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April 2019 • Volume 69 Number 4

MAGAZINE

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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

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

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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

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

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities, Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

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

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

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

CALENDAR

April

- 8 Civil Roundtable**
The Honorable Craig Riemer
Noon – 1:15 p.m.
RCBA Boardroom
- 9 Civil Litigation Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Joseph Ortiz
Topic: “What does Dynamex Mean for California Employees and Workers?”
MCLE – 1 hour General
- 10 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Meghan A. Blanco
Topic: “Cross Examination of a DEA Agent”
MCLE – 1 hour General
- 12 General Membership Meeting**
Noon – 1:30 p.m.
RCBA Gabbert Gallery
Speaker: John Aki, Chief Assistant District Attorney
Topic: “Effective Voir Dire”
MCLE - .75 hour General
- 16 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: John Madden
Topic: “Understanding and Effectively Using Actuary Reports”
MCLE – 1 hour General
- 23 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Hon. Raquel A. Marquez & Hon. Sunshine S. Sykes
Topic: “What You Need to Know About the Appellate Department of the Riverside Superior Court”
- 26 RCBA Good Citizenship Awards**
1:00 p.m.
Riverside Historic Courthouse – Department 1

EVENTS SUBJECT TO CHANGE.

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





President's Message

by Jeff Van Wagenen

Last week, I had a meeting at the Public Defender's "new" office on Main Street. (Although to me, it will always be the "Old District Attorney's Office.") On my way to the meeting, I walked past the Robert Presley Detention Center and the Robert Presley Hall of Justice. I started wondering about the career of an individual whose accomplishments were so significant that they warranted not only the naming of two buildings, but also the Robert Presley Institute of Criminal Investigation for Advanced Investigators and the Robert Presley Center of Crime and Justice Studies at the University of California, Riverside.

After serving in the Army during World War II, earning a Bronze Star for heroism, Robert Presley moved to Riverside and began a career in the Riverside County Sheriff's Department. He worked as a line level law enforcement officer, concurrently pursuing his education. He quickly worked his way up the ranks from patrol deputy to homicide detective, sergeant, lieutenant, and captain. His promotion to criminal division chief deputy soon paved the way for his appointment as undersheriff, the department's "number two" – a position he held for twelve years. His retirement after 24 years was short lived. In fact, he was just getting started....

In 1974, Robert Presley was elected to the California State Senate. During his twenty years in the Senate, Senator Presley gained a reputation for his bi-partisanship and work ethic. His legislative initiatives ranged from wildlife conservation to clean air to education reform and many other quality-of-life issues. However, his top priority and longtime commitment was always to improve and reform California's correctional system and its law

enforcement profession, while remaining focused on overall criminal justice reform. After another short-lived semi-retirement, Senator Presley was appointed by Governor Davis to serve as the chairman of the California Offender Parole Board and Secretary of the California Youth and Adult Correctional Agency from 1999-2003.

Senator Presley died in 2018 at the age of 94.

On May 9, 2019, the University of California, Riverside (UCR) School of Public Policy and the Presley Center of Crime and Justice Studies at UCR are convening a daylong tribute to Senator Presley, with the help of the Sheriff's Office, the District Attorney's Office and the County Board of Supervisors. During the day, two separate symposia on emerging issues in criminal justice will be held in downtown Riverside, highlighting the policy impact Senator Presley had on criminal justice reform in the state. The day will culminate with the Senator Robert Presley Tribute Dinner at 5:30 p.m. at the UCR Culver Center of the Arts. If you are interested in attending or sponsoring the event, please email Jennifer.Kelsheimer@ucr.edu or call 951-827-5564. The proceeds from the event will benefit the Senator Robert Presley Scholarship Fund to support UCR students who participate in academic pursuit that continues the legacies of Senator Presley.

This deep dive on Robert Presley made me think about the other legal legends memorialized in various ways in our community.

When we walk through the John Gabbert Judicial Plaza, do we think about the prosecutor who left the District Attorney's Office in 1938, to join a father and son duo to form the law firm of Best, Best & Gabbert? Do we think about his appointment by Governor Earl Warren to be a judge of the Riverside County Superior Court, a position he held for 21 years, before Governor Ronald Reagan appointed him to the Appellate Court? Do we wonder what our community would be like if he did not lead the charge to bring the University of California to Riverside?

When we go by the Victor Miceli Law Library, do we pause and remember the man who transformed our legal community literally and figuratively by his dedicated efforts to bring a federal courthouse and bankruptcy court to Riverside, to relocate the Court of Appeal, Fourth District, Division Two, from San Bernardino to Riverside, and to restore the Riverside Historic Courthouse? In describing Judge Miceli, Justice Gabbert had remarked, "There is not a soul I can think of in my lifetime here that did more for the Riverside community in a constructive way than he did. His contributions have just been beyond measure."

You may be asking yourself, how any of this relates to this month's topic of "Children and the Law?" During my trip through history, Crosby, Stills, Nash & Young's "Teach Your Children Well," has been playing in my head. I know it is a stretch (at best), but the lyrics are resonating. We need to constantly remind ourselves, and those who follow us, about those who came before. We need to think of them not as landmarks, but rather as people. We need to understand what they went through, so as to give what we go through greater context and perspective. And, we need to constantly strive to live up to the examples they set.

Jeff Van Wagenen is the assistant county executive officer for public safety, working with, among others, the District Attorney's Office, the Law Offices of the Public Defender, and the courts.



BARRISTERS PRESIDENT'S MESSAGE

by Megan G. Demshki



May 2 Judicial Reception

The Board of Directors of the Riverside County Barristers invites you to the **Third Annual Judicial Reception** on **Thursday, May 2, 2019** from 5:30 - 7:30 p.m. at Grier Pavilion located at Riverside City Hall.

Come admire a beautiful view of the Riverside skyline while enjoying appetizers and refreshments from Riverside's own, The Salted Pig. Network with the Riverside legal community and meet members of the judiciary. Barristers alumni are encouraged to attend and socialize with past and current members.

We are humbled to present the Honorable Jackson Lucky with the 2019 Barristers Judicial Officer of the Year Award and Robyn Lewis with the 2019 Barristers Attorney Advocate of the Year Award!

Hon. Jackson Lucky: 2019 Barristers Judicial Officer of the Year Award

This award is presented to a judicial officer in the Riverside legal community that takes a special interest in the development and mentorship of new and young attorneys. Judge Lucky routinely goes above and beyond to be a model member of the Riverside legal community. You can frequently find Judge Lucky coaching high school mock trial along with newer attorneys, participating at the Deegan Inn of Court, providing guidance and mentorship to young attorneys, and presenting at MCLE events for the Barristers and the Bar Association with some of the best power point presentations around.

Robyn Lewis: 2019 Barristers Attorney Advocate of the Year Award

This award is presented to an attorney in the Riverside legal community that advocates for new and young attorneys and presents young attorneys with opportunities for growth and advancement. When considering nominations for this award, the Barristers board unanimously and enthusiastically selected Robyn Lewis to be the first-ever recipient of the Barristers Attorney Advocate of

the Year Award. Robyn has distinguished herself in our legal community through her commitment to the RCBA. Robyn has been indispensable in the development and continued success of both the Bridging the Gap program and the New Attorney Academy. Both of these programs give the new attorneys an introduction to the Riverside legal community, while also providing opportunities for relationship building, MCLE credit, and skills-based learning.

We hope you will join us to recognize these amazing leaders in our legal community and to celebrate the Riverside judiciary. This event is free for judicial officers and Barristers (members of the RCBA who are under age 37 or have been in practice less than 7 years). The cost to attend is \$10 for RCBA members. The cost to attend is \$20 for non-RCBA members. Register for this event on the Barristers Facebook Event or the EventBrite page, <http://rcbabarristersjudicialrecep.eventbrite.com>.

The Barristers greatly appreciate the support of our sponsors that made this reception possible.

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It is not too late to sponsor this event. Please contact Megan at megan@aitkenlaw.com for details.

Upcoming Events:

- Meet up with the Barristers Tio's Tacos for Happy Hour on **Friday, April 12**, at 5:30 p.m. Summit Settlement Services, Inc. graciously sponsored this event.

- Celebrate the graduates of the New Attorney Academy with the Barristers at El Patron on **Friday, May 17**, at 4:30pm.
- Elections for the 2019-2020 RCBA Barristers board of directors will be held on **Wednesday, June 12**, at 5:30 p.m., at The Brickwood.
 - o All nominations must be received by Friday, May 19, 2019, at 5:00 p.m.
 - o Available positions include: President-Elect, Treasurer, Secretary, and Member-at-Large.
 - o Please send nominations to rcbabarristers@gmail.com.
 - o Only Barristers members who have attended 2 Barristers event this year may vote.
- Learning more about upcoming events by following @RCBABarristers on Facebook and Instagram or visiting our website, www.riversidebarristers.org.

Looking to get involved?

Whether you are eager to start planning the next great Barristers gathering, or just looking to attend your first event, please feel free to reach out to me. I would love to meet you at the door of a Happy Hour, so you do not

have to walk in alone, or grab coffee to learn more about how you want to get involved. The easiest ways to reach me are by email at Megan@aitkenlaw.com or by phone at (951) 534-4006.

Megan G. Demshki is an attorney at Aitken Aitken Cohn in Riverside where she specializes in traumatic personal injury, wrongful death, and insurance bad faith matters.





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MINOR'S COMP PETITIONS

by Robyn A. Lewis

A Minor's Comp petition, which is short for a Petition to Approve the Compromise of a Disputed Claim of a Minor, is a court hearing that must take place if a minor receives a monetary settlement of \$5,000.00 or more. This comes up often in my personal injury practice in cases where we have represented a minor and we have either come to a settlement agreement or if we have received a verdict that has become a judgment in a case where the prevailing plaintiff is a minor.

