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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

May

- 2 Barristers Judicial Reception**
Grier Pavilion, Riverside City Hall
5:30 p.m. – 7:30 p.m.
- 6 Civil Roundtable**
The Honorable Craig Riemer
Noon – 1:15 p.m.
RCBA Boardroom
MCLE - .75 hour General
- 14 Civil Litigation Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Kristy Arevalo
Topic: “Getting Organized for Trial”
MCLE – 1 hour General
- 15 Estate Planning, Probate & Elder Law Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Dayn Holstrom & Sharon Anderson
Topic: “Crossovers Between Family Law & Estate Planning & Probate”
MCLE – 1 hour General
- 16 Solo/Small Firm Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Jordan Vander Poorten, CPA
Topic: “Small Business Taxes: Tips, Tricks & Pitfalls for Solo Practitioners and Small Firm Owners”
MCLE – 1 hour General
- 17 General Membership Meeting**
Noon – 1:30 p.m.
RCBA Gabbert Gallery
Speakers: Dan Bernstein,
Retired Justice James Ward, Mel Opotowsky.
Moderated by John Boyd
Topic: “Justice in Plain Sight: How a Small-Town Newspaper and Its Unlikely Lawyer Opened America’s Courtroom”
MCLE - .75 hour General
- New Attorney Academy Graduation**
Noon
RCBA Gabbert Gallery
- 28 Joint Family Law Section & Appellate Law Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Ronald Funk
Topic: “Idiosyncrasies of Family Law for Appellate Practitioners”
MCLE – 1 hour General

EVENTS SUBJECT TO CHANGE.

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



BARRISTERS PRESIDENT'S MESSAGE

by Megan G. Demshki



As this issue of *Riverside Lawyer* is dedicated to experts, I am reminded of one of my favorite quotes from Albert Einstein:

Wisdom is not a product of schooling but of the lifelong attempt to acquire it.

I remember thinking how exciting it would be to become an “expert” in political science when I chose that discipline as my major during my undergraduate studies. I also remember the disappointment I felt years later upon graduation when I realized that I was far from an expert in this field. I was met with the realization of just how little I “knew” in my chosen “major.” Years of study had only begun to reveal the complexity and nuances of political science. I was left with many more questions than answers.

This same sentiment came after the completion of law school and the bar exam. I had a generalized knowledge base of the law in broad strokes, but I knew I would never master all areas of the law. Contrary to the belief of some of my friends and family, my juris doctor did not make me an expert for all of their questions in every area from tax law to family law. I was left with many more questions than answers.

I am a firm believer in the quest for lifelong learning. I have witnessed the happiness and success of lifelong learners who continue to explore, innovative, question, and learn throughout their life.

It is part of why I love the practice of law so much. The law is constantly changing and evolving. We have a duty to stay current in those developments. We are met with new challenges regularly. Research is a frequent aspect of our day to day workload. But the learning does not stop with legal research.

I am always amazed by how one single case can present us with so many different questions. Was the roadway dangerous? Does design immunity apply? How are human factors at play here? How would an average driver have reacted? How will these injuries impact her over her lifetime? What will that treatment cost for the next 40 years? Can she go back to work? What type of work would now

be a reality for her? As I am working up a case, I am often left with many more questions than answers.

Luckily, we can turn to expert consultants and witnesses for many of the answers to the questions we are met with in a vast array of fields.

I never know where a new case will take us. One month I could be working alongside our experts to learn as much as possible about knee replacements or traumatic brain injuries, and the next month I can be delving into the facts of a case with an arborist, an accident reconstructionist, or amusement park ride engineers. We have located experts in fields that I never knew existed before we were met with a specific set of facts. (And I learned how to spell metallurgist.)

I have learned the importance of intellectual humility in the quest for knowledge. I believe intellectual humility makes me a better person and a better trial lawyer.

I have learned the importance of asking the right questions to solidify my own understanding in a specific area, knowing that my preparation along the road to trial will hopefully allow me to help the jury succinctly, and clearly understand the complexity of the issues they are tasked with deciding. Learning how to boil down months or years of learning, discovery, deposition testimony, and preparation into a few hours of trial testimony for the jury is something that I imagine I will spend my whole career trying to master. I am frequently reminded that asking the “right” questions may be one of the most difficult and time-consuming tasks for a trial lawyer.

I feel fortunate to have a career where I am often left with many more questions than answers.

Upcoming Events:

- Celebrate the graduates of the New Attorney Academy with the Barristers at El Patron restaurant in Riverside on Friday, May 17, at 4:30 p.m.
- Elections for the 2019-2020 RCBA Barristers Board of Directors will be held at The Brickwood restaurant in Riverside on Wednesday, June 12, at 5:30 p.m.
 - o All nominations must be received by Friday, May 17, 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.



RIVERSIDE LEGAL AID SEEKS EXECUTIVE DIRECTOR

Public Service Law Corporation of the RCBA, dba Riverside Legal Aid, has been providing free civil legal services to low-income residents of Riverside County since 1982.

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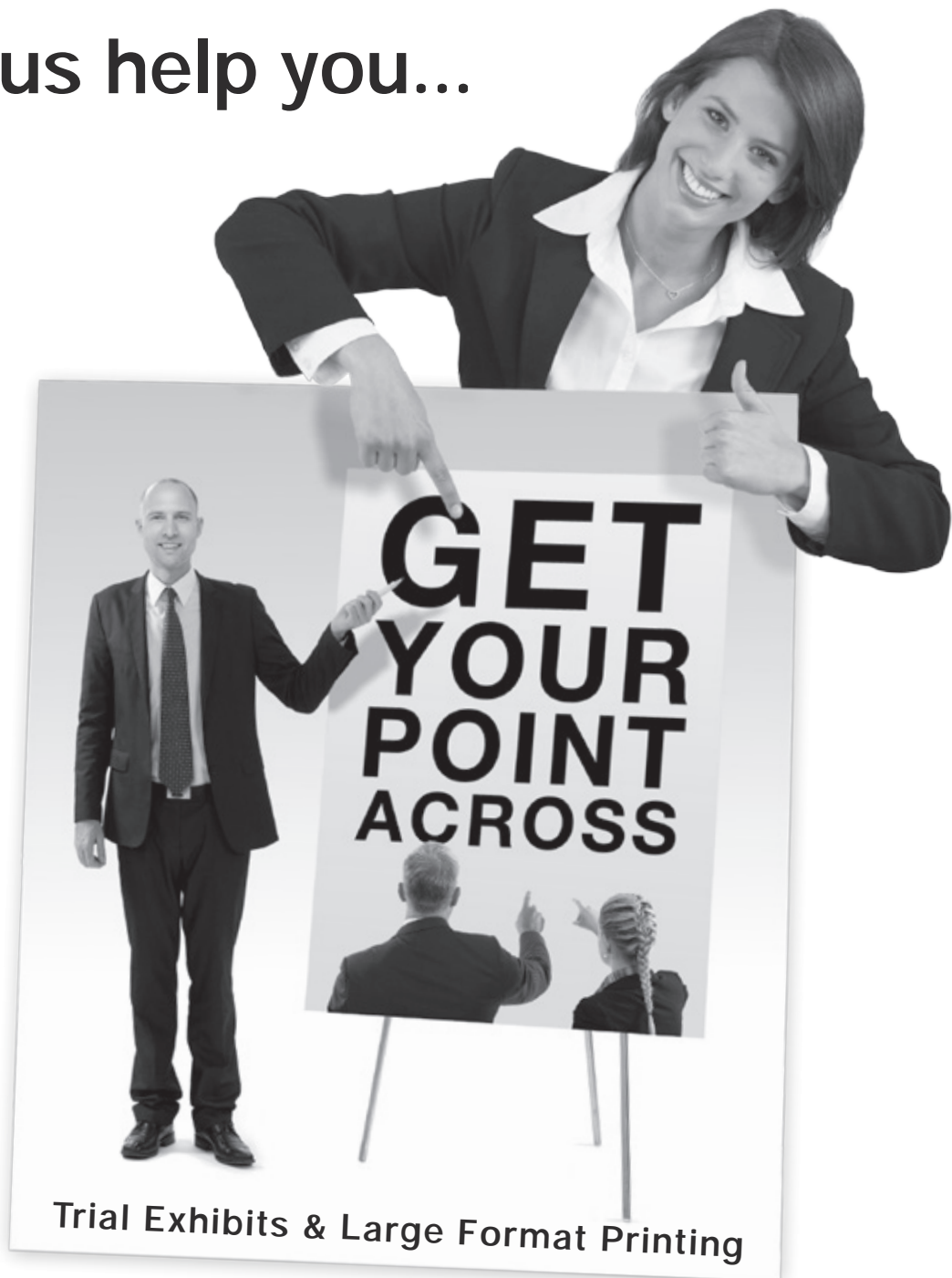
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UTILIZING EXPERT ECONOMISTS IN WAGE AND HOUR REPRESENTATIVE CASES

