

I have been practicing law in Riverside County since 1993 and have been involved in the local legal community and the RCBA over the course of my career. I have twice previously served as a Director-at-Large on the Board of Directors of the RCBA. I have also served on the Board of Directors of the Inland Empire Chapter of the Federal Bar Association and served a term as President of that organization. I have also volunteered at the RCBA's Family Law Clinic and have also been a member of the adjunct faculty of the University of La Verne Law School. These experiences lead me to believe that the legal community has been greatly strengthened by the activities of the RCBA, including the educational programs and the pro bono work done through the RCBA, and, if elected, I would work to continue to enhance the RCBA's efforts in these areas and to advance the growth of the RCBA.



**David Cantrell**  
*Director-at-Large*

David Cantrell is a partner at the Riverside law firm Lester & Cantrell, LLP, where he practices commercial litigation. The bulk of David's practice is devoted to the defense of professionals – primarily lawyers – who are the subject of claims arising out of their practices. David is certified as a Specialist in Legal Malpractice Law by the State Bar's Board of Legal Specialization. He is one of only two lawyers based in the Inland Empire to achieve this certification.

David has enjoyed his involvement with the RCBA and the Riverside legal community and would like to serve our legal community as a Director-at-Large of the RCBA. David previously had the privilege of serving the RCBA Board through his role as President of Barristers (2008-2010), and he was a member of the Leo A. Deegan Inn of Court from 2007-2009. In addition to his involvement with the local bar, David has served as a scoring attorney for the high school Mock Trial competition and has assisted a local high school with its presentation of the Every 15 Minutes program (designed to make teenagers aware of the dangerous consequences of impaired driving).

Prior to becoming a lawyer, David received a B.S. from San Diego State University and a J.D. from Pepperdine University.

David has been a resident of Riverside County for approximately ten years. He currently resides in Riverside with his wife Tonia (a pediatric dentist practicing in Moreno Valley and Temecula), and their sons Jake (4) and Cooper (22 months).



**DW Duke**  
*Director-at-Large*

DW Duke (David W. Duke) is an experienced trial attorney, writer and noted lecturer. He has authored four published books and dozens of articles on various legal topics ranging from real estate and insurance law to human rights. DW is a member of the California Association of Realtors Strategic Defense Panel and lectures regularly to members of the real estate industry. DW manages the Inland Empire office of Spile, Leff & Goor, LLP, serving clients in Riverside, Orange and San Bernardino Counties.

DW is the President of the Institute for Children's Aid and a member of the Board of Directors of Stop Child Executions. He holds a third-degree black belt in taekwondo with the World Taekwondo Federation in Seoul, Korea, and has been a competitor, instructor and referee in the United States Taekwondo Union, which is the official governing body of the U.S. Olympic Taekwondo Team. DW is an accomplished musician who plays keyboards and guitar. DW lives with his wife Laura in Temecula, California, where they are active in human rights and numerous civic and charitable organizations.

**Education:**

Juris Doctor – Washington University School of Law in St. Louis, Missouri, 1984

Bachelor of Arts, double major, Economics and Psychology – University of Michigan, 1980

**Admissions:**

California

United States Court of Appeals, Ninth Circuit

Supreme Court of the United States



**L. Alexandra Fong**  
*Director-at-Large*

I am honored to be nominated for a position as Director-at-Large. I am a Deputy County Counsel for the County of Riverside, where I practice exclusively in the area of public entity defense. I received my undergraduate degree and J.D. locally.

After graduating from law school and passing the bar exam in 2000, I began practicing law at the San Bernardino offices of Lewis D'Amato Brisbois & Bisgaard LLP (now Lewis Brisbois Bisgaard & Smith LLP), one of the largest law firms in California. While at Lewis Brisbois, I was mentored by many local attorneys. I practiced primarily in public entity defense before moving to Riverside County Counsel.

Since 2005, I have been an active member of the RCBA. I am currently the chair of RCBA's Mentoring Program Committee. Our program has paired approximately one dozen protégés with respected attorneys within the community. I am also mentoring a protégé.