Simply put, a minor cannot enter into a legally binding contract. For example, if a minor is injured in a car accident, the minor does not sign the fee agreement with the personal injury attorney. Typically, a parent signs the fee agreement on the minor's behalf. If the minor's case is litigated, a guardian ad litem must be appointed on the minor's behalf. If the case is settled, it is the parent or guardian ad litem that accepts the settlement amount on the minor's behalf. Legally, the minor has no say. However, the minor can attempt to void a release or settlement agreement when he or she reaches the age of 18. Thus, most insurance companies and/or settling parties require that a Minor's Comp petition be filed and a court order approving the settlement is obtained, particularly in cases that settle over \$5,000.00, so that a minor cannot attempt to void that settlement after he or she reaches the age of majority.

The other point of requiring a Minor's Comp in cases where a minor has settled a case and is receiving monies is to protect that minor. Since an approval of a Minor's Comp petition means that the minor's personal injury settlement is final and is not voidable when the minor has reached the age of majority, the court will scrutinize the minor's settlement to make sure that it is fair and that the minor is protected from the attorney (in the amount of attorneys' fees and costs that are being requested) and from their own parent or guardian ad litem.

Minor's Comp petitions are a function of the probate court and will be held in Riverside Superior Court's probate department. If you practice in other counties, the Minor's Comp hearings are often heard by the civil judge that your case has been assigned to under a direct assignment calendar system. For instance, if you are filing a Minor's Comp petition in San Bernardino Superior Court, your case typically will be assigned to your assigned department judge. In Riverside Superior Court, however, the Minor's Comp petition will be heard by one of its probate judges.

The Minor's Comp petition is not a complicated form to complete. However, it does require a significant amount of information and requests a number of mandatory attachments, which will be set forth below in this article in more particularity. There is nothing worse than seeing another attorney appearing before the court with his or her clients and having the petition rejected simply because the attorney did not complete the petition properly. The minor's comp process is not as trying as it seems. You just have to know the rules and make sure that you follow them.

When filing a Minor's Comp petition, it is first important to distinguish the two circumstances in which a minor's claim can be settled: Either there is an action pending with the court or there is not.

If there is not an action pending with the court, the petition is filed under Probate Code section 3500, which states that the following persons have the right to petition the court on behalf of the minor (unless the claim is against such person or persons):

- (1) Either parent, if the parents of the minor are not living separate and apart;
- (2) The parent having the care, custody or control of the minor, if the parents of the minor are living separate or apart.

Under Probate Code section 3500, the petition must be filed either in the county where the minor resides or in any county where suit on the claim properly could have been brought.

The proper Judicial Council form to use is MC-350.

If there is an action pending in the court, however, the petition will be governed by Code of Civil Procedure section 372, which states that the petitioner must be the guardian ad litem of the minor. Thus, in addition to the minor's comp petition (Judicial Council Form MC-350), it will be necessary to file an Application for Appointment of Guardian Ad Litem (if you have not done so already when you filed the lawsuit on the minor's behalf). The proper Judicial Council form to use when filing an application for Appointment of Guardian ad Litem is CIV-010.

In years past in Riverside, minor's comp hearings were presided over by the late Judge Victor Miceli. During his tenure, the "Miceli Rules" were created, which were followed by many of the judges who came after him. These rules implicitly imposed a higher standard on minor's compromises than other counties commanded. I mention these

as you should consider those rules when you are drafting your petition if you are intending on filing in Riverside County. However, I typically apply these “rules” to a minor’s comp petition that I am filing, regardless of county. And I have never had a minor’s comp petition rejected by the court in my twenty years of practice.

The minor’s comp petition is lengthy and requires much information. I will try to highlight several sections that are common pitfalls, because attorneys often miss them when completing the petition.

The petitioner in a minor’s comp petition is the person who is acting on the minor’s behalf, such as a parent or guardian ad litem. The claimant is the minor to the subject action.

Section 3 asks whether the petitioner was a plaintiff in the same incident or accident, from which the claim arises. This is very common, particularly in car accident cases where the parent is driving, the minor is also in the car, and they are involved in an accident. If the answer is yes, the petitioner was a plaintiff in the same accident, the petition requires that you include “Attachment 3b” and explain to the court whether the petitioner’s own involvement in the case has affected the minor’s claim.

This is when I must point out one of the “Miceli Rules,” which goes one-step further. Judge Miceli was always concerned about whether the petitioner has settled the minor’s case for a lesser value in exchange for a larger settlement for himself or herself. If you have a parent and child who are both injured, consider using the non-injured parent as the petitioner, so that there is no problem. However, if you have a case in which both parents are injured, or if there is no other parent, try to get a close relative or family friend designated as the petitioner. That way, you can avoid that issue all together.

Section 9 is also a section worth highlighting. The petition clearly states that “[a]n original or photocopy of all doctors’ reports containing a diagnosis of and prognosis for the claimant’s injuries, and a report of the claimant’s present condition, must be attached.” Often times, attorneys fail to attach those records but the petition explicitly requires that you do so.

In Section 13, the petition requires you to set forth the medical expenses that you are asking to be paid out from the settlement. For those practitioners who take only the occasional personal injury claim, it is worth noting that most medical bills are negotiable, a fact of which the court is well aware. Thus, if you are preparing a minor’s comp petition, be sure to attempt to negotiate the medical liens and bills prior to submitting the petition. I have seen the court reject a petition because the medical bills and liens were not negotiated or because the court feels that a greater reduction is necessary.

How attorney fees and costs are awarded is extremely important to be aware of when handling a minor’s comp. Typically, a court will not entertain a request for attorneys’ fees in an amount greater than 25% unless you have tried the case. The mere fact that you have a fee agreement that says otherwise might not make any difference to the court.

The “Miceli Rules” would also require that an attorney deduct allowable costs first before attorneys’ fees could be calculated. So, hypothetically, if the minor had a \$10,000.00 settlement and \$200.00 in allowable costs, cost would be deducted first and attorneys’ fees would be calculated, based on \$9,800.00 and not \$10,000.00. I have seen courts in other jurisdictions require this as well so this is something to consider when determining your attorney fees in a minor’s comp case.

With respect to costs, it is also important to note that courts will typically not allow any and all costs. Litigation costs or the costs of preparing a case, such as medical record request fees, are usually granted. However, internal cost such as photocopying might not be allowed by the court. I normally will attach copies of receipts of any costs that I am requesting to my petition as Attachment 14(b).

The attorneys’ fees section of the petition is in Section 14. That section requires that an attorney provide a declaration as Attachment 14(a) to the court that sets forth what you did to warrant the attorneys’ fees that you are requesting. It is not enough to point to your fee agreement and say that you are entitled to 25%. Be as specific and thorough as you can. I can guarantee that if you do not have that declaration attached and you do not thoroughly set forth all that you did to justify your attorneys’ fees, your petition will be denied.

With respect to the funds that are ultimately being paid out to the minor, it is important to consider investment before preparing the petition. Typically, if the amount to the minor is in excess of \$5,000.00, the court will be interested in knowing whether you researched any annuity options and discussed those options with the petitioner. If you are depositing the funds into a blocked account, be sure to prepare Attachment 19(b)(2), which provides the name of the depository as well as its address and branch name.

Other forms that will need to be filed, in addition to the petition and its attachments, include a proposed order (Judicial Council Form MC-351). If you are depositing the funds into a blocked account, a proposed Order to Deposit Money into a Blocked Account must also be filed (Judicial Council Form MC-355).

Once your petition is approved, your job is not done. If the minor’s funds were invested into an annuity, you must file a declaration with proof of purchase of that annuity. If the money is deposited into a blocked account, you will need to bring a Receipt and Acknowledgment of Order

for the Deposit of Money into a Blocked Account (Judicial Council Form MC-356) to the depository to be completed by a bank representative. This will confirm to the court that you have, in fact, deposited the funds on behalf of the minor. Make sure that you file that form with the court after the deposit has been made or else you will need to appear on Order to Show Cause.

Finally, the court will require the petitioner, as well as the minor, attend the hearing. I cannot emphasize enough the importance of preparing your client for the actual court hearing.

During the hearing, the court will inquire as to the injuries the minor sustained and whether the minor has recovered from those injuries. As a practice tip, it is always a good idea to know what the last date of treatment that the minor had or when the minor was released from a doctor's care.

If the minor has been physically scarred, the court will generally look for a plastic surgery consultation report, as it is expecting that any future revision surgery was factored into the ultimate settlement amount agreed to between the parties. Let the minor know that the judge may ask the minor to come to the bench, so that the judge can see the current status of the minor's scars.

The judge will also ask if the petitioner believes that the settlement is fair and reasonable. It is always a good idea to

prepare the petitioner in advance of this question. Since the petitioner would have agreed to the settlement itself, you might assume that they agree that the settlement is fair and reasonable. However, clients sometimes state otherwise before a judge.

Finally, it is important that the petitioner understand in advance that, by accepting the settlement, the minor can never go back and get more money from the defendant. Further, it should be made clear to the petitioner before the court hearing how the money is being invested, so that they understand that the money cannot be touched until the minor reaches the age of majority (or per the terms of the annuity) without further court order.

Minor's comp petitions and hearings do not have to be complicated. A complete and thoroughly prepared petition, with all required attachments, prepared clients, and knowledge of the "Miceli Rules" will ensure your success in any minor's comp hearings that you might have here in Riverside or in any other county.

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



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PROBATE GUARDIANSHIP OF A CHILD

by Andrew Gilliland

One of the essential functions of a probate court is to protect those who cannot protect themselves through the appointment of a guardian. Such protection extends to minor children, who cannot legally act for themselves (unless they are emancipated). By definition, a guardian is someone other than the child's parent who is authorized to act legally on behalf of a child. These responsibilities extend to providing life's basic necessities as well as caring for the child's mental well-being. A guardian can also be in charge of the child's finances if there are monies and assets that are the child's own property. Moreover, a guardian can be appointed on a temporary or a permanent basis.