by Jamie E. Wrage

Expert economists are essential to wage and hour class action cases that are so prevalent in California. An experienced economist (or statistical expert) who has working knowledge of California wage and hour laws is not only necessary for the calculation of damages and penalties, but a great expert can provide insight into trends in the data and possible defenses. Whether you represent the employer or the employee, this can be valuable information.

There can be many obstacles to getting an accurate liability analysis in a wage and hour class action. You will have to work closely with your expert to make sure they have what they need to do the work.

From a defense perspective, often the most difficult part of any wage and hour analysis is gathering accurate timekeeping, payroll, and other data for use by your expert. If there are manual time cards, then that data must be located and input into a useable electronic format. This is time consuming, even when the time punches are legible. While electronic timekeeping data is certainly better, it may include omissions that cause errors in your expert's calculations. A good expert will have suggestions for you regarding assumptions that may have to be made where there are gaps in the data. Finally, the expert will need employee wage information, along with policy and handbook documents that provide information on timekeeping, payroll, work days, and pay periods.

When defending a wage and hour representative action, your expert should be engaged as soon as possible after there is notice of the litigation.

The payroll and timekeeping data must be collected and provided, so that you and your expert can determine what information might be missing or incomplete. The sooner the better because the employer-client needs to know the potential range of damages and penalties they are facing. Clients that have not faced this type of litigation before might be in denial as to the scope of potential liability. While not every client will have the financial resources to jump right into an in-depth statistical analysis or be willing to devote the money and resources needed to do so, it must be strongly encouraged, so informed decisions can be made as the case proceeds. Where a client does not have the resources, talk to your client and expert about options for providing at least a rough estimate of damages instead.

Other information your economist needs for an accurate analysis includes employer's pay periods and work day hours. This sounds easy enough and it can be when the information appears in a handbook or human resources memorandum. But in the real world, it may not be so simple. What constitutes a "work day" is not necessarily 12:01 a.m. to 12:00 a.m. It could be 12:00 a.m. to 11:59 p.m., and this one-minute difference can change an overtime or meal period analysis. Or it could be 8:00 a.m. to 7:59 a.m. because the employer has an overnight shift. What constitutes a "work day" not only varies between employers, but a single employer with employees on varying shifts may have different hours in a "work day" for different employee classes or locations to reduce overtime. Once again, employers may have trouble locating this

information because the person who originally set up the timekeeping system years ago is no longer employed. From the very beginning of the case, try to find the right person with the employer to answer these key questions and be prepared. However, when no such employee exists at the company to answer these questions, ask your expert to extrapolate the answer to the question of what constitutes a "work day" from the timekeeping data.

Of course, as with any other expert, your economist will also have to have the credentials to be able to provide credible testimony for motion work, mediation, and trial. He or she needs to be able to explain the analysis in language that someone who is not a wage and hour expert can understand. If you find an economist experienced in wage and hour analysis who meets all of these requirements, do not let them go.

Jamie E. Wrage is a shareholder with Stream Kim Hicks Wrage & Alfaro, PC in Riverside and specializes in employment counseling, employment litigation, and complex business litigation.



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EXPERT WITNESS DEPOSITIONS: THE SEARCH FOR THE HIDDEN TREASURE

by Mark A. Easter

If there is any activity in litigation that I do find—and I hate to use this word—“fun”, it is taking an expert witness deposition—especially the key expert on the other side, which in my practice is usually their appraiser. In this setting, I am often meeting the other side’s star witness for the first time. It is my opportunity to question him or her, without the judge or jury present, find out how strong each side’s case is, and set up my cross-examination at trial. It is “fun” because if the case has reached this point, it usually means that 1) we have a large spread in the valuation opinions; and 2) someone has made a mistake. And if I am on top of my case, that hopefully means that the “someone” is the expert I am about to depose. So the deposition becomes a search—a search for hidden treasure in a big house.

An expert deposition is like a house with many rooms that must be searched. Unless you have an unlimited budget (rare), you have limited time to search all those rooms. So you must know, or at least exercise good judgment about, how long you should search each room, as the treasure is usually only in one or two of the rooms. The better you know your case, and the work done and opinions held by your own expert, the better you will know how long you should stay in each room. SO, what are these “rooms”?

1. The Foyer:

It is important to confirm, up front, what the expert’s specific ASSIGNMENT was, and what conclusions the expert reached. Often you know this already because the expert’s valuation statement, report, or entire file has been exchanged or produced before the deposition. But not always. Knowing the expert’s specific assignment and conclusion(s) is basically the foyer. You cannot search the other rooms before you have stopped here.

2. The Trophy Room:

Now that you know what the expert did, you need to determine what his or her QUALIFICATIONS were to do it. Survey all of the diplomas, plaques, certificates, client lists, and war stories and see if anything in the room is relevant to your case. You cannot really know how much time to spend here if you haven’t paid at least a brief visit to your own expert’s trophy room. If the medal collections look pretty similar, then maybe you move to the next room.

3. The Bedroom:

Here, I’m trying to identify any BIAS. Are all or many of the expert’s medals and belt notches coming from the same source? Is the expert “in bed with,” or have too close of a relationship with, the same attorney, client, or type of client? So in my cases, does the appraiser almost always work for property owners, but never the agency? Did your client, or your partner down the hall, recently give this expert a “medal”? You would not want to have that sprung on you at trial. Again, for this search to be meaningful, you need to be familiar with where your own expert’s assignments usually come from.