I am a member and contributing writer of the RCBA Publications Committee. Since 2009, I have authored a number

of attorney profiles and several judicial profiles. I have also written about local community efforts to assist the less fortunate, including Be a Santa to a Senior, Fill a Backpack, Thanksgiving Baskets, and the Snowman Banner Project.

I am co-chair and member of the Continuing Legal Education Committee of the RCBA. The committee meets monthly in order to discuss, plan, and organize upcoming mandatory continuing legal education (MCLE) events that do not fall within one of the many sections of the RCBA. These events include the yearly Bridging the Gap program and, this year, have included learning opportunities in ethics and the Government Claims Act.

I am a member of the Leo A. Deegan Chapter of the American Inns of Court. Last year, our team (Team Darrow), with the Honorable Tom Cahraman, presented vignettes based on the topic "Marching Orders: Client" on May 25, 2011 at the Mission Inn. This year, our team (Team Thompson), with the Honorable John Vineyard as its judicial master, presented a film based on the topic "Profession v. Business" on April 25, 2012 at the Mission Inn.

I have participated in the Mock Trial program as a scoring attorney, an experience I highly recommend. It is rewarding to observe the high school students present a criminal case, from pretrial motions to closing argument.

I believe it is important to have public entity representation within the local bar association. I welcome the opportunity and privilege to serve the Riverside County Bar Association, and the legal community, as a member of its Board of Directors.



**Keith Kelly**  
*Director-at-Large*

Mr. Kelly is a sole practitioner in Riverside.



**Steven G. Lee**  
*Director-at-Large*

Steve Lee is a senior attorney and partner in the Riverside law firm of Reid & Hellyer, where he practices primarily in the area of real estate and business litigation. Mr. Lee has received an A.V. rating from Martindale-Hubbell in these litigation practice areas. He received his undergraduate degree (magna cum laude) from Brigham Young University and his J.D. from the J. Reuben Clark School of Law at Brigham Young University.

Since his admission to the bar in 1988, Steve has practiced exclusively in Riverside. He is a past member of the Leo A. Deegan Inn of Court. He is also a past president (and current board member) of the Inland Chapter of the J. Reuben Clark Law Society. Steve is a volunteer mediator with the RCBA Dispute Resolution Services (DRS). He is actively involved in numerous community organizations and charities.

Steve resides in Redlands with his wife, Susan. They are the proud parents of three adult children.

It is an honor to be considered for a possible position on the RCBA Board of Directors. Thank you for your consideration.



**Diana Renteria**  
*Director-at-Large*

Diana Renteria is an attorney in Riverside, having received her law degree from Western State University in 1995. After practicing as a corporate attorney for a construction firm and as an associate for Thompson & Colegate, LLP, she opened her own practice in 2005.

She currently represents clients in the areas of family law (dissolution, child custody, child visitation, support issues, and property division), probate, guardianship, name changes, step-parent adoptions, Americans with Disabilities Act (“ADA”) defense, dependency, and some civil litigation.

Diana Renteria is a current sitting board member of the Junior League of Riverside, Inc. (“JLR”, since 2006), Riverside County Bar Association Lawyer Referral Service (2006), Inland Counties Legal Services, Inc. (2010), and Public Service Law Corporation, Inc. (2004).

As a member of the JLR, she has held positions in fund development, training development, and with the State Public Affairs Committee of California (“SPAC”). SPAC is a highly coveted two-year position permitting a member to travel and participate in the legislative process on behalf of women, children and their families throughout the state of California. This position is the legislative arm of the JLR, providing skills and training in drafting and advocating legislation regarding violence prevention, health, education and family support. During her 2009 term, Ms. Renteria, as the Legislative Liaison, was instrumental in drafting sponsored legislation regarding Perinatal and Mood Anxiety Disorder (a/k/a the post-partum depression education bill). This legislation was known as A.B. 159 and sponsored by Assemblymember Pedro Nava’s office in Santa Barbara. The bill eventually transpired to make May the month to “Speak Up, When You Are Down,” a campaign and educational tool to teach women to speak up if they are feeling depressed after having a newborn.