Who can be a Guardian?

A guardian must be at least 18 years old and cannot have been convicted of a felony or misdemeanor. As a practical matter, the guardian should be someone who has the capacity to take care of the child and is willing to take care of the child. Consideration should also be given to where the proposed guardian lives with respect to the child's friends, school, and medical providers. If the child is of appropriate age, the child could be consulted to determine the child's wishes. Because of the seriousness of the responsibility, the selection and appointment of a guardian requires thoughtful consideration based on an actual analysis of the child, the guardian, and the situation.

When is a Guardian Appointed?

In probate court, a guardian can be appointed when both parents are deceased, both parents consent to a guardianship for their child, or a petition is filed by someone other than the parent. If child protective services removes a child, these proceedings are not brought before the probate court and are handled in juvenile court. Thus, this article will not be discussing this situation.

When both parents are deceased, a minor child must have a guardian appointed for purposes of having physical and legal custody, as well as to manage the child's financial affairs (if any). The first step is to verify whether or not there is an estate plan in place. A typical estate plan has a Will with a clause nominating a guardian for any minor children. If the Will contains a nomination for a guardian, a petition along with the Will are filed with the probate court setting forth the deceased's desired guardian. An investigation will follow with the court investiga-

tor (or if you are not a relative with social services), and absent any intervening circumstances that would make the nomination not in the child's best interest, the probate court will then appoint the nominee in the Will as the child's guardian.

As for the child's finances, if there is a trust there will likely be provisions dealing for distributions to minor beneficiaries. However, it should be verified that the trust is properly funded to determine that there are actual assets in the trust to be used for the child. If the trust is properly funded, there should be no need to involve the probate court in the appointment of a guardian of the child's estate because the trust assets are handled pursuant to the instructions in the trust. The trustee of the trust simply follows the trust's direction in handling the child's estate.

In the absence of an estate plan, probate court is the only way to provide the protection the child needs. Essentially, the process is identical as in the case of a Will nominating a guardian, however, the probate court is left without any direction as to who should be appointed the guardian. Without a trust, the child would also inherit their parent's estate outright, subject to the jurisdiction of the probate court and the appointment of a guardian over the child's estate until the child turns 18. This appointment may or may not be the same person who was appointed guardian over the person of the child.

A guardian may also be appointed when the parents can no longer take care of the child and they nominate a guardian for the child.¹ A parent may nominate a guardian only with the consent of the other parent, unless one of the parent's lacks capacity or would not be required to consent to an adoption.² A relative or other person on behalf of the minor may also file a petition for appointment of a guardian.³ If the petition filed by another is based on the lack of capacity of the parent, the probate court may review any incapacity planning documents, such as a power of attorney that nominates the appointment of a guardian. Appointing a guardian in a power of attorney is in essence similar to a parent with capacity nominating a guardian.

¹ Probate Code § 1500.

² *Ibid.*

³ Probate Code §1510, subd. (a).

What Does a Guardian Do?

As discussed above, the guardian makes the legal decisions for the child and provides care sufficient to meet the child's needs. In a temporary guardianship (when the parents are not deceased), the guardianship is subject to parental rights. The guardian may have duties to facilitate visitation and contact between the child and the parents, unless such visitation or contact has been determined to not be in the child's best interest. In certain cases, the child may have unique needs, such as physical and mental limitations, or assets in the estate that the probate court will address in the appointment of the guardian. For instance, a child with special needs may need a special needs trust created and the guardian may be ordered to have one created. If the assets are complicated, the guardian may be ordered to seek appropriate help with managing such assets. Failure to follow the probate court's orders may result in the removal of the guardian or even termination of the guardianship.

Conclusion

The nomination and appointment of a guardian requires a holistic approach taking into consideration the circumstances and surroundings of the child and the guardian. Each situation can be as unique as the individuals involved. The goals should be to find the best possible

fit for the child as well as to not set anyone up for failure. Often this duality places all parties in an uncomfortable situation of dealing with a child, a guardian, and a parent who may not all be on the same page.

Andrew Gilliland is a solo practitioner and the owner of Andrew W. Gilliland Attorney-at-Law with offices in Riverside and Salt Lake. Andrew is the co-chair of the RCBA's Solo & Small Firm Section and a member of the RCBA's Publications Committee.



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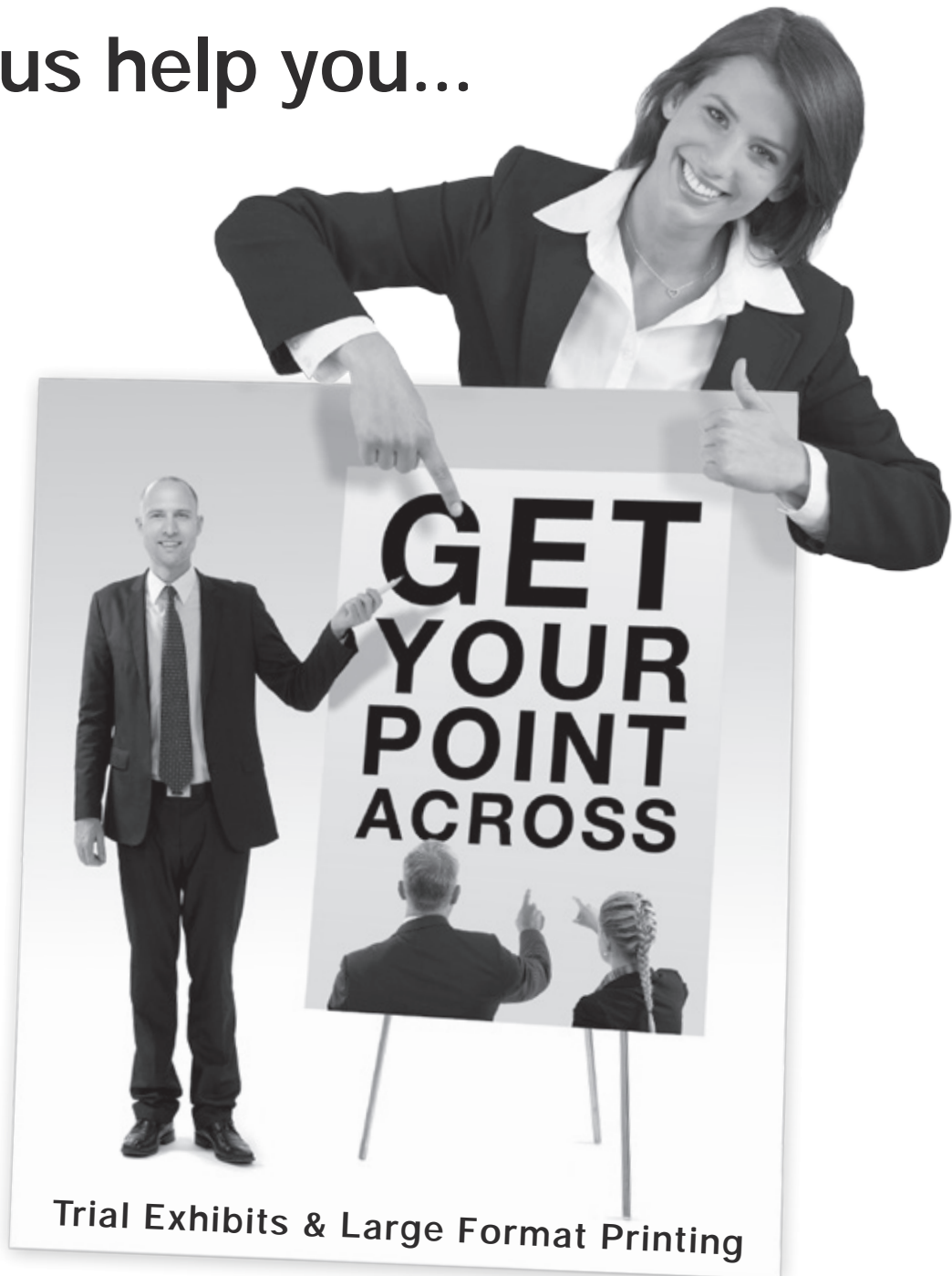
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WHAT'S NEW FOR 2019? LEGISLATIVE CHANGES IMPACTING JUVENILE DEPENDENCY

by Jamila T. Purnell

Governor Edmund Gerald "Jerry" Brown, Jr., analyzed 1,217 pieces of legislation, signing 1,016 into law and vetoing 201.¹ Now that California's 2017-2018 Legislative Session has concluded, practitioners in the juvenile dependency arena are eager to learn new laws that will affect their everyday practice. This article addresses substantive changes to juvenile dependency laws.²

Confidentiality of Juvenile Case Files

Welfare and Institutions Code section 827 was established to protect the privacy rights of children by delineating who may inspect and obtain copies of a juvenile case file. Assembly Bill 1617, chaptered on September 30, 2018, expanded the list of those who may inspect and obtain copies of a juvenile case file by adding the following subsection to Welfare and Institutions Code section 827, subdivision (a):

(6) An individual other than a person described in subparagraphs (A) to (P), inclusive, of paragraph (1) who files a notice of appeal or petition for writ challenging a juvenile court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court pursuant to subparagraph (Q) of paragraph (1), including any records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall continue to apply to any other record, or a portion thereof, in the juvenile case file or made a part of the appellate record. The requirements of paragraph (4) shall continue to apply to files received pursuant to this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

Child and Family Team Meetings

Welfare and Institutions Code section 16501 addresses child welfare services and supports the premise that a team-based approach facilitates successful outcomes for the child's safety, permanency, and well-being. Currently,

1 <http://www.counties.org/csac-bulletin-article/governor-brown-takes-final-action-2018-legislation>.

2 This article summarizes the essential changes to juvenile dependency laws. Readers are encouraged to refer to <http://leginfo.legislature.ca.gov/> to analyze the full versions of each statute.