4. The Living Room:

Every expert assignment has an initial meeting or “kick-off.” You want to learn how the expert was contacted and retained by the attorney and/or the client. Recreate those initial “living room” meetings. How was the assignment decided on? Was the assignment phased? Some experts I’ve deposed were first hired to do a “preliminary” analysis in phase 1, then asked to “finalize” their conclusions in phase 2, and then be designated, deposed, and called to testify at trial in phase 3. This situation usually produces good cross-examination material for trial, but that’s another article. And just as important—what information, documents and instructions was the expert given? In my cases, legal instructions on issues like the date of value, the larger parcel, highest and best use, and the “after” condition can be very material.

5. The Pantry:

Next, what information did the expert collect in his INVESTIGATION? My partner, Ken MacVey, taught me that while the deposition is the basis of cross-examination of the expert, the investigation is the basis of the expert’s direct examination. You want to find out all of the expert’s sources of information, and everyone the expert interviewed. All of the information collected is the expert’s “pantry.” The goal here is not to critique the pantry; it is simply to make an accurate record of what was in the expert’s pantry. Having said that, you do want to know whether the expert spoke to the same people that your expert spoke to and is relying on the same, or at least similar, information. Is there “garbage” or wrong information in the pantry? Accordingly, make

sure you have spent some time in your own expert's pantry before taking the deposition.

6. The Kitchen:

The expert's analysis of the information from his pantry is the "kitchen" where the expert's conclusions were "made." What "tools"—assumptions and methodologies—did the expert use? How did the expert organize, adjust, treat, or "mix" the data? With appraisers, that might be things like time adjustments, growth rates, depreciation rates, or capitalization rates. The goal here is not to second guess how the expert reached his or her conclusions, or argue with the expert—as some attorneys feel compelled to do. The goal is to make a clear record of what happened in the kitchen—how the expert reached his conclusions, so that you can impeach the expert if he tries to tell a different story at trial. In fact, you are more likely to achieve that goal if you do not argue or quibble with the expert.

7. The Closet:

Rather than quibble with the expert over her analysis, your time is better spent confirming not only what information the expert relied upon, but what data the expert disregarded and left "in the closet"—what information, if any, the expert rejected. Maybe that data was not "useless," but information that your own expert considered.

8. Time Management:

Sharp instincts for how much time to spend in any of the above rooms certainly come with experience. But thorough preparation and knowing your own expert's analysis, will also help keep you on track and not waste too much time in one room.

Strategic restraint is also vital. You may think that a medal in the trophy room was undeserved. That information in the pantry was wrong. That there was a missing ingredient or methodology in the kitchen. But those are the "treasures" that you have found—treasures for cross-examination at trial. If you debate the expert over those treasures in the deposition, they almost always lose their luster, because now your opponent has a roadmap for preparing direct and/or re-direct examination at trial.

I hope you have found my house analogy helpful rather than hokey. If you thoroughly prepare (including an inspection of your own expert's "house"), focus on the goal of locking in the expert's testimony in each room, and (where appropriate) exercise strategic restraint, your tour through your opponent's expert witness house should be successful.

Mark A. Easter is a partner at Best Best & Krieger, LLP and focuses on public agency acquisitions, including eminent domain and condemnation litigation..



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EXPERT WITNESSES IN BANKRUPTCY PROCEEDINGS: PRE-TRIAL DISCLOSURES AND PROTECTIONS

by Cathy Ta and Claire K. Wu

Using expert witnesses in bankruptcy cases is a common occurrence, when there is litigation over issues such as the valuation of a debtor's business, real property, or other assets; the debtor's financial projections and their feasibility; the solvency of the debtor at the time of certain transfers alleged to be fraudulent; and more generally, any aspect of the debtor's financial affairs before or after the bankruptcy case. While these issues can be bankruptcy case specific, they can also be issues found in any business litigation case.

Likewise, bankruptcy court litigation is procedurally similar to other federal court litigation, in that the Federal Rules of Civil Procedure (FRCP) largely apply in bankruptcy court litigation.¹ However, there are certain notable differences that all litigators should be aware of, particularly in the context of using expert witnesses. Specifically, bankruptcy court litigation, and the use of expert witnesses, occurs in two different contexts. The first is adversary proceedings and the second is in contested matters. However, the pretrial expert disclosure rules and protections in these proceedings are not identical.

The Difference Between Adversary Proceedings and Contested Matters

As an initial matter, an adversary proceeding is a lawsuit in the bankruptcy court, filed by at least one party plaintiff against another party defendant, in connection with, but separate from, the debtor's main bankruptcy case. An adversary proceeding has its own docket and case number. Generally, an adversary proceeding is commenced by the plaintiff filing a complaint. The defendant then faces a deadline by which to respond to the complaint; and, assuming the lawsuit is not dismissed at the outset, the lawsuit proceeds with status conferences, scheduling orders, pre-trial motion practice, and discovery, before the lawsuit heads to trial, unless of course the suit is resolved without the need for a trial.

Requests for relief in the debtor's main bankruptcy case are made by motion; and when contested, they are known as contested matters. Customarily, bankruptcy judges rule on contested matters at their initial hearings. To the extent the bankruptcy judge requires further evidence, the bankruptcy judge may set the contested matter

for an evidentiary hearing or a trial. Preceding the evidentiary hearing or trial, the parties may need to conduct discovery, typically pursuant to a scheduling order or other court order.

Pretrial Expert Disclosure Rules Governing Adversary Proceedings and Contested Matters

Procedurally, bankruptcy courts are governed by their own Federal Rules of Bankruptcy Procedure (FRBP), which largely make applicable the FRCP.

With respect to pretrial expert disclosures, in adversary proceedings, FRBP Rule 7026 makes applicable FRCP Rule 26, which are the general provisions governing discovery and the duty to disclose.²

Contested proceedings are governed by FRBP Rule 9014(c), which makes applicable, among other FRCP rules, FRCP Rule 7026 with certain exceptions. Specifically, FRBP Rule 9014(c) excepts from contested proceedings the following parts of FRCP Rule 7026: (a)(1), mandatory initial disclosures; (a)(2), pretrial expert testimony disclosures; (a)(3), pre-trial disclosures; and (f), meet and confer requirements prior to the initial scheduling conference.³ This means FRCP Rule 26(a)(2)'s pretrial expert testimony disclosure requirements do not apply in contested matters, unless the court directs otherwise.

As a result, in contested matters, counsel do not have the onus of making advance disclosures of expert testimony, including any written report required under FRCP Rule 26(a)(2). However, counsel may have to provide expert testimony-related information in response to discovery served by opposing counsel, including to document requests and interrogatories. Notwithstanding the foregoing, counsel may stipulate, or request that the bankruptcy court order, that FRCP Rule 26(a)(2)'s pretrial expert testimony disclosure requirements apply to the contested matter, especially if it is set for an evidentiary hearing or trial. Also, counsel should always check the bankruptcy court's local rules to see if this exception is otherwise addressed or modified.

² Fed. R. Bankr. p. 7026.

³ Fed. R. Bankr. p. 9014(c)

¹ Fed. R. Bankr. p. 7001 *et seq.*

What is the Effect of this Disclosure Exception on Trial Preparation Protections for Experts in Contested Matters?