In her career, she has contributed articles to the *Riverside Lawyer*, and she was recently quoted in the *Press-Enterprise* newspaper regarding ADA lawsuit abuse and legislation sponsored by Senator Bob Dutton, R-Rancho Cucamonga, namely S.B. 1198 (March 3, 2012). This bill would permit business owners to correct minor infractions and defer “drive-by” plaintiffs’ and their attorneys’ large monetary compensation.

She is a member of the California Bar, the RCBA, and the San Bernardino Bar Association. She has participated in the Leo A. Deegan Inn of Court (1999-2000) and was a board member of the Bridle Creek Homeowners Association (2009-2011). She is listed among the alumni of the University of California, Riverside, and Sigma Kappa sorority. Along with her daughter, Marina, she is a member of National Charity League, Inc. Diana Renteria is involved with her children’s scouting activities in Boy Scout Troop 2 and Girl Scout Troop 80, and in 2011, she was honored to receive the Scouter of the Year award from Cub Scout Pack 65.

Diana Renteria lives in Riverside with her family, Gary Kaye, Marina, age 13, and Sebastian, age 11.

**The following members have submitted their names by way of petition for the office indicated (as per the Riverside County Bar Association bylaws, Article VI, Section 4):**



**Christopher J. Buechler**  
*Director-at-Large*

Christopher, or Chris to his friends, is a sole practitioner based in downtown Riverside, with a focus on family law. He first joined the RCBA in January 2010 and has been an active member both among the general membership and in the Barristers program. Chris has also been a regular volunteer with the Public

Service Law Corporation Family Law Clinic since February 2010, and he was recognized for his contributions with the Outstanding Volunteer Service Award at the 2012 Inland Counties Legal Services/ PSLC Wine and Cheese Benefit.

In addition to his legal work, Chris also serves on the RCBA’s Publications Committee, frequently writing feature articles for the *Riverside Lawyer*, and he is a member of the RCBA’s Technology Committee, tasked with redesigning the RCBA website to better serve its members and attract public interest. He hopes to carry forward this mission of public outreach as a director on the RCBA board.

Chris was born and raised in Southern California. He received his A.A. degree from Orange Coast College, his B.A. in Philosophy from Cal State Long Beach in 2006, and his J.D. from USC Law School in 2009. He currently resides in Riverside with his domestic partner, William Marin. In his free time, Chris plays contract bridge at the Riverside Bridge Club and enjoys exploring computer technology.



**Scott Talkov**  
*Director-at-Large*

Scott Talkov is Barristers President and an attorney at Reid & Hellyer, where he practices real estate and civil litigation. Scott has worked alongside his fellow board members to organize Barristers meetings with attendance that far exceeds that in the recent memory of the organization.

In 2011, he worked with the Barristers Board to institute a democratic system for board elections, being elected by his peers as President that same year. Scott also worked with the Barristers to reestablish the Associated Students of UC Riverside Legal Education Clinic, volunteering as the founding Director to connect students with Barristers who provide pro bono legal advice. As Barristers President, Scott has served on the RCBA Board of Directors over the last year, where he continues his participation in general membership meetings and other activities of the bar.

Scott graduated cum laude from Washington University in St. Louis School of Law and served on the board of the Washington University Law Review, where his law review was published by the American Bar Association. He began his studies at UC Riverside, completing his bachelor’s degree at UC Santa Barbara. Scott was born and raised just west of Riverside County in Walnut, California, where he rose to the rank of Eagle Scout.

Scott has been endorsed by former State Bar and RCBA President Jim Heiting, RCBA Director-at-Large General Richard Roth, Virginia Blumenthal, RCBA Immediate Past President Harlan Kistler, RCBA Past President Jane Carney, Barry O’Connor, Eli Underwood, Curtis Wright and Sylvia Choi. He has also been endorsed by Barristers Board members Amanda Schneider, Luis Arellano, Sophia Choi, Arlene Cordoba and Brian Pedigo. Scott has additionally been endorsed by Reid & Hellyer Senior Attorneys Dave Moore, also a former RCBA President, Jim Manning, Dan Katz, Doug Plazak, Mike Kerbs, Mark Schnitzer and Steve Lee, whom Scott also endorses in this election for RCBA Board.