Court-Appointed Special Advocates, also known as CASAs, are excluded from the list of statutorily authorized individuals who are invited to child and family team meetings. American Academy of Pediatrics, California, noted that "the absence of CASA volunteers from the team means that an important support for the child is missing from important discussions about the child's future."³

Subdivision (a)(4)(B) of Welfare and Institutions Code section 16501 specifies those who may be included on the child and family team. Senate Bill 925, chaptered on July 20, 2018, expanded the list to include "the child or youth's Court-Appointed Special Advocate, if one has been appointed, unless the child or youth object."⁴ The addition of CASA volunteers helps assure that children are receiving "the best possible representation and support during important deliberations about their lives."⁵

Nonminor Dependents

Welfare and Institutions Code sections 388.1 and 11403 addresses nonminor dependents. Current law authorizes a nonminor, between the ages of 18 and 21, who received KinGap or AFDC-FC funding, to reenter foster care if the former legal guardian died or is no longer providing support and receiving aid on behalf of the nonminor. AB 2337 was chaptered on September 19, 2018, modifying § 388.1 and § 11403.

Assembly Bill 2337 expanded the current law to include nonminors, between the ages of 18 and 21, who received or were in receipt of Supplemental Security Income benefits or other aid from the federal Social Security Administration, who would have otherwise received aid under KinGap, to reenter foster care if the former legal guardian died or is no longer providing support and receiving aid on behalf of the nonminor.

Resource Family Approval

The Resource Family Approval (RFA) program was introduced statewide January 1, 2017. SB 1083, chaptered on September 29, 2018, modifies Sections 1517 and 1517.1 of the Health and Safety Code, and Sections 11402, 11461.6, 16501.01, 16507.5, 16519.5, and 18360 of the Welfare and Institutions Code, relating to child welfare. Noteworthy modifications to the RFA program are as follows:

3 <http://aap-ca.org/bill/foster-care-2/>.

4 Welfare and Institutions Code § 16501, effective January 1, 2019.

5 <http://aap-ca.org/bill/foster-care-2/>.

1. The RFA conversion deadline for current care providers was extended to December 31, 2020.
2. Applicants who withdrew a resource family application before its approval or denial are authorized to resubmit the application within twelve months.
3. The permanency assessment for RFA must be completed within 90 days of the receipt of the application to become a resource family if the child was placed with the family on an emergency basis.
4. The permanency assessment for RFA must be completed within 90 days of the child's placement in the home if the child was placed with the family for a compelling reason.
5. A county may cease further review of an application if, after written notice, the applicant fails to complete the application without good faith and within thirty days of the date of the notice.
6. The following provision was added: "If it is determined, on the basis of the fingerprint images and related information submitted to the Department of Justice, that subsequent to obtaining a criminal record clearance or exemption from disqualification, the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273ab, 273d, 273g, or 368 of the Penal Code, or a felony, the department or county shall notify the resource family to act immediately to remove or bar the person from entering the resource family's home. The department or county, as applicable, may subsequently grant an exemption from disqualification pursuant to subdivision (g) of Section 1522 of the Health and Safety Code. If the conviction or arrest was for another crime, the resource family shall, upon notification by the department or county, act immediately to either remove or bar the person from entering the resource family's home, or require the person to seek an exemption from disqualification pursuant to subdivision (g) of Section 1522 of the Health and Safety Code. The department or county, as applicable, shall determine if the person shall be allowed to remain in the home until a decision on the exemption from disqualification is rendered."⁶

Gender Affirming Medical Care

Welfare and Institutions Code sections 16001.9 and 16010.2 address the rights of minors and nonminors in foster care and was modified by Assembly Bill 2119 to address gender affirming health care. "All children in foster care deserve to have the medical and mental health care they need. Unfortunately, when it comes to gender-affirming care, too many transgender and gender non-conforming

⁶ Welfare and Institutions Code § 16519.5(d)(2)(A)(i)(V).

youth are denied critical care because misconceptions and misinformation lead system stakeholders to disregard those needs. By ensuring the healthy development of transgender and gender non-conforming foster youth and nonminor dependents, AB 2119 will further California's objective of promoting the safety, well-being, and permanency of all children in the state's child welfare system."⁷

Assembly Bill 2119 modifies section 16001.9 by adding the following right:

To be involved in the development of his or her own case plan and plan for permanent placement. This involvement includes, but is not limited to, the development of case plan elements relates to placement and gender affirming health care, with consideration of their gender identity."

As it relates to Welfare and Institutions Code section 16010.2, the Assembly Bill 2119 modification clarifies that the right "to receive medical, dental, vision, and mental health services" as outlined in Section 16001.9 includes gender affirming health care and gender affirming mental health care.

Foster Care Placement

Foster youth from across California have made clear that one of the root causes of disruption in their lives is placement instability.⁸ One of the goals of Assembly Bill 2247, which added Welfare and Institutions Code section 16010.7, was to establish a procedure for social workers, youth, and caregivers to secure and maintain the best possible placement for dependent children. The new Section 16010.7 requires that prior to making a placement change of a dependent child, a social worker or placing agency must develop and implement a placement preservation strategy. If a change in placement becomes necessary after the development and implementation of a placement preservation strategy, the social worker or placing agency must serve written notice at least fourteen days prior to the placement change on the following individuals: child's parent(s), child's caregiver(s), child's attorney, and the dependent child, if age ten or older.

In addition, placement changes shall not occur between 9:00 p.m. and 7:00 a.m., unless the unauthorized placement change is mutually agreed upon by the dependent child, ten years of age or older, the child's caregiver, the child's prospective caregiver, and the child's social worker.

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⁷ <https://kids-alliance.org/wp-content/uploads/2018/10/New-Laws-Webinar-10.31.18-FINAL.pdf>.

⁸ <https://kids-alliance.org/wp-content/uploads/2018/10/New-Laws-Webinar-10.31.18-FINAL.pdf>.

CONSTITUTIONALITY OF CALIFORNIA'S MANDATORY SCHOOL VACCINATION LAWS

by David P. Rivera

As of February 28, at least 206 confirmed measles cases have been reported in 2019 by 11 states (including California) to the Centers for Disease Control and Prevention (CDC).¹ The majority of people in those cases were unvaccinated.² Each reported case contributes to public awareness about this highly contagious and sometimes fatal disease.³ This inevitably leads to concern about disease prevention via laws that mandate vaccination.

I. Vaccine Effectiveness and Safety

Vaccines are one of the greatest modern achievements in public health.⁴ Each year, in the United States alone, immunizations are estimated to prevent tens of millions of illnesses, millions of hospitalizations, and tens of thousands of deaths.⁵

Most vaccine-preventable diseases are communicable, transmitted from person to person.⁶ Accordingly, disease is less likely to spread as vaccination rates increase.⁷ Once vaccination rates reach 80–95% (more contagious diseases require higher rates), this principle manifests in what is commonly referred to as “herd immunity,” a phenomenon where the incidence of disease decreases even in unvaccinated persons.⁸

The United States' vaccine supply is the safest and most effective in history.⁹ The Food and Drug Administration (FDA)

and CDC subject vaccines to years of rigorous testing before they are licensed for public use.¹⁰ It doesn't stop there. Post-licensure studies monitor vaccines for rare adverse events.¹¹

Courts take judicial notice that vaccines are safe and effective, “a fact... commonly known and accepted in the scientific community and [by] the general public.”¹²

II. California's Mandatory School Vaccination Law—Senate Bill No. 277

Since 1889, California has required immunizations for school-aged children.¹³ The state has periodically updated these requirements.¹⁴ In 2015, a measles outbreak at Disneyland prompted California to reexamine its mandatory school immunization law.¹⁵ The result was Senate Bill No. 277 (S.B. 277), which Governor Jerry Brown signed into law on June 30, 2015, and became effective January 1, 2016.¹⁶

The legislative changes embodied in S.B. 277 were made for the express purpose of achieving the total immunization of “appropriate age groups.”¹⁷ Toward that end, S.B. 277 amended the immunization requirements for children enrolled in elementary and secondary school (public and private), and child care facilities.¹⁸ Current law requires these children to be vaccinated against ten specific diseases, including measles.¹⁹

Vaccination exemptions are provided to children who are medically-unfit candidates, enrolled in a home-based private school or independent study program, or enrolled in an individualized education program.²⁰

S.B. 277's most controversial change was the elimination of the preexisting personal belief exception (PBE).²¹ Parents are now unable to opt out of immunization for their children based on religious beliefs, philosophical beliefs, conscientious beliefs, and the like.²²

Ensuring Vaccine Safety <<https://www.cdc.gov/vaccinesafety/ensuringsafety/index.html>> (last rev'd Sep. 29, 2015).

10 *Id.*

11 *Id.*

12 *Brown v. Smith*, 24 Cal. App. 5th 1135, 1143 (2018).

13 Cal. Assembly Comm. on Health, *Analysis of Sen. 277, as Amended May 7, 2015*, 2015-2016 Reg. Sess. 8 (Jun. 9, 2015) [hereinafter Health Comm. Sen. 277 Analysis]; see Dennis F. Hernandez, *Health First*, 41 L.A. Law. 26, 28 (2018).

14 *Health Comm. Sen. 277 Analysis* at 8-9.

15 Cal. Sen. R. Comm., *Analysis of Sen. 277, as Amended Jun. 18, 2015*, 2015-2016 Reg. Sess. 8 (Jun. 26, 2018).

16 *Brown v. Smith*, 24 Cal. App. 5th 1135, 1139 (Ct. App. 2018).

17 Cal. Health & Safety Code § 120325(a).

18 *Id.* § 120335(b).

19 *Id.* § 120335.

20 *Id.* §§ 120335(f), (h), 120370.

21 *Health Comm. Sen. 277 Analysis* at 23.