Overall, FRCP Rule 26(a)(2)'s pretrial expert disclosure requirements apply in adversary proceedings, but not in contested matters. This difference is significant in how trial preparation protections regarding experts are set forth under FRCP Rule 26(b)(4). Specifically:

- FRCP Rule 26(b)(4)(B) provides that Rules 26(b)(3)(A) and (B), codifying the work-product doctrine, “*protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.*”⁴
- FRCP Rule 26(b)(4)(C) protects “communications between a party’s attorney and *any witness required to provide an expert witness report under Rule 26(a)(2)(B), regardless of the form of the communications, with certain exceptions.*”⁵

In short, both work-product and attorney-witness communication privileges are statutorily written in reference to pre-trial expert testimony disclosures required under FRCP Rule 26(a)(2), which does not apply in contested matters. Therefore, it is statutorily unclear that

⁴ Fed. R. Civ. p. 26(b)(4)(B) (emphasis provided).

⁵ Fed. R. Civ. p. 26(b)(4)(C) (emphasis provided).

these privileges apply in contested matters, since FRCP Rule 26(a)(2) does not apply in contested matters.

Protecting Expert Trial Preparations and Communications in Contested Matters

One statutory interpretation of FRCP Rule 26(b)(4)(B) and Rule 26(b)(4)(C) may lead to the conclusion that in contested matters, drafts of an expert’s report may not be entitled to work-product privilege, or attorney-expert communications may not be protected as privileged communications. To safeguard against any uncertainty, in contested matters, counsel can and should stipulate to, or request that the bankruptcy court enter, an order affirmatively delineating the scope of required pre-trial expert testimony disclosures under FRCP Rule 26(a)(2), if any, and otherwise making applicable the work-product privilege and the attorney-witness communication privilege under FRCP Rule 26(b)(4)(B) and Rule 26(b)(4)(C) respectively.

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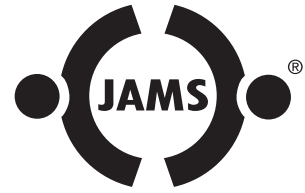


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by Honorable Jackson Lucky

Intro

I hear, “Objection, *Sanchez!*” I think, “You keep using that word. I do not think it means what you think it means.”¹ I say, “Overruled.” Sigh.

Few recent cases have generated as much FUD² as *People v. Sanchez*.³ I hope to give the reader a practical guide to navigating *Sanchez*. This article explains how to diagnose *Sanchez* problems.

What *Sanchez* Said

Contrary to urban legend, *Sanchez* does *not* limit an expert’s ability to *rely* on hearsay. “Any expert may still rely on hearsay ... and may tell the jury *in general terms* that he did so.” “What an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception.”⁴ So an expert can *rely* on and *generally describe* hearsay, but not *relate* it to the jury.

Sanchez’s holding maps to four elements: “[W]e adopt the following rule: [If any expert [1] relates to the jury [2] *case-specific* [3] out-of-court *statements*, and [4] treats the content of those statements as *true and accurate* to support the expert’s opinion, [then] the statements are *hearsay*.”⁵

Rely v. Relate

*People v. Williams*⁶ illustrates the distinction between rely and relate. In *Williams*, the Supreme Court held that a doctor could testify that the defendant was alcohol dependent, that the doctor based his opinion on a parental history of alcohol abuse, and that the doctor had talked to the defendant’s family members. However, the content of those conversations with family members was hearsay.⁷

To show the difference between permissibly *describing* hearsay information and impermissibly *relating* it,

I’ll adapt four hypothetical situations from the *Sanchez* decision.

- An officer could testify that she relied on witness interviews and other officers’ police reports for her opinion of a car’s speed, as long as she didn’t relate to the jury what those witnesses and reports said.
- A medical examiner could testify that he read and considered the autopsy report for his opinion on cause of death without relating what he read in the report.
- A gang expert could testify that he read police reports, reviewed field-identification cards, spoke with specific gang members, and discussed his findings with other officers, without relating what those reports, cards, gang members, or other officers said.
- A neuropsychiatrist could testify that she reviewed medical reports of a man’s brain injury, talked to him and his family, and read deposition transcripts, as long as she didn’t relate the contents of those reports, conversations, or depositions.

Do not overthink the problem. *Sanchez* applies only when the expert witness testifies about the content of out-of-court statements.

Case-Specific

But *Sanchez* doesn’t apply to all out-of-court statements, just *case-specific* hearsay. Because this is the topic that most decisions and commentaries cover, I won’t belabor it here. Instead, I’ll recap the four examples of case-specific hearsay from *Sanchez*: (1) that someone measured 15 feet of skid marks at an auto accident scene is case-specific information, but how to calculate speed from skid marks is not; (2) that the medical examiner noted hemorrhaging in a homicide victim’s eyes is case-specific, but the likely causes of such hemorrhaging is not; (3) that an associate of the defendant had a gang tattoo is case-specific, but background information about the gang and its activities is not; (4) that an adult party to a lawsuit had a serious head injury is case-specific, but the effects of such a head injury is not.

¹ *The Princess Bride* (Act III Communications 1987).

² Fear, uncertainty, and doubt. https://en.wikipedia.org/wiki/Fear,_uncertainty,_and_doubt.

³ *Sanchez*, supra, 63 Cal.4th, at p. 685 (emphasis in original).

⁴ *Id.*, at p. 686 (emphasis in original).

⁵ *Sanchez*, supra, 63 Cal.4th, at p. 686, emphasis added.

⁶ *People v. Williams* (2016) 1 Cal.5th 1166.

⁷ *Id.*, at pp. 1199-1200.

Look to whether the out-of-court statements are background information like academic literature, training, and experience, or whether the statements relate to “the particular events and participants ... in the case being tried.”⁸ This isn’t always easy. For instance, some Courts of Appeal disagree as to whether a website that experts use to identify prescription medication is case-specific⁹ or background.¹⁰ The Supreme Court has granted review on some of these decisions, so stay tuned.

Statements

Because *Sanchez* is a hearsay rule, it applies to statements. Although experts rely on statements in forming their opinions, they rely on other information, like MRI or CAT scans, videos, diagrams, or machine-generated information like GPS data. Such images are not statements, so they cannot be hearsay.¹¹ *Sanchez* does not apply to evidence like this.¹²

8 *Sanchez*, 63 Cal.4th, at p. 676.

9 *People v. Stamps* (2016) 3 Cal.App.5th 988.

10 *People v. Veamatahau* (2018) 24 Cal.App.5th 68.

11 See, e.g., *People v. Garton* (2018) 4 Cal.5th 485 (autopsy photos are not hearsay), *People v. Goldsmith* (2014) 59 Cal.4th 258 (red-light photos and video are not hearsay), and *People v. Rodriguez* (2017) 16 Cal.App.5th 355 (GPS data are not hearsay).

12 *People v. Garton* (2018) 4 Cal.5th 485.

True and Accurate

Even when the evidence is a statement, it must be offered for its truth for *Sanchez* to apply. An expert doesn’t always rely on the truth and accuracy of the out-of-court statements underlying her opinion. For instance, in a fraud case, a forensic accountant might review business records and conclude that someone cooked the books. In such a case, the accountant has not relied on those records as *true and accurate*, so *Sanchez* would not apply. Do not forget your fundamental hearsay analysis!