Scott lives in Riverside and is engaged to Adina Hemley. More information can be found online at [ScottTalkov.com](http://ScottTalkov.com).



# JUDICIAL PROFILE: JUDGE JOHN M. DAVIS

by Donna Thierbach

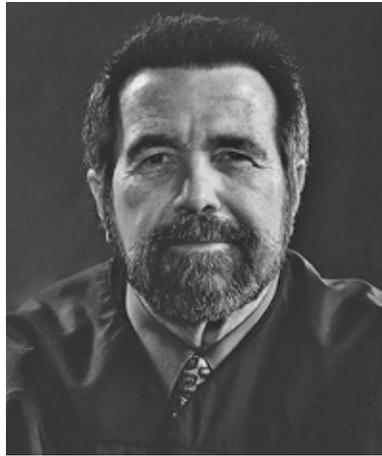
I'll warn you now, do not be surprised if you find yourself humming "It's a Small World" or singing some songs from your favorite musicals as you read this article.

Judge John Davis has had an extremely interesting life. He was born and raised in San Diego, California. His mother was a homemaker and his father was the principal of a junior high school for 40 years. It really is a small world, because former Riverside County District Attorney Grover Trask lived four houses away from Judge Davis as they were growing up. They attended school together from kindergarten all the way through high school and were good friends. In high school, Judge Davis' extracurricular activities included singing bass in the school's Madrigal Singers, playing baseball and football and serving as the student body president.

After graduating from high school, Judge Davis was accepted into the Air Force Academy, but he decided that was not the direction he wanted to take. Since he had also been accepted to the University of California, Irvine, he decided to go there, but that all changed when he received a leadership scholarship to the University of California, Los Angeles (UCLA). As a result he became a proud Bruin, majoring in psychology. He continued to play baseball and took up rugby, but also took a lot of performing arts classes and performed in all of the school's singing groups. He must be pretty good, as he earned extra money singing at churches that needed a bass singer. In 1967, while still in college, he played a year in the rookie league with the Anaheim Angels. There was a special program wherein a player could sign on just for expenses while still retaining amateur status. He also was a member of the Acacia Fraternity at UCLA.

After graduating from UCLA, Judge Davis spent the next several years performing in eight community theater musicals, including "Fiddler on the Roof," "Man of La Mancha" (as Sancho Panza) and "Cabaret." During this time, he was looking for a career-type position, and he eventually accepted a job as an office manager with the Social Security Administration. He still continued to perform in local shows. He worked for the Social Security Administration for the next 12 years.

So by now, you are thinking, wait a minute, when did he become interested in studying law? During high school,



Judge John M. Davis

Judge Davis thought he might enjoy the practice of law. However, after graduation from college, he did not have the funds to pursue additional schooling at that time. After working a number of years for the Social Security Administration, he was ready for a change and finally felt he was financially able to pursue law school. Judge Davis continued to work during the day for the Social Security Administration and attended Southwestern Law School in Los Angeles at night. Once again, it is a small world, because he was classmates with Judge Michael Donner and Riverside County Deputy District Attorney Pat

Estell. As though Judge Davis were not busy enough, along the way he discovered he enjoyed participating in television game shows. He was on "The Cross-Wits," "Scrabble" and "Jokers Wild." He was one of the top ten winners of all time on "Jokers Wild" and qualified for the championship playoff.

I am guessing your next question is, how does a San Diego native end up in Riverside? Judge Davis was living in Diamond Bar when he graduated from law school but was considering moving to Temecula, so he applied for a position with the Riverside County District Attorney's office. When he went to the office to apply for a job, he had no idea his high school friend Grover Trask was the district attorney there, because they had lost touch after going away to college.