22 *Id.*

1 Ctr's for Disease Control & Prevention, *Measles Cases and Outbreaks, Measles Cases in 2019* <<https://www.cdc.gov/measles/cases-outbreaks.html>> (last rev'd Mar. 4, 2019).

2 Ctr's for Disease Control & Prevention, *Measles Cases and Outbreaks, Spread of Measles* <<https://www.cdc.gov/measles/cases-outbreaks.html>> (last rev'd Mar. 4, 2019).

3 Ctr's for Disease Control & Prevention, *Top 4 Things Parents Need to Know about Measles, Measles Is Very Contagious* <<https://www.cdc.gov/measles/cases-outbreaks.html>> (last rev'd Mar. 4, 2019).

4 Ctr's for Disease Control & Prevention, *Morbidity & Mortality Wkly. Rpt., Ten Great Pub. Health Achievements—U.S., 1900-1999* <<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm4850bx.htm>> (last rev'd May 2, 2001); see generally *id.* at *Achievements in Pub. Health, 1900-1999 Impact of Vaccines Universally Recommended for Children—U.S., 1990-1998* <<https://www.cdc.gov/mmwr/preview/mmwrhtml/00056803.htm>> (last rev'd May 2, 2001).

5 Cynthia G. Whitney, M.D., et al., Ctr's for Disease Control & Prevention, *Morbidity and Mortality Wkly. Rpt., Benefits from Immunization During the Vaccines for Children Program Era—U.S., 1994-2013* <<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6316a4.htm>> (last updated Apr. 25, 2014).

6 Ctr's for Disease Control & Prevention, *Vaccines & Immunizations, What Would Happen If We Stopped Vaccinations?* <<https://www.cdc.gov/vaccines/vac-gen/whatifstop.htm>> (last rev'd Jun. 29, 2018).

7 *Id.*

8 Manish Sadarangani, M.D., Oxford Vaccine Group, *Herd Immunity: How Does It Work?* <<https://www.ovg.ox.ac.uk/news/herd-immunity-how-does-it-work>> (Apr. 26, 2016).

9 Ctr's for Disease Control & Prevention, *Vaccine Safety*,

Several factors encouraged this. First, vaccination rates often decrease when PBE are available.²³ Second, measles is one of the first diseases to reemerge when vaccination rates fall.²⁴ Third, measles immunization rates among some California schools had fallen below the 92–95% CDC-recommended threshold required to achieve herd immunity against the disease.²⁵

S.B. 277 passed the senate and assembly by 24-14 and 46-30 votes, respectively.²⁶ A vocal minority of constituents and interested parties strongly opposed the bill, some of whom challenged it in court.²⁷ To date, all challenges have been unsuccessful.²⁸

III. Constitutional Challenges to S.B. 277

Challengers to S.B. 277 have marshalled their constitutional challenges somewhat inconsistently, but they basically fall into three categories: free exercise of religion, substantive due process, and equal protection.²⁹ A right to education figures squarely in these lawsuits, always presented as a separate category. Notwithstanding the presentation, challengers actually argue it under an equal protection lens.

A. Free Exercise of Religion

Challengers to S.B. 277 allege infringement on their First Amendment right to free exercise of religion on three bases. First, it does not provide for a religious exemption. Second, it requires parents to choose between religious beliefs (i.e., vaccine disapproval) and education for their children. Third, it provides for secular exemptions (e.g., medical exemptions) without providing for religious exemptions.³⁰

In denying these claims, courts have recognized that a secular exemption does not create a requirement for one based on religion, and that the right to free exercise of religion does not outweigh a state's interest in public health and safety.³¹ Additionally, even if S.B. 277 did infringe on free

23 *Id.* at 11.

24 *Id.* at 12.

25 Matthew Bloch, et al., *N.Y. Times*, "Vaccination Rates for Every Kindergarten in Calif.," <<https://www.nytimes.com/interactive/2015/02/06/us/california-measles-vaccines-map.html>> (Feb. 6, 2015).

26 Cal. Legis. Info., Bill Info., Votes, *SB-277 Pub. Health: Vaccinations (2015-2016)*, Votes <http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160SB277> (retrieved Mar. 8, 2016).

27 See generally *Whitlow v. Calif.*, 203 F. Supp. 3d 1079 (S.D. Cal. 2016); *Brown*, 24 Cal. App. 5th 1135; *Love v. State Dep't of Educ.*, 29 Cal. App. 5th 980 (2018).

28 See generally *Whitlow*, 203 F. Supp. 3d 1079; *Brown*, 24 Cal. App. 5th 1135; *Love*, 29 Cal. App. 5th 980.

29 This article focuses on three S.B. 277 cases: *Whitlow*, 203 F. Supp. 3d 1079, *Love*, 29 Cal. App. 5th 980, and *Brown*, 24 Cal. App. 5th 1135. A fourth case, *Middleton v. Pan*, is not discussed. It asserted several claims, including alleged criminal acts that it attempted to prosecute in a civil action, all of which the court summarily dismissed. Rpt. & Recommendation of U.S. Magistrate Judge, *Middleton v. Pan*, WL 7053936 (C.D. Cal. Dec. 18, 2017). The district court accepted the magistrate judge's recommendation to dismiss the lawsuit. See *Middleton v. Pan*, 2018 WL 582324 (C.D. Cal. Jan. 25, 2018).

30 *Whitlow*, 203 F. Supp. 3d at 1085-1086.

31 *Id.* at 1086, citing *Prince v. Mass.*, 321 U.S. 158, 166-167 (1944); *Whitlow* at 1086, citing *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 651 (10th Cir. 2006).

exercise, it is still constitutional because it satisfies strict scrutiny. Prevention of disease is a compelling state interest.³² Vaccination requirements are necessary to achieve that interest when a single parent's refusal to vaccinate might jeopardize the community.³³

B. Substantive Due Process

Challengers to S.B. 277 allege that the elimination of the PBE unjustifiably infringes on privacy rights, particularly in the form of bodily autonomy and child rearing. Children must submit to invasive vaccination if they wish to attend school without a medical exemption. In those situations, parents who are opposed to vaccination must agree to their child becoming vaccinated against their wishes.³⁴

Courts have firmly denied relief, recognizing states' police power and their broad discretion to legislate for the public welfare, including through compulsory vaccination.³⁵ This is enough to bar the challenge, yet courts continue their analysis. When challengers elect to attack the elimination of the PBE rather than the power to mandate vaccination, their argument carries even less sway: "[such] cases are one more step removed, as they involve... the removal of an exemption that is not required under the law."³⁶

C. Equal Protection

Challengers to S.B. 277 allege that it treats particular classes of children differently, and on that basis denies them their right to an education. Several class distinctions are alleged, but two—variations on a theme—have the most merit: vaccinated children vs. unvaccinated children, and children with PBEs vs. children without PBEs.³⁷

As a preliminary matter, Courts note that while education is not a fundamental right under federal law, California's constitution guarantees children a system of free school.³⁸ Moreover, the state's legal precedent recognizes education as a "fundamental interest."³⁹ But that right is not absolute or unassailable. In 1904, California's Supreme Court found that "legislative vaccination requirements do not interfere with this right."⁴⁰

Courts use various approaches to attack the alleged classifications.

First, they dismiss them as contrived and foreclosed by law. Children attending school "occupy a natural class by themselves, more liable to contagion."⁴¹ Consequently,

32 *Brown*, 24 Cal. App. 5th at 1145.

33 *Id.*

34 *Whitlow*, 203 F. Supp. 3d at 1089; *Love*, 29 Cal. App. 5th at 989 (2018).

35 *Whitlow*, 203 F. Supp. 3d at 1084, citing *Zucht v. King*, 260 U.S. 174 (1922) (holding that it is within the police power of the state mandate vaccination); *Love*, 29 Cal. App. 5th at 990, citing *Jacobson v. Mass.*, 197 U.S. 11 (1905) (upholding stat mandatory vaccination law under the Fourteenth Amendment).

36 *Whitlow*, 203 F. Supp. 3d at 1086, 1089.

37 *Id.* at 1087; *Brown*, 24 Cal. App. 5th at 1147.

38 Cal. Const. art. IX, § 5; *Love*, 29 Cal. App. 5th at 994; *Brown*, 24 Cal. App. 5th at 1145.

39 *Love*, 29 Cal. App. 5th at 994; *Brown*, 24 Cal. App. 5th at 1145.

40 *Love*, 29 Cal. App. 5th at 995, citing *French v. Davidson* 143 Cal. 658, 662 (1904).

41 *Whitlow*, 203 F. Supp. 3d at 1088 n. 8, citing *French*, 143 Cal. 658; *Brown*, 24 Cal. App. 5th at 1146, citing *French*, 143 Cal. 658.

mandatory vaccination laws “have no element of class legislation.”⁴²

Second, they take an alternative approach: “evidence of different treatment of unlike groups does not support an equal protection claim.”⁴³ Vaccinated children and children without PBEs (i.e., who are vaccinated) are not similarly situated to unvaccinated children and children with PBEs (i.e., who are unvaccinated). The former are immunized against disease, while the latter are more susceptible to it. Children with PBEs are not being treated differently because of their beliefs, but because of their unvaccinated status. Since unvaccinated children are not similarly situated to vaccinated children, there is no equal protection claim when they are denied enrollment.⁴⁴

Third, courts note that even if vaccinated and unvaccinated children were similarly situated, challengers have never presented evidence that the latter are in a suspect class deserving of special protection.⁴⁵ Thus, S.B. 277 is subject to rational basis review rather than strict scrutiny.⁴⁶ Allowing vaccinated children to enroll in school, but not unvaccinated children, is rationally related to the state’s legitimate interest in protecting public health and safety.⁴⁷

Finally, courts state that even if unvaccinated children were part of a suspect class, S.B. 277 would still survive under strict scrutiny. A state’s efforts in preventing the spread of communicable disease is a compelling interest. Allowing PBEs would not serve S.B. 277’s express goal of totally immunizing school-aged children: an “aggressive goal requires [i.e., necessitates] aggressive measures, and the... [state] has opted for both...”⁴⁸

IV. Conclusion

California has developed a practical and prudent plan in S.B. 277 to safeguard the public from vaccine-preventable disease, especially children. While challengers have strong personal and religious beliefs against vaccines, they are inadequate to overcome the well-established jurisprudence supporting the state’s effort. S.B. 277 stands safely on firm ground.