Conclusion

Remember that *Sanchez* applies only if the following four things are true: [1] the expert witness *relates* to the jury; [2] *case-specific*; [3] *out-of-court statements*; and [4] that the witness has relied on as *true and accurate*. If any of these elements are unmet, you don’t have a *Sanchez* problem.

Honorable Jackson Lucky is a judge with the California Superior Court, Riverside County.



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FORENSIC DOCUMENT EXAMINATION

by Mike Wakshull

To reduce errors, the courts currently require more rigorous, science-based, and verifiable evidence to support the opinions offered by all testifying expert witnesses.

Forensic document examination is the fascinating scientific discipline used to determine the authenticity of documents. It includes the analysis of handwriting, inks, photocopies, printed documents, computer-generated documents, and any other form of document. I had a case where the document in question was handwritten on piece of toilet paper. In another case, I analyzed writing on the side of a portable outhouse. A third case involved words written with paint on a door.

The discipline is largely misunderstood by the public, by victims of forgery and document alteration, and most importantly by legal professionals, court employees on all levels, and jurors. At worst, this can lead to an incorrect determination of guilt or innocence of the alleged creator of the questioned document.

Legal Standards

The publication entitled, *Strengthening Forensic Science in the United States* by the National Academy of Sciences (NAS), reported that there is too much bias in forensic disciplines, including handwriting examination. According to the NAS, opinions are based too much on subjective analysis, rather than objective and science-based analysis.

California expert witness testimony is governed by the Kelly-Frye standard which requires following generally-accepted practices in the forensic discipline. Federal cases are governed by the Daubert standard. Both standards require use of a scientific approach for developing and presenting opinions of expert witnesses. A science-based approach requires examination for both authenticity and non-authenticity of a document. Not all examiners comply.

In *United States v. Starzecpyzel*, 880 F. Supp. 1027 (S.D.N.Y. 1995), the court determined document examiners are “skilled experts” rather than scientists. The Daubert standard was not applied to forensic document examiners.

In *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), the United States Supreme Court applied the Daubert standard to all expert testimony. Therefore, the Daubert tests apply to forensic document examiners.

Standards have been established for document examiners to perform handwriting examinations and other examinations. They are guidelines rather than prescriptive procedures. Document examiners develop standard operating procedures that best fit the case on which they are working. In this way, document examiners are following generally-accepted practices.

Handwriting Examination

Much of the work performed by forensic document examiners is authentication of handwriting and signatures. *Black’s Law Dictionary* Tenth Edition defines “signature” as, “A person’s name or mark written by that person or at the person’s direction.”

Forensic document examiners often refer to handwriting as brain writing. Handwriting is a complex neuromuscular coordination habit performed without thought of how to construct individual letters or words. The hand is merely the appendage holding the writing instrument.

Handwriting examination requires documents of sufficient quality for the examiner to see the handwriting attributes. Research shows that excellent quality photocopies yield the same results as the original documents. The examiner needs the document with the writing to be examined for authenticity (questioned document) and documents containing known examples of the suspect’s writing (known documents, also called exemplars).

The best exemplars are written within three years from the date of the questioned document. Exemplars before and after the date of the questioned document are best, to show whether there is consistency in the handwriting. Having at least 15 exemplars is best for learning the common attributes of a person’s writing habits. If the questioned writing was written by the author of the exemplars and the exemplars contain consistent writing habits, fewer exemplars may suffice.

Forensic document examiners look at the minutia of writing rather than just the overall structure. Conversely, when a person attempts to copy or trace someone’s handwriting, they focus on the overall structure of the writing rather than the small details. Minutia includes connections between characters, spaces between words and lines of writing, ink blobs, writing slant, relative letter size, and many other unique attributes that define a person’s writing.

When interviewing a prospective handwriting examiner, ask about their procedure for examining handwriting. Do they use Photoshop or similar software to enable direct comparison of handwriting rather than eyeballing, which is less accurate?

Compare Like Writing with Like Writing

Handwriting must be compared with similar style handwriting. Signatures are compared with signatures, cursive writing is compared with cursive writing, and print writing is compared with print writing.

Frequently people write formal signatures and text differently than friendly communications such as greeting cards. Therefore, document examiners typically do not compare formal writing with friendly writing.

Altered Documents

A document examiner's due diligence includes examining the document for potential alterations. Modern photocopiers may have the capability of creating documents that appear authentic. I have been presented with photocopies that were allegedly original ink-signed documents. A microscope can differentiate ink from photocopy.

Examples of alterations:

- Changing a number on a check or invoice
- Adding information onto a document
- Lifting a signature or text from one document and placing it onto another
- Scribbling out writing so the underlying writing is supposedly unreadable
- Substitution of a new page into a document
- Changing an electronic document

Tools of the Trade

Tools used to discover alterations include alternate light sources, electrostatic detection devices, microscopes, light tables, and computer software.

Alternate Light Sources

Infrared light can discover when different inks were used to write on a document. Adobe Photoshop® can also differentiate inks. Ultraviolet light is used to discover erasures and chemical washes to remove ink from a check or other document. Ultraviolet light can distinguish different paper among pages in a document. Applying filters can help to see underneath scribbled-out writing.

Microscopes

Microscopes are used to examine details of handwriting and printed documents. They can show whether written lines are composed of continuous strokes or disjointed strokes. They can reveal unprinted document attributes such as the type of printer used, or defects in

the printer and font. Many attributes are best examined under the microscope

Electrostatic Detection Device

Electrostatic devices are used to examine indented writing on documents. Indented writing is invisible indentations in a document caused by pressure from writing on a page above.

Computer Software

According to Evidence Code section 250 and Federal Rules of Evidence section 1001(a), documents created with software are writings. Software such as Photoshop can detect attributes, such as changes in ink on a page. It can enhance images without changing their proportions or attributes to determine whether alterations exist. Enhancements include changing the exposure, increasing the resolution to enlarge the image, rotating the image, and other techniques. Electronically-created documents can also be examined for alterations.

Cut and Paste Alteration

When a person needs a signature or other text on a document, they can simply lift a legitimate signature from another document, place it onto the new document, and print the created document. The printout is passed off as a copy of a legitimate document that has been lost or destroyed. Frequently the created document has tell-tale signs of how it was created. Photoshop is used to place one writing over the other to determine whether they are identical.

A simple method you can use to determine a cut and paste is holding two pages on top of each other at a window to see whether two signatures are identical.

Keys to Remember

When interviewing a potential forensic document examiner, ask the prospects about their methodology for performing the work. Learn whether they follow a generally-accepted practice. Do they have sophisticated document examination equipment? Do they use software to compare writing or do they just view it side-by-side? How can they ensure the court their examination is based on science? Engage them to learn whether they have the skills for the work.

Mike Wakshull, MSc, CQE is a forensic document examiner and author of Forensic Document Examination for Legal Professionals.



SELECTION OF EXPERTS

by James O. Heiting

Certain witnesses are meant to help the trier of fact decide on issues by offering expert opinions on the matter. Experts are meant to be used when the judge or jury would find them helpful to understand the evidence or to determine a fact in issue by providing opinions based on scientific, technical, or other specialized knowledge. Expert use is becoming more and more prevalent, especially with juries, with trials becoming more and more costly as a result. Even then, it seems most trials end up with a result based on jurors' opinions and common-sense analyses, irrespective of what the experts may say. Hopefully, neither side of your cases will go wild in the use of experts (and judges will limit them to what is necessary).