Judge Davis spent the next 24 years practicing law in the Riverside County District Attorney's office. His first assignment was misdemeanor trials. He gained a lot of experience in the assignment, because he did 36 misdemeanor trials. After that, he was assigned to the Sexual Assault Child Abuse unit (SACA) for two years, gangs for four years and then homicides. He had an impressive record, winning all but one (a simple possession case) of 107 felony trials, 45 of which were murder cases. His creative approach in several cases led to major changes in the law. He was the first to successfully prosecute a driver for murder in a driving under the influence (DUI) case where the defendant had no DUI priors. Also, due to his efforts, a person can now be charged with carjacking after taking the victim's keys by force, a methamphetamine manufacturer can be charged with second degree murder when a child dies due to a drug lab explosion, and a perpetrator

who stabs a victim can be charged with murder even though the victim dies at the hospital due to hospital error. Judge Davis also appreciated the learning experience he received at the district attorney's office in his additional assignment, wherein it was his responsibility to respond to police shootings to ensure the investigation was conducted properly. Oh and did I mention in 1999, out of 4,500 prosecutors, Judge Davis was named outstanding prosecutor of the year for the state of California by the California District Attorneys Association? As with everything, all good things come to an end. In March 2009, Judge Davis retired when Riverside County offered an attractive golden handshake package to certain veteran employees due to budget concerns.

Judge Davis had submitted an application for a judicial appointment prior to considering retirement. Then, after he had been retired for about a year, he was excited and pleased when he "got the call." His first assignment was criminal trials at Southwest Justice Center. He was only there about four (4) months, but presided over 18 trials, most of which were life cases. He then went to Indio and handled a VCD (Vertical Criminal Department) calendar for about six (6) months and now is back at Southwest Justice Center handling the misdemeanor arraignment and motion calendar. He said although the drive to Indio was challenging, each of his assignments has been a very enjoyable experience and he definitely made the right decision when he accepted the appointment.

So, what does Judge Davis do for fun? For 15 years, he had been a coach for the mock trial team at Temecula Valley High School and then, when he was appointed to the bench, he served as their judicial mentor. However, this past year he served as a coach for the Southwestern Law School moot court team. His son was a student there at the time and he said it was a wonderful experience. As though that was not enough, he is the president of Acacia Fraternity Scholarship Foundation at UCLA, which gives out eight \$5,000 scholarships a year to deserving UCLA students.

Judge Davis has two children from a previous marriage. His son recently graduated from Southwestern Law School and he just took the Bar. He is interested in a career in sports law. His daughter has recently graduated from San Diego State and is pursuing a Masters in the nursing field. Judge Davis recently married Angela Sannipoli. She was a real estate agent, and they met when he was looking for a new home in the Temecula area. She has since started her own jewelry design business. She also has children from a previous relationship, so they spend a lot of time doing family activities.

Judge Davis is an avid UCLA football fan and season ticket holder. He also enjoys UCLA basketball on TV. He follows the San Diego Padres and, although recently with their record it has been disheartening, he continues to attend their games when he can. He is also a proud relatively new boat owner. For the past two years, he has been fixing the boat up and learning navigation. He has had the boat rigged for fishing and installed a GPS navigation system. Now, he is just waiting for fish to arrive. He also plans to take the boat to Catalina Island some day. For now, they cruise the harbor to practice and to fish the La Jolla kelp beds. Interestingly, during one of their harbor cruises he discovered a dead body. He has since learned that a bridge in that area is frequently used by individuals to commit suicide. During his brief retirement, Judge Davis did a little traveling and enjoyed a lot of racquetball, bowling, poker, and family activities.

*Donna Thierbach, a member of the Bar Publications Committee, is retired Chief Deputy of the Riverside County Probation Department.*



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# OPPOSING COUNSEL: BRIAN G. COSGROVE

by L. Alexandra Fong

## Defender of Veterans, or the Veteran Defender

Brian G. Cosgrove grew up in the San Francisco Bay area, the son of a police officer father and an events planner mother. He attended the University of California, Santa Barbara, graduating with a Bachelor's Degree in Law and Society. He attended the University of the Pacific, McGeorge School of Law, with the intention of following his father into a law enforcement career, and graduated in 1993.