David P. Rivera, a member of the RCBA Publications Committee, is a solo practitioner of business law in Highland.



⁴² *Whitlow*, 203 F. Supp. 3d at 1088 n. 8, citing *French*, 143 Cal. 658; *Brown*, 24 Cal. App. 5th at 1146, citing *French*, 143 Cal. 658.

⁴³ *Whitlow*, 203 F. Supp. 3d at 1088, citing *Wright v. Incline Village Gen. Improvement Dist.*, 665 F.3d 1128, 1140 (9th Cir. 2011).

⁴⁴ *Id.* at 1087-1088; *Brown*, 24 Cal. App. 5th at 1147.

⁴⁵ See *Love*, 29 Cal. App. 5th at 994-995, *Brown*, 24 Cal. App. 5th at 1145, distinguishing *Serrano v. Priest*, 5 Cal.3d 584, 608-609 (1971), in which the California Supreme Court struck down a public school financing scheme because it discriminated against the right to an education based on district wealth, a suspect class.

⁴⁶ *Whitlow*, 203 F. Supp. 3d at 1087-1088.

⁴⁷ *Id.* at 1088; *Love*, 29 Cal. App. 5th at 989; *Brown*, 24 Cal. App. 5th at 1147.

⁴⁸ *Love*, 29 Cal. App. 5th at 993, citing *Whitlow*, 203 F. Supp. 3d at 1091.

YOU BE THE JUDGE

by Judge Christopher Harmon

I remember as a young lawyer walking into a courtroom one morning and seeing a colleague of mine sitting on the bench. I was shocked. Did this person get appointed overnight? Then I saw the sign over the name plate indicated they were sitting as a temporary judge. I was amazed attorneys could do that. I had never heard of that before, but I was intrigued. I watched my colleague run through the calendar and do what I thought was a wonderful job of showing respect to litigants and taking the time to explain things to the pro pers. Immediately I wanted to find out how I could sign up. To my astonishment, a few days later, with no classes required (this has since changed of course), I was put on a list and started receiving calls to sit pro tem. I quickly learned how rewarding this work was, how much I enjoyed playing a different role than attorney, and how this perspective and experience made me a better lawyer and advocate. I look back at the time I volunteered as a temporary judge as the catalyst to my interest in becoming a judge. It struck me that in just one morning I could interact with and help far more people as a judge than I ever could as an attorney.

By now we are all quite familiar with how under-resourced Riverside County is in the number of judicial positions we have been allocated. Suffice it to say we should have many more positions allotted to us. Add to this burden some recent changes made in the Assigned (retired) Judges Program and you have the makings of a bona fide shortage of bench officers in our county. The real victims of this are of course the litigants who face delays in having their important matters heard. It is with this in mind that I write to our legal community and ask for your help. Consider volunteering your time, talents, and experience by serving as a temporary judge.

Riverside County has always had a robust community of attorneys sitting pro tem. While some rule changes over the years have made sitting as a temporary judge a bit more onerous than just throwing a robe on and taking an oath, time spent volunteering is not just a wonderful way to give back but is also a rewarding and invaluable experience for the attorney volunteer. If you are curious about pursuing a career as a bench officer it is a wonderful way to get a feel for the job and find out if you are interested in pursuing it further or not. If you need MCLE, our training classes can offer you that. But most of all, volunteering your time as a temporary judge is a gift of your talents to our community. If you are interested please feel free to reach out to me or another bench officer for more information. **Applications and additional information can be found at: <https://www.riverside.courts.ca.gov/attylitigant.shtml>**

Judge Christopher Harmon is the current chair of the Temporary Judges Committee.





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Hon. LeRoy A. Simmons (Ret.)

Judge Simmons has extensive ADR expertise as a full-time mediator, arbitrator and special master since 2004 as well as three decades of service on the San Bernardino County Superior Court. He handles complex civil, family and probate disputes.

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APPOINTED COUNSEL FOR CHILDREN IN DEPENDENCY PROCEEDINGS: WHAT WE DO AND WHY WE LOVE IT

by Laurie Burns

Children in dependency proceedings are resilient and courageous. After suffering abuse or neglect, they are removed from everything they know to live with strangers; they lose their siblings, switch schools, lose friends, fall behind, and worry. They ache for love and stability. But they survive. And they keep moving forward.

When their parents are unable to meet their needs and keep them safe, children become parties to a legal proceeding that they did not initiate and whose outcome they cannot control. Some are old enough to comprehend the proceedings, but many are not.

By necessity, they are given an attorney. Also by necessity, they are given a guardian ad litem. In California, the same person often fulfills both roles through “hybrid representation.” It is imperative their attorney/guardian ad litem represents them well. Of course, she must fulfill duties of loyalty, confidentiality, and competency; but she must also do much more.

Children are unique clients. They often cannot use words to communicate how they feel or what they want. They cannot always tell you whether they are scared nor adequately express their trauma. Regardless, their voice must be heard, their desires must be considered by the court, and they must be kept safe.

In California, counsel’s obligation of loyalty and zealous representation does not just apply to the client’s wishes, but also to the child’s safety and best interest.¹ A primary responsibility of counsel is to advocate for the “protection, safety, and physical and emotional well-

being” of her client.² This is contrary to the national trend in which counsel primarily represents the child’s stated interest if the child is of sufficient age to express one.³ She is also charged, “in general with the representation of the child’s interests.”⁴

To advocate effectively, counsel must meet with her client regularly and independently investigate her circumstances. She must listen to her client, understand her client’s desires, and ensure the court is informed of the same.

Sometimes the client’s stated interest may diverge from her own safety and best interest. Most minors wish to return home regardless of what home was like. They love their parents and fear foster care. But their parents may not be willing or able to keep them safe. Situations arise when the client wishes an outcome her attorney feels would not further her “protection, safety, and physical and emotional well-being.” When counsel and the minor do not agree on what is safe and best for the minor, the hybrid attorney/guardian ad litem must advocate effectively in both roles. This can be cause for ethical tension.

There is no one-size-fits-all answer to this dilemma, but there are some rules and guidelines that assist. Regardless of what the client wants, counsel may not advocate for the child’s return to a parent if counsel believes that return conflicts with the safety and protection of the minor.⁵ She should, however, ensure the client’s preference is stated to the court. Thus, counsel may state, “My client wishes to return to her parents. She loves and misses them and does not want to go into foster care. I am not able to join in her request to return pursuant to Welfare and Institutions Code section 317, subdivision (e).”

The ethical tension an attorney/guardian ad litem may face is further complicated by the duty of confidentiality. Child clients are owed the duty of confidentiality by their attorney. Counsel is not a mandatory reporter and, therefore, not mandated to report abuse disclosed in confidence by her client.⁶ This duty of confidentiality does not

1 Welfare and Institutions Code § 317(c)(2).

2 Welfare and Institutions Code § 317(c)(2).

3 *Seiser and Kumli on California Juvenile Courts Practice and Procedure* § 2.62[3][c][iii][A].

4 Welfare and Institutions Code § 317(e)(1).

5 Welfare and Institutions Code § 317(e)(2).

6 Penal code § 11164 et seq.

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apply to a guardian ad litem and may directly contradict a guardian ad litem's duty to disclose information necessary to keep her child safe. For example, a child may disclose to her counsel in a confidential, privileged communication that a parent is abusing her. If the client does not consent to disclosure, the attorney must maintain inviolate that confidence. As guardian ad litem, however, she may need to disclose the information for the child's protection. When this situation arises, the attorney should continue in her role as attorney, but declare a conflict as to her role as guardian ad litem, and have a separate guardian ad litem appointed.⁷ She should not disclose the reason for the conflict nor the confidential information. Remaining only as the child's attorney, she must continue to advocate for the child's safety and protection.

Overall, it is an amazing and highly rewarding job being minors' counsel. These kids are survivors and overcomers. I admire and respect them. I learn from them. I am inspired by them. I care about them.

While I cannot erase past harm, I can do my best to represent my kids well and work within a system of individuals who work hard to keep them safe. That system includes social workers, county counsel, foster parents,

⁷ ABA Standards of Practice for Lawyers Who Represent Children In Abuse and Neglect Cases B-2.

and many others. I have also been fortunate to practice in front of judges who are knowledgeable and genuinely concerned for the well-being of the children who pass through their courtroom.

If you would like to become a part of the network of people who care for our kids, there are two ways you can get involved. First, you can become a Court Appointed Special Advocate (CASA) and provide mentorship, friendship and advocacy for a foster youth in need. I highly respect our CASAs and the invaluable ways these volunteers contribute to the lives of our kids. Information on the CASA program and how to apply can be found at www.speakupnow.org. Second, you can be appointed as an educational advocate and mentor for a foster youth at risk of not graduating high school through the "Project Graduate" program. This is another program that routinely changes the lives of foster children through the kindness of volunteers who care. If you're interested in being part of Project Graduate, please contact Brian Unitt brianunitt@holsteinlaw for more information.

Laurie Burns is a member of the Juvenile Defense Panel in Riverside. She primarily represents minors in juvenile dependency proceedings and can be reached at lburns@juveniledefensepanel.com.