But this column was requested to explore selection of an expert. While the request related to our field of emphasis (personal injury, medical malpractice, and wrongful death), the discussion can relate to any expert in any field.

First, we need to know what we are looking for in an expert. We want an expert with excellent qualifications that can impress the judge and jury with education and experience. Jurors do compare the experts' qualifications. We want someone who is seen by their peers as an expert in their field; and we want someone who is well respected, one who gives back to society and makes meaningful contributions to make our world a better place. The expert needs to be someone the jury looks at and says, "I want that person to be my doctor" or "If I ever needed a [fill in the blank] I would want that person to be the one."

We also need a communicator, a person who can teach the jury and use simple and understandable language and methods to convey concepts and conclusions so that the jury will adopt them easily.

Does the expert need to have trial experience and savvy? That would certainly be helpful, but is not necessary. If we can find an expert that has the other qualifications and qualities enumerated, we can teach them about the courtroom in very short order. The expert needs to be thoroughly familiar with the evidence, the exhibits, and the testimony, in essence, the entire case. The expert should also be familiar with the opinions of the other side and be ready to refute them and explain them away.

Courtroom "savvy" and trial experience of testifying in hundreds of cases can actually be a detriment when, in cross-examination, the opposing counsel cares nothing about the opinions or the basis for those opinions, but only attacks the idea that this person is a paid gunslinger and will say anything that the hiring party asks them to say. Prior testimony in other cases can be researched and used to claim

that prior testimony conflicted with the current presentation, or even supports the other side.

Then we need to focus our search. What type of expert do we need? What are the issues in this particular case that require, or would benefit from, expert opinion? What experts does the other side have, and do I need to refute the opinions that will be offered by those experts? Once I have that in mind, I will be able to target my search. (We try to find multiple experts in each area so that we can compare and determine which expert fits our case the best.) So where do we get such an expert? One place to start would be institutions of higher learning, or we may look to authors, recipients of prizes and accolades in their field, recognized speakers, chairs of departments in institutions of high repute; and we consult others who have experience with the type of expert we need (other lawyers, other experts, others who work in the field, etc.).

But what happens if we hit a dead-end after asking our peers for referrals, looking in treatises and research documents, exploring institutions of higher learning, and all the rest? Sometimes finding the right expert is difficult. In fact, sometimes engaging the proper expert is nearly impossible. Certainly, there is reluctance on the part of many who have expertise in fields to testify in court and subject themselves to cross-examination and the feeling that these attorneys really do not care about the truth; they only want to nibble around the edges, engage in character assassination, and try to make points with the jury.

Because experts are sometimes difficult to obtain, many services exist to provide experts in a variety of fields. While we generally shy away from those services with some of the explanations above in mind, there are times when it is helpful to engage these services and find an expert through them. You will be able to find many services available through legal publications and advertisements.

Once we decide that we are interested in a particular expert, we have to ensure that there will be no conflicts of interest, scheduling conflicts, or other issues that would make the selection less than fruitful, including prior deposition and trial testimony. Of course, we need to know about the fees and anticipated costs for the expert to review the case, prepare for deposition and trial, and give testimony. We try to make sure that the expert charges a reasonable fee and that the costs of engaging the expert will not overwhelm the case or client resources.

When evaluating the expert, we think about how one could attack that expert's credentials and/or opinions. Websites, advertisements, prior testimony, articles and publications, and even social media, can serve to be embarrass-

ing, and even contradictory to the opinions offered at trial. Careful preparation will minimize this exposure. Make sure the expert is prepared with all the materials and research necessary to be at the top of their game and to be able to testify in a supportive way. Slipshod methods, cutting corners, and guesswork or speculation can never help. Simple cross-examination will always expose these weaknesses.

Finding the perfect expert will take time, it will take patience, and it will take research and phone calls; but once you have found the right expert and they are prepared properly, when that expert testifies, you will have the satisfaction that you have done a good job, you have found the right person, and you have met the trust of your client. You will be able to throw out softball questions and the expert will use the questions to hit home runs. If your expert is properly prepared, exposure to cross-examination will not be terrifying.

In regard to providing testimony, the expert needs to be focused and understand the conclusions that need to be empathized, always bringing the discussion back to those conclusions and the support for those conclusions. There should be no argument with the cross-examiner, and ego strengths should be conveyed through qualifications, opinions, and the bases for those opinions, not raising one's voice or arguing with the question or the court. It can be very helpful for the expert to prepare with the attorney to provide an outline of questioning to make their presentation flow and be the most effective.

Always keep the jury instructions in mind as you are selecting an expert and as that expert is preparing for trial. Jury instructions for California civil cases are found at CACI, Instructions 219, 220, and 221. They are based on Evidence Code sections 720, 801, and 802, and a variety of cases. In Federal court, Federal Rules of Evidence sections 701 through 705 (Jury Instruction 4.14). The state criminal version of jury instruction for expert witness testimony comes through Penal Code section 1127b and CALCRIM Jury Instruction 332.

There are times when I wish it was not so, but there are experts in many, many fields. "Expert" is defined as a witness who has knowledge beyond that of an ordinary lay person regarding that particular issue and who can provide opinion testimony on an issue that requires or may require expertise to understand. It may involve DNA, accident reconstruction, human factors of observation and reaction, medical issues, or things as simple as whether certain marks were made by a certain type of bird, and whether that bird's footprints were made on a specific date or in a specific manner (true story).

Maybe this fits: "I don't always use an expert for these issues, but when I do . . ." I use the best.

James O. Heiting, of Heiting & Irwin, was president of the State Bar of California in 2005-2006, and president of the RCBA in 1996.



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THE APPRAISAL STORY

by *Cydney Bender-Reents*

So, your deposition is done. Now what? By way of background, my perspective is coming from more than 20 years in the industry performing as a company owner, appraiser, and expert witness for real estate valuations and damages. My perspective is obviously flavored by my own experience, but I absolutely believe that my knowledge of the mechanics surrounding expert testimony applies to a much wider audience than just those in the appraisal industry.

We start by asking a few questions. Do you have an expert witness you believe will be an asset? Do you know what characteristics separate the good expert witnesses from the great ones? It all starts with how you would answer a few different questions:

- What is the relationship between the attorney and the expert, what is the importance of the attorneys' assignment and instructions?
- What makes a good appraisal expert witness: Preparedness? Attention to detail? Compliance with industry standards?

I. Start with the Relationship Between the Attorney and their Expert

In my experience, there are two types of litigators. The first are attorneys with experts that just "show up." The second type are attorneys that actually embrace the expert witness as a valued and important cog in their cases. The litigation style where the expert just shows up and is lobbed softball questions is indicative of an attorney who has predetermined that his/her expert adds little value to the case. The attorney believes that he/she is the only determinate in winning the case. In this scenario, the attorney is really looking for baseline competence in the hired expert; just do not screw up on the stand. The attorney will ask the leading questions, require a yes or no answer, or a brief narrative, and the expert witness testimony has little influence on the jury, as the witness is only the mouthpiece for the attorney. The attorney has likely spent little to no time with the expert witness, does not feel it is important to drive the comparable, and finds the expert to be a vehicle of testimony and not a game changer.