While in law school, he joined the United States Marines Corps,<sup>1</sup> and he attended its Officer Candidate School in the summer of his first year. He was commissioned as a Second Lieutenant in August 1991 before returning to law school in the fall. After completing law school, he was sent to Quantico, Virginia, site of one of the largest Marine Corps bases in the world, for additional training. He then traveled to Newport, Rhode Island to attend Naval Justice School (NJS), which provided him with training in all aspects of military law.<sup>2</sup> After completing NJS, he was initially assigned to the Marine Corps Air Ground Combat Center in Twentynine Palms.

As part of Brian's career in the Marines, he has travelled internationally (Japan) as well as domestically (Hawaii, Arizona, Rhode Island, Washington D.C., Virginia, and North Carolina). As a Judge Advocate, he prosecuted cases against military personnel (for three years) and defended military personnel (four years). In one prominent case that he handled as a Judge Advocate, he prosecuted Marines who refused to take the anthrax vaccine.

He was honorably discharged from active duty in 2000 and remained in the inactive reserves until after



Brian G. Cosgrove

September 11, 2001, when he joined a reserve artillery unit in Pico Rivera. He was mobilized to Camp Pendleton in 2006, where he defended Marines accused of murder and kidnapping allegedly committed in both Haditha and Hamdania, Iraq. He left the reserves in 2008 after attaining the rank of Lieutenant Colonel.

In 2002, while still in the reserves, he became a deputy public defender for the County of Riverside. He wanted the opportunity to return to criminal trial work after a brief stint practicing family law in the desert. His experience as a

defense attorney in the Marines helped prepare him for the various misdemeanor and felony cases he has handled. As a deputy public defender, he has been assigned to all three offices (Riverside, Southwest, and Indio). He was named Misdemeanor Attorney of the Year in 2003 and Felony Attorney of the Year in 2010. He has tried over 100 jury trials (military and county).

Some notable recent cases that Brian has handled for the Office of the Public Defender have been: (1) *People v. Holmes* (RIF1103593), in which the defendant pleaded guilty to gross vehicular manslaughter in the death of CalTrans employee Barry Steele, and (2) *People v. Parker* (RIF136528), in which the defendant was convicted of causing the 1985 death of Fred Taylor, a retired Riverside police sergeant working as an armed security guard for a bank.<sup>3</sup>

In March, he completed a murder trial, *People v. Delaney* (RIF10004236), in which his client was accused of the August 13, 2010 killing (by stabbing with a kitchen knife) of an 18-year old man and the assault on two other men at the Moreno Valley mall. The case was prosecuted by Deputy District Attorney Michael Hestrin, vice-president of the Riverside County Deputy District Attorneys Association (RCDDAA). The trial resulted in a hung jury and will be retried.

Brian is currently assigned to handle selected murder cases, all matters involving competency to stand trial

1 "The Few. The Proud. The Marines."

2 According to its website ([www.jag.navy.mil/njs.htm](http://www.jag.navy.mil/njs.htm)), the mission of the NJS is to "[t]rain all Sea Service (Navy, Marine Corps and Coast Guard) judge advocates, and enlisted and civilian legal professionals to deliver quality legal services, promote justice, and enhance Sea Service fleet readiness" and to "[t]rain Sea Service leaders and legal support personnel to perform their command and staff duties in accordance with United States and international laws."

3 Mr. Parker was arrested in 2007 in the then-unsolved murder of Fred Taylor. He was linked to the crime based on DNA collected from an abandoned getaway car.

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pursuant to Penal Code section 1368, and cases at the newly formed Veterans Court in Department 31 of the Robert Presley Hall of Justice, where the Honorable Mark Johnson presides. In Veterans' Court, he handles cases involving veterans referred to him by other deputy public defenders handling the misdemeanor and felony calendars in all county courts, including Indio and Southwest. The Veterans' Court team, consisting of the Superior Court, the District Attorney's office, the Public Defender's office, the Department of Probation, Veterans Affairs Healthcare Systems, and the Department of Mental Health, evaluate whether the accused is eligible for these services.