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ENFORCING THE RIGHT OF A STUDENT WITH DISABILITIES TO A FREE, APPROPRIATE PUBLIC EDUCATION

by Eulalio Castellanos

Education is a fundamental right to all children in California.¹ The state has the responsibility to provide basic educational equality.² It is a right that gives individuals the tools to escape poverty and to have the ability to become active members in our society. And yet, according to *USA Today*, California ranks 35 among the 50 states in worst schools, and it is one of the worst-performing.³

With such poor performance by schools in teaching our children, it is critical for the legal community to assist students and parents in asserting their rights. Although there are a number statutory protections and rights for individuals to assert their rights to an education, regrettably too few attorneys practice in this area of law. My clients repeatedly inform me that they cannot find an attorney who will provide pro bono services or at a low legal costs to handle their special education case. One of the ways that attorneys can assist in ensuring students' rights to education is by providing pro bono services and volunteering with agencies such as Inland Counties Legal Services.

Special education programs in California are governed by both federal and state laws. The Individuals with Disabilities Education Act (IDEA) is the federal statute that governs special education.⁴ California also passed its own laws, which generally parallel IDEA and forms the basis for providing services in this state.⁵ These laws provide that a child with a disability be provided with a free and appropriate public education (FAPE). FAPE means that special education services are to be provided at public expense and without charge, meet appropriate standards, include preschool through secondary education, and comply with an individualized education program (IEP plan).⁶ An IEP plan is a written statement that describes the student's present levels of performance, learning goals, placement, and special education services.

Additionally, special education services must be provided in the least restrictive environment. This means that to the maximum extent appropriate, all students with disabilities should be educated with students who are not disabled.⁷ In addition, FAPE requires that special education students are involved and make progress in the general education curriculum and toward achievement of their IEP goals.⁸

The federal and state laws contain most of the provisions governing delivery of special education and related services. However, sometimes the statute is unclear or leaves something out. In those circumstances, both the United States Department of Education and the California State Department of Education (CDE) have created regulations under the authority of IDEA or state law. The federal regulations are at Title 34 of the Code of Federal Regulations, Part 300 (34 C.F.R. §300), and the state regulations are at Title 5, California Code of Regulations, §§300 and following.

Federal law and regulations create the framework within which California must function as a recipient of federal funds under IDEA. California must adhere to federal law and regulations, and any statutes or regulations that California has enacted must be consistent with federal mandates. If there is any conflict between state and federal law, the latter trumps state law due to the Supremacy Clause of the U.S. Constitution. However, federal law simply provides a floor of protections for students with disabilities. California law may be more protective and grant additional rights to the student.⁹

With that preliminary background, a school district has an obligation to "identify, locate and evaluate" all children with disabilities who may be eligible for special education, including those who are attending private schools, are homeless, or wards of the court.¹⁰ This is called "child find."

Once a child has an IEP plan, a dispute may arise from the implementation, lack of implementation, or improper implementation of the IEP. There are two administrative procedures to address issues involving a student's IEP plan, which are to: 1) A request for mediation and due process hearing (due process) or 2) A compliance complaint.

The differences between these two administrative procedures are the following: due process addresses the substance of the IEP plan, while the compliance complaint addresses whether the school district violated the implementation or lack of implementation of the IEP plan. A compliance complaint may be filed with the California Department of Education, Special Education Division Procedural Safeguards Referral Service (PSRS), 1430 N Street, Ste. 2401, Sacramento, California 94814-5901. This article will focus on the former, but not the latter.

As noted earlier, the due process hearing addresses the disagreement between the parent and school district about the student's eligibility, placement, program needs, or related services.¹¹ At the due process hearing, both sides present

1 California Constitution, Article IX, §1.

2 *Butt v. California*, 4 Cal. 4th 668, 685.

3 *USA Today*, published February 8, 2018 and updated February 12, 2018.

4 20 U.S.C. §§1400 et al.

5 California Education Code §§56000 et al.

6 Title 20 United States Code (U.S.C.) §1401(9); Title 34, Code of Federal Regulations (C.F.R.) §300.17.

7 34 C.F.R. §300.114.

8 20 U.S.C. §1414(d)(1)(A); 34 C.F.R. §300.320(a)(1).

9 *Students of the California School for the Blind v. Honig*, (9th Cir. 1984) 736 F.2d 538.

10 34 C.F.R. §300.111; Cal. Ed. Code §§56300 & 56301.

11 There are four types of due process cases depending on the relief

evidence by calling witnesses, submitting reports and evaluation that support their position. An assigned administrative law judge (ALJ) decides whose witnesses and documents are correct and what program is appropriate. The formal rules of evidence do not apply in the administrative process. However, motions may be filed, such as motion to consolidate two or more cases or a motion to challenge the assigned ALJ.

The request for mediation and the due process hearing (complaint) is filed with the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200, Sacramento, California 95833. The Complaint may also be filed with the Office of Administrative Hearings (OAH) Secure e-file Transfer (SFT) system. All documents are required to be filed with the SFT system and can be sent via U.S. Postal Service or hand delivered. All documents need to be served on the opposing party.

Once a Complaint is filed, OAH will send out a scheduling order, sets a deadline for requesting mediation, schedules a prehearing conference, and due process hearing. Parties must adhere to the schedule. If the parties reached an agreement at mediation, then the case will be closed. If there is no agreement, then OAH will hold a prehearing conference where the ALJ will discuss the case with the parties, clarifying the unresolved issues, and confirming the dates of the hearing. The parties will then proceed to the hearing. After the hearing, the ALJ will issue the decision.

If any of the parties disagree with the decision, that party has the right to appeal within 90 days to a court of competent jurisdiction.¹²

Please note that it is critical to have evaluations and experts to support the client's case. Your client also has the right to request an Independent Education Evaluation (IEE).¹³ An IEE gives your client access to an expert who can evaluate all the materials that the school district must make available and who can give an independent opinion.

If your client loses, the school district may request attorneys' fees. Attorneys' fees may be awarded to a "prevailing party" (the side that wins some or all issues) if the case is found to be "frivolous, unreasonable, or without foundation. . ." ¹⁴ Losing a case does not necessarily mean the case was frivolous, unreasonable, or without foundation. As such, clients should not request a due process hearing when there is no factual or legal basis, or take actions designed only to delay or drive up the district's costs in defending the student's case. As always, please review the procedures outlined at the OAH for the latest guidelines and procedures.

Eulalio Castellanos is with Inland Counties Legal Services, Inc., and is the lead attorney on the Education Team. Disability Rights Education and Defense Fund (DREDF) provided technical assistance for this article.



request. The four types are 1. Mediation Only; 2. Mediation and Due Process Hearing; 3. Hearing Only Case; and 4. Expedited Case or a Dual Case. I will deal only with Mediation and Due Process Hearing.

¹² Cal. Education Code §56505, subd. (k).

¹³ 34 C.F.R. § 300.502(b)(2)(ii).

¹⁴ *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978); 20 U.S.C. §§1415(i)(3)(B)(i)(II) and (III); 34 C.F.R. §300.517; Cal. Ed. Code §56507(b)(2).

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THE IMPACT OF PARENTAL CONSENT ON A CHILD'S RIGHT OF PUBLICITY

by Lynne Boisineau

The right of publicity protects a person's name, image, likeness, and voice. This right is protected in 38 states via common law and 22 states via statute.¹ The right of publicity emerged out of tort law, and specifically, has its roots in privacy law. What eventually became the right of publicity began as one of the four privacy torts listed in the Restatement (Second) of Torts—the misappropriation of a person's name or likeness.² New York was the first state to codify the right of publicity in 1903.³ It stands to reason that the Second Circuit was the first to really launch the right of publicity cause of action and hold that a common law right of publicity did exist; it was assignable; and that this right was not the same as the statutory right of privacy that already existed at the time.⁴ In the *Topps* case, the Second Circuit decided in favor of a company that held an exclusive license for a baseball player's image that had been damaged by the use of that same player's image on a competing company's baseball cards.⁵ This case is the basis for modern day right of publicity protection in many states.

The right of publicity is a personal right that is separate from the copyright in the image or artwork itself and is also separable from any trademark associated with that person's name. All three rights may be portrayed in a single image, with ownership of each right belonging to a different party. For example, if an image features a famous child and her name is displayed in the background of the image, the copyright might be owned by the photographer, the trademark might be owned by a holding company or a company that uses the child's name to endorse its products, and the right of publicity would be owned in most cases by the child herself—although the consent for that child would need to be obtained from her parent.

This can lead to thorny issues of intellectual property ownership and can cause problems for the child once she is older. The rule is that a consent or right of public-

ity release pertaining to a minor must be signed by the child's parent or legal guardian. However, it is critical to note that while in Washington, and other states, a minor can later disavow that consent after it reaches the age of majority,⁶ other states have concluded that a child has no ability to reclaim her right of publicity after reaching adulthood. In *Shields v. Gross*,⁷ Brooke Shields attempted to stop publication of nude photographs taken of her as minor that her mother had signed consents for, after her attempts to purchase the negatives failed. There, the court decided that the signed model release was “unrestrictive as to time and use” since Ms. Shields was considered a “model” rather than a “child performer.”⁸ Not only could Ms. Shields not stop the publication of the photos, but she actually had to obtain permission to feature the photographs in her own autobiography.⁹

The lack of consistency with right of publicity protection in various states, coupled with parents' lack of informed consent as to the difference between unlimited consent to use photographs in the future and consent limited to time, place, geography, or other aspects of scope, can have lasting negative effects on children, especially as those children grow into adulthood and try to regain control of images that were taken of them that they may not wish to be in circulation forever. Sadly, in some cases, parents even signed away rights to minors' nude images that had no limitations on future uses, including for hardcore pornographic forums.¹⁰

Living in Southern California, many parents have let their kids audition for acting/modeling jobs and may have even signed some of the right of publicity releases discussed above. Even non-controversial images may crop up in the future that a child might not want displayed forever, such as those taken at an awkward phase in life—especially if that child grows up to be a famous actor, reality star, or high-profile business person. More

1 RIGHT OF PUBLICITY, <http://rightofpublicity.com/statutes> (last visited March 7, 2019).

2 Restatement (Second) of Torts § 652 (Am. Law Inst. 1977).

3 *Rothman's Roadmap to the Right of Publicity*, <http://www.rightofpublicityroadmap.com/law/new-york> (last visited March 7, 2019).