The second type of litigator embraces the expert witness. The attorney recognizes the true meaning of the word "expert" and understands that this person brings a value and a message to the table that the attorney cannot deliver. The attorney functions to connect the technical information in such a manner that every juror can now form an opinion similar to the experts. The attorney works with the

expert to understand the testimony, and more importantly, rehearse the delivery of the testimony to ensure the message is communicated, consistent, and will stand up to the pressure of opposing counsel.

II. Understanding the Attorney's Assignment and Instructions

This can be the most difficult part of any litigation. When appraisers and attorneys start a project, one of the key issues is to really ascertain and understand what the question is that we are answering. Were there damages? When? If there was a preexisting value detriment, has the project exacerbated the condition? And can that be measured? Is the real issue simply that the market has changed? How many valuation scenarios are required? Having both professionals spend time defining the question, the appraisal problems, the timelines, dates of value, and the assumptions is pivotal to sound expert testimony. The complication is that understanding may also change as new facts are discovered.

III. What Does a Valuation Expert Rely On?

As valuation experts, we rely upon legal to provide case law that may influence our approach. We see confusion between these roles when an appraiser makes legal determinations and attorneys play appraiser. As appraisers, we are not attorneys and while we may be aware of some case law, a review by legal of the applicable case law should be standard practice with your expert witness. This may lead to a legal instruction to prevent the appraiser from making a legal determination. Role clarity, especially understanding the difference between a legal determination and a valuation problem, is paramount.

Some attorneys shy away from making a legal determination as this may be construed as influencing the valuation. For example, a levee has provided flood control for over 60 years, however, when the levee was built, no property rights were acquired. The appraiser may ask legal if this represents a prescriptive easement. We have asked this exact question four times and received two different answers. Two attorneys felt that it absolutely met the test of a prescriptive easement and were willing to direct the appraisers to assume a prescriptive easement existed. The other two attorneys were not willing to give the appraiser a directive and asked them to determine how the market viewed a levee on agricultural properties. As appraisers, we should not be voicing an opinion as to the legal basis and legal tests.

Beware of appraisers masquerading as attorneys. How many times in a deposition have you seen your valuation witness give an opinion outside of their expertise? I have seen situations where an appraiser has been asked to provide an opinion as to the legitimacy of a lease that was not fully executed. The following is a line of questioning surrounding typical commercial real estate brokerage practices:

- (1) Was this a valuation question?
- (2) Was this a legal question?
- (3) What is typical of brokerage practices?

Too many times the appraiser exceeds their role or their expertise.

IV. Use of an Appraiser in Preparing for the Deposition

One of the successful strategies includes an appraiser preparing an attorney for the deposition. You should know your own expert's analysis as this will help you ask questions to clarify the differences between the two values or find the true value drivers. Should you have your expert help in your deposition preparation? A clean approach is using a consulting appraiser as a team member to advise you as to the differences in valuation and methodology between the two appraisers. This protects your expert witness from forming an opinion that may or may not be used against them in trial.

V. What Makes a Good Expert Witness?

Here is what I think. Your expert must know the problem, the valuation, methodology, and every aspect of the assignment. The expert must know the Uniform Standards of Professional Appraisal Practice and be compliant. These are the bare minimum standards to be an expert witness. However, none of those standards will convince a jury if your witness lacks confidence. The expert needs the right personality and a rock-solid belief in his/her self, experience, and preparation to be able to bring that home for a jury. The smallest, tiniest issue can erode confidence in your numbers with a judge or jury, but a good expert witness can bring that back for you with a compelling voice and a clear explanation of the expert's process. Clearly, opposing counsel will be trying to find a discrepancy in order to undermine and discredit your expert's testimony. However, if your witness is confident in his/her process and is well prepared, the cross examination will be ignored.

A great expert is the one with the ability to tell the story, to communicate the methodology, findings, and conclusions with conviction. This ability to tell the "story," to communicate the information in a manner that is both logical and captivating for a layperson jury is the piece missing in so many trials. The themes and story set forth in the deposition carry over to trial. Good storytelling takes practice and an innate understanding of how to com-

municate and connect with an audience. Have your expert present the information to you, do an internal practice, discuss anticipated questions, have them practice in front of people from his/her office that know nothing about valuation and appraising. As appraisal expert witnesses become fewer and fewer, our industry, attorneys and appraisers, need to invest in our craft. Attorneys need to be willing to coach the appraiser as to the narrative. Appraisers need to be willing to develop their communication skill by studying or taking classes outside of the norm. Be assured that your expert can describe the appraisal problem and leave you understanding something you had not considered. Can your appraiser communicate the problem, research, and findings in such a way that every juror now understands the approach, reasoning, and conclusions? Can the juror repeat the narrative and become your expert's advocate? A good appraiser does not necessarily translate to being a good expert witness. Accomplishing the technical aspects of appraisal is the ante, but communicating the story in a compelling and confident manner is the game changer. It is the difference between a good technician and a great valuation expert.

Cyndney Bender-Reents, MAI, is the founder and CEO of Bender-Rosenthal, Inc., California's largest full-service Right of Way firm.



MEMBERSHIP

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

Kelly L. Dingwell – Dingwell Law, Santa Ana

Martin M. Flores (A) – Gang Expert Witness Services, Los Angeles

Nancyrose S. Hernandez – Law Office of Nancyrose Hernandez, Canyon Lake

Howard L. Hoffenberg – IP Law Offices of Howard L. Hoffenberg, Palm Desert

John D. Lueck – Law Offices of John D. Lueck Inc., Rancho Cucamonga

Howard L. Thomas – Law Office of Howard L. Thomas, Corona

(A) – Designates Affiliate Members



EFFECTIVELY CONDUCTING TRIAL EXAMINATION OF EXPERTS

by Scott Ditfurth

You have completed your discovery, you have designated your expert witnesses, and you have even deposed the other side's experts. Now what? One of the tougher skills in conducting trials is being able to effectively conduct a direct examination of your expert, as well as successfully conduct a cross examination of the other side's expert. This article provides suggestions or guidelines in conducting trial examinations for experts.

Direct Examination of Your Expert

Provide An Easy and Understandable Roadmap

This is often harder than it sounds. You want to present why your expert is qualified, explain what those opinions are, and the jury can easily understand how she/he reached those opinions in a manner that can be easily understood by the jury.

Start by preparing an outline for the testimony. An outline, as opposed to a script, provides for a more natural discussion about your expert's qualifications, the work the expert performed, and the opinions she/he reached.

Next, it is important to establish that your expert is qualified to render opinions on the topics at issue. Often experts have a broader scope of expertise than what they are being asked about at trial. In going through the expert's curriculum vitae, focus on topic specific achievements, awards and training in order to establish credibility for your expert.

Next, you should provide the appropriate background to set up the opinions your expert reached. In doing this, you elicit from your expert the necessary research, investigation, in and factual background your expert conducted in coming up with their opinions. This will allow the jurors to better understand the work your expert did in reaching her/his opinions.

Finally, your expert should provide her/his ultimate opinion on the matter.

Use Plain Language And Simple Terms

Experts have superior knowledge on the topics they are providing testimony for. No matter how believable your expert is, if the jury does not understand the opinions being expressed, the testimony will all be for naught. This can be achieved by having the attorney use short, concise questions, and having the expert use real world analogies to ensure the jury understands the opinions being expressed. Avoid using legal jargon or complex language.