The Veterans' Court is designed to supervise probation-eligible felony and misdemeanor veteran defendants through an 18-month program monitored by the court. It is focused on treatment and rehabilitation, rather than punishment of the accused. For a veteran to be eligible for treatment, under Penal Code section 1170.9, a nexus must exist between the issues that "caused the veteran to intersect with the criminal justice system and their military service."<sup>4</sup> To date, 12 veteran defendants who

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<sup>4</sup> See Brian Cosgrove's article on page 15 and [riverside.courts.ca.gov/criminal/veterancourt\\_infosheet.pdf](http://riverside.courts.ca.gov/criminal/veterancourt_infosheet.pdf) for additional information.

are represented by the Office of the Public Defender have been considered for entry into the program: two have been accepted and two are pending approval, while the others have either been rejected or have accepted other dispositions.

When he is not defending the accused, Brian is actively involved with the Riverside County Attorneys' Association (RCAA), the employee organization representing deputy public defenders employed by the County of Riverside. He has been involved with the RCAA since its inception in mid-2009, when it was engaged in a dispute with the County of Riverside over its recognition. Fortunately, that dispute ended after two years, and in late 2011, the RCAA was recognized as the exclusive employee organization representing non-management deputy public defenders. The RCAA utilizes the services of the RCDDAA to negotiate wages, hours, and other terms and conditions of employment pursuant to the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

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*L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.*



# PROJECT GRADUATE

*by Brian Unitt*

Project Graduate is an official program of the Riverside County Bar Association. It is a joint effort of the court, county agencies, and the bar association to assist foster youth in Riverside County to graduate from high school and become productive community members. Some 45% of foster youth in Riverside County do not complete high school, and once they turn 18, they are forced out of the system with minimal resources, wholly unprepared for the challenges of adulthood. We match eligible students with RCBA members who are trained as education representatives, provide incentives for and celebrate success, and provide enrichment opportunities for the students. A monthly juvenile court calendar is devoted exclusively to tracking the students' progress and acknowledging their successes.

The RCBA Project Graduate Steering Committee held its first informational mixer and fundraiser in February. More than 50 RCBA members attended to learn about Project Graduate's mission and vision for making a difference in the lives of foster youth. As a result, we expect to have another ten Education Representatives trained by the end of April. We are particularly appreciative of our generous financial donors. Those who did not request anonymity include: Best Best & Krieger, \$500; Judith Graumann Murakami/Attorneys to Go, \$500; Joshua Lyons, \$100; Jean M. Younger, \$100; Allison M. DeTal, \$50; Holstein, Taylor & Unitt, \$500; Margaret Hosking, \$100; and Pamela Bergman, \$100.

For more information, to become a volunteer, or to make a financial contribution, please contact: Mona Nemat, at (951) 826-8215 or [Mona.Nemat@bbklaw.com](mailto:Mona.Nemat@bbklaw.com), or Brian Unitt, at (951) 682-7030 or [brianunitt@holsteinlaw.com](mailto:brianunitt@holsteinlaw.com)

*Brian Unitt is the chair of the RCBA Project Graduate Steering Committee. He is a shareholder in Holstein, Taylor and Unitt, APC. His practice focuses on civil appeals and writs and personal injury litigation.*



# MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2012.

**William Gregory Bennett** – Bennett & Bennett, Temecula

**Keith Casey Campbell** – Law Student, Riverside

**Vincent Leone (A)** – Leone & Associates, Moreno Valley

**Amberlie Romney** – Sole Practitioner, Yorba Linda

(A) = Designates Affiliate Member



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Volunteer attorneys to train to assist in fighting the “big bank” mortgage companies and their co-conspirators. Make a difference, if not money. Grant writing and public service experience a plus. Please call (951) 347-7707.

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