4 *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

5 *Id.* at 868.

6 A minor is generally bound by any contract unless the contract is disaffirmed within a reasonable time after the minor attains the age of majority (Wash. Rev. Code § 26.28.030 (2012)). The age of majority in Washington is 18 (Wash. Rev. Code § 26.28.010 (2012)).

7 448 N.E.2d 108, 111 (N.Y. 1983).

8 *Id.* at 109.

9 *Id.*

10 *Faloona by Fredrickson v. Hustler Magazine, Inc.*, 799 F.2d 1000, 1004–07 (5th Cir. 1986).

importantly, California has a posthumous right of publicity that lasts 70 years after the death of a person. It could be heartbreaking for parents of a deceased child to see such images published years after the child's demise and have no ability to stop it. That's why it's imperative that parents thoroughly read and understand the contracts they are signing on behalf of their children and that they understand the implications of such consent—now and in the future.

Lynne Boisineau, the founder of Boisineau Law, focuses her practice on U.S. and foreign trademark prosecution, counseling, enforcement, and licensing, as well as providing trademark litigation support. She authored the right of publicity chapter of the ABA's Computer Games and Immersive Entertainment, 2d Ed. (2019), and her articles on the Right of Publicity and Social Media have appeared in the ABA's Landslide Magazine and GPSOLO Magazine "best of" issue. Lynne is ranked in the World Trademark Review 1000: The World's Leading Trademark Professionals (2014-2018).



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OPPOSING COUNSEL: ANNA M. MARCHAND

by L. Alexandra Fong

*Children need love, consistency and commitment.*¹

Anna M. Marchand grew up in Minnesota. After graduating with a bachelor's degree in elementary education from Concordia University in Saint Paul, she worked as an educator for eight years. Once she relocated to Southern California, she obtained her paralegal studies certificate from the University of San Diego. After a year of working as a paralegal, she began efforts to enroll in law school. In 1994, she received her Juris Doctor from the University of San Diego, School of Law and began practicing in San Diego County, in private practice. She handled real property and business litigation matters

In 2001, she took a temporary position with the office of County Counsel in Riverside. She was hired full-time as a deputy county counsel in 2002. Initially, she represented the office of the Public Guardian in conservatorship proceedings.

The Riverside County Public Guardian ensures the physical and financial safety of incompetent and mentally disabled adults who meet the criteria for conservatorship when there is no one else to do so, under the authority of the Lanterman-Petris-Short (LPS) Act and the Probate Code.

The public service work, by and through the office of County Counsel, dovetailed with Anna's interest in social services and education. With a mission of service and protection, Anna transitioned to the practice of juvenile dependency in 2005, as an appellate attorney. In 2015, she was promoted to a supervisory position within the office and began handling trials and other assignments for the Department of Public Social Services (DPSS). She has supervised attorneys in all three regions of the County Counsel's satellite office and is currently working at the Murrieta office.



Anna M. Marchand

DPSS handles matters associated with approximately 5,425 cases in the Child Protective Services (CPS) Programs, receiving an average of 2,477 referrals per month.² DPSS has offices located throughout the Riverside County in Blythe, Indio, Cathedral City, Rancho Mirage, Banning, Hemet, Perris, Temecula, Lake Elsinore, Norco, Arlington, Moreno Valley, and Riverside.

The office of Riverside County Counsel employs eighteen attorneys to handle juvenile dependency matters.

Fourteen attorneys handle juvenile dependency trials in five courtrooms in three courthouses: two courtrooms in Riverside (County Farm) and Murrieta (Southwest Justice Center), and one courtroom in Indio. In addition to maintaining an active caseload, these trial attorneys also handle additional matters, involving procedures, policies, education and case management, on behalf of DPSS. The other four attorneys are dedicated to investigations and appeals on behalf of DPSS.

Anna enjoys her work in this dynamic area of law and assisting DPSS while working with a team of colleagues. During the past eight years, she has also had the pleasure of welcoming a daughter-in-law, son-in-law, and four grandchildren into her own family.

All children deserve a loving family; the children of Riverside County who suffer abuse, neglect, or abandonment deserve protection. Social services practitioners and their attorneys who work with DPSS are committed to this goal. In Riverside County, there are approximately 4,000 children who have been removed from their families because of abuse, neglect or abandonment. These children need love, consistency and commitment.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside, practicing in juvenile dependency law. Ms. Fong is a past president of the Riverside County Bar Association and is the president of the Leo A. Deegan Inn of Court.



¹ This phrase, from the Riverside County Department of Public Social Services' website, could be the motto of every attorney practicing juvenile dependency law. See: <http://dpss.co.riverside.ca.us/childrens-services-division/adoption-information/foster-adoptive-parent>.

² <http://dpss.co.riverside.ca.us/about-us/history>.

POLY HIGH SCHOOL FIRST IN COUNTY, THIRD IN STATE

by John Wahlin

The championship round of the Riverside County Mock Trial Competition was a repeat of last year's final, with Riverside's Martin Luther King High School and Poly High School again facing each other. This year Poly re-claimed its title, winning its 7th championship in the last 9 years.

In the case, *People v. Klein*, the defendant was charged with making a false report of an emergency and making a criminal threat. United States District Judge Jesus Bernal presided over the championship round, which was scored by District Attorney Michael Hestrin, Public Defender Steven Harmon, RCBA President Jeff Van Wagenen, Presiding Judge of the Superior Court John Vineyard, and defense attorney Virginia Blumenthal. Twenty-four teams from throughout the County participated in the first four rounds of competition. The highest scoring 8 teams then continued the competition in the "Elite 8" single elimination tournament. The pairing of the Elite 8 teams included Poly vs. Xavier College Prep., Martin Luther King vs. Great Oak High School, Murrieta Valley High School vs. John W. North High School, and Notre Dame High School vs. Valley View High School.

In the "Final Four" semifinal round, Martin Luther King defeated Valley View High School and Poly High School defeated Murrieta Valley High School, setting up a rematch of last year's final, in which Martin Luther King defeated Poly. In a close final round, it was Poly that prevailed.

Individual awards for outstanding performances were announced at the awards ceremony. First, second, and third place awards were presented in attorney and witness categories. Internships with the District Attorney, Public Defender, and the Superior Court were awarded to the top trial and pre-trial lawyers.

Poly went on to the State competition in Sacramento on March 21 and 22 where it finished an impressive third place. The team was honored among the top 8 teams at the awards ceremony, which culminated the annual competition. The sponsor of the competition, the Constitutional Rights Foundation, encountered logistical problems with the scoring of the rounds causing Poly and the other teams to be delayed in starting the fourth round until 7:00 and later on Saturday night. After a mistaken announcement of the 2 final teams, the correct teams were finally announced after midnight, early Sunday morning. In the final, San Mateo County defeated Shasta County.

As always, it is the many volunteers from the legal community that drive the success of the program. Without coaches, judges, and scoring attorneys there would be no program. For more information concerning the volunteer opportunities, please contact the RCBA.

John Wahlin, Chair of the RCBA Mock Trial Steering Committee, is a partner with the firm of Best Best & Krieger, LLP.



BENCH TO BAR

Proposed Local Rule and Form Changes Effective July 1, 2019

Riverside County: Pursuant to California Rules of Court, Rule 10.613, the Superior Court of California, County of Riverside, proposes that local rule and form changes be made, effective July 1, 2019. The proposed changes are to the following rules and forms:

- Title 1 – General — Local Rule 1025 – Interpreters and Translators
- Title 5 – Division 1 – Family Law — Local Form RI-FL070 – Minor Marriage Child Custody Recommending Counseling Intake Questionnaire (New); Local Form RI-FL071 – Consent of Parent for Minor to Marry (New)

- Title 7 – Probate — Local Rule 7123 – Inventory and Appraisal (Repeal); Local Rule 7215 – Affidavits for Real Property of Small Value (Amend)

To view the proposed changes please visit the court's website at: <https://www.riverside.courts.ca.gov/localrules/localrules.shtml>.

Please direct any comments regarding the proposed changes to the Riverside Superior Court Executive Office, 4050 Main Street, Riverside, CA 92501. Comments may also be sent by email to courtexecutiveoffice@riverside.courts.ca.gov. Comments must be submitted by 5:00 p.m. on May 2, 2019, so that they can be considered as part of the rule and form adoption process.



KRIEGER AWARD NOMINATIONS SOUGHT

by Presiding Judge John Vineyard

The Riverside County Bar Association has two awards that can be considered "Lifetime Achievement" awards. In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service beyond the bar association and the legal profession. The E. Aurora Hughes Award was established in 2011 to recognize a lifetime of service to the RCBA and the legal profession.

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

The award honors the memory of Jim Krieger and his exceptional record of service to his community. He was, of course, a well-respected lawyer and member of the Riverside bar. He was also a nationally recognized water law expert. However, beyond that, he was a giant in the Riverside community at large (please see the great article by Terry Bridges in the November 2014 issue of the *Riverside Lawyer*). The past recipients of this award are Judge Victor Miceli, Jane Carney, Jack Clarke, Jr., and Virginia Blumenthal, to name a few.

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

Current members of the RCBA board of directors are not eligible, nor are the current members of the award committee.

If you would like to nominate a candidate for the Krieger Award, please submit a nomination to the RCBA office no later than May 10, 2019. The nomination should contain, at a minimum, the name of the nominee and a description of his or her record of community service and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

The Honorable John Vineyard is the presiding judge of the California Superior Court located in Riverside County, chair of the Krieger Meritorious Service Award Committee, and a past president of the RCBA.



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Office Space – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

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Conference Rooms Available

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



Riverside
County

LAWYER

Riverside County Bar Association

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