Provide A Summary

At the end of your direct exam of the witness, it is important to tie everything together and leave the jury with an understanding of why your expert is qualified, what your expert did to reach their opinions, what their opinions are, and why they should be believed. This can be achieved by ending the examination with two or three major points from the opinions in order to leave the jury with an overview of what the expert has said.

Cross Examination of an Expert

Develop a Theory

Before you even start your examination, you should develop a theory of why the expert's opinions cannot be trusted or are otherwise not credible. Is the expert mistaken in her/his testimony? Is the expert relying on faulty facts? After developing a theme, your cross examination can build off of that theme.

Keep the Expert Honest

The framework for an effective cross examination happens long before the examination. It is important that the attorney flush out and box in the expert regarding her/his opinions during deposition. This includes asking the expert during the deposition the exact opinions that she/he intends to give at trial, as well as the basis for those opinions. Thereafter, the cross examination at trial effectively becomes keeping the expert honest to her/his deposition.

Ask the expert leading questions drawn from the deposition that elicit only a yes or no response. Do not allow the expert to provide opinion testimony by asking open-ended questions that can result in the expert presenting to the jury her/his expertise and credibility on the subject. Additionally, ask the judge to strike any non-responsive answers and do not ask questions that you are not able to impeach the expert on. Again, keep the expert honest.

It is also important to stick to a handful of points. It is not necessary to refute every single thing that comes out of an expert's mouth. Rather, select a handful of points that drive home the theme you selected and stick to those points. While the expert may have superior knowledge on the topic, you have superior knowledge of your case.

Challenging Foundational Facts

An expert witness's credibility diminishes if it can be shown that the expert relied on inaccurate facts. An expert's opinion is only as good as the facts she/he relied on. If the facts cannot be believed, then the expert's opinion cannot either. One way to challenge foundational facts is to look for omissions or inconsistencies in the expert's reports or other records. Such omissions or inconsistencies may undercut the expert's opinion.

Know When to Stop

Always try to end on a strong and clear note. Avoid asking wrap up questions that allows the expert to further explain her/his opinion or offer new information.

Scott Ditfurth is a litigation partner at Best Best & Krieger LLP in the firm's Riverside office and practices all aspects and stages of litigation for both private and public clients in contract claims, business disputes, and real property disputes, such as land use, planning, eminent domain, and inverse condemnation.



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OPPOSING COUNSEL: WYLIE AITKEN

by Megan G. Demshki

When I first met Wylie Aitken, founding partner of Aitken Aitken Cohn, I was a student at Chapman University, where Wylie now serves as the Chairman of the Chapman Board of Trustees. In the sea of influential and successful people that kindly donate their time to Chapman, Wylie always stood out—kind, compassionate, well-spoken, and not afraid to question the status quo. What I didn't know at the time was that my initial impression of Wylie at 20 years old would only become truer in the years following, or that I would have the opportunity to start working for him about two years later.

Thanks to Wylie and the other seven attorneys that make up Aitken Aitken Cohn, that opportunity would change the course of my career and, in all reality, my life.

Wylie Aitken was born in Detroit, the fourth child out of six. His family came to California in 1955. Ultimately, he would meet his wife, Bette, in Garden Grove. After attending, Santa Ana College and Cal State Fullerton, Wylie accepted a scholarship to Marquette University Law School in Milwaukee, Wisconsin. Wylie was the youngest president in the history of the California Trial Lawyers Association at 35 years old. Wylie and Bette have three children, Darren, Chris, and Ashleigh, all who now work alongside Wylie at Aitken Aitken Cohn. Wylie and Bette are now busy grandparents with 11 grandchildren.

Learning from great mentors, like Vern Hunt and Herb Hafif, but always applying his own signature Wylie-twist, Wylie has tried some of the most influential cases of our time, several of those cases right here in the Inland Empire. Wylie's passion for justice is the driving force behind his practice, and a cornerstone value on which he has built Aitken Aitken Cohn. Occasionally, people will ask Wylie when he is going to retire, to which he quickly replies, "I'm having too much fun to retire."

And while our cases often involve tragic events, the ability to represent these individuals is rewarding, challenging, fulfilling and life-altering. In that way, we have a whole lot of fun.

His passion is infectious, and his work ethic is unparalleled. He drafts, edits, strategizes and communicates with clients daily. He is the Energizer bunny of our law firm—balancing a demanding career, an incredible family, and an active social and civic life. He has shown me how to practice law by doing, never too busy to provide feedback on



Wylie Aitken

my own cases or a listening ear on another attorney's closing argument preparation. He has shown us the importance and value of collaboration.

It only takes a few minutes being in the same room as Wylie to understand how he stands out among his peers. Whether it is his dynamic personality, hearty laugh or effortless ability to connect with people, Wylie redefines what it means to be a lawyer and encourages the legal community around him to be more engaged advocates for their clients and for justice. Wylie challenges the legal system to truly administer justice to consumers from all walks of

life. He engages on a personal level and first name basis with clients. Wylie has played a pivotal role in the development of the law and consumer protections through risky, precedent-breaking, and provoking litigation.

Wylie tells a story of trying a case in Department 1 of the Riverside Historic Courthouse following the restoration in front of Judge Victor Miceli. He recalls wondering if they could ever fill up all those seats in Department 1. He recalls cases he handled in the Inland Empire when "wig wags" were the only safety precaution warning motorists of oncoming trains. He has helped to create safer parking lots, roadways, and even fast-food chain playgrounds, all from cases stemming from Riverside and San Bernardino counties.

He has held Southern California Edison accountable in one of the most horrific cases the firm has ever handled, the Vego matter. Three members of the Vego family, mother, father and eldest son, were electrocuted in their backyard in San Bernardino when a live electrical line fell and failed to deenergize, all while the two younger children watched. While the civil settlement in this matter was confidential, the Public Utilities Commission fined Southern California Edison \$16.5 million as result of this incident. The firm is currently handling another electrocution incident against Southern California Edison that occurred in Cabazon.

So, what are some of the lessons that Wylie Aitken has taught me about being a trial lawyer?

- Your reputation and your integrity are your greatest assets.
- The practice of law is a noble profession—as such, we have a duty to practice with civility and contribute to our legal community and the community at large.

- Standing up for justice doesn't just happen in the courtroom—it also happens in the legislature.
- If you approach every case with client's best interest as the focus, you can never go wrong.
- Don't be afraid to have an unpopular or unique idea.
- Value the opinions and feedback of those around you, but don't be afraid to challenge their thinking.
- Expert witnesses can be found in unique and unconventional places.
- Prepare every case as if you're going to trial from day one.
- A great trial lawyer begins as a great storyteller.
- Get out of your office and get your feet on the ground.
 - Great trial lawyers go hear from witnesses directly, don't simply just send an investigator.
 - Go look at an accident scene with your own eyes, you'll be surprised what you can't learn from Google Maps.
 - Go sit in your client's hospital room or living room with them and take the time to really get to know them.
- Stay current with pop culture and technology—it's an important tool to help you connect with a jury.

(He just used a Harry Potter reference in an opposition motion last week. I thought it was the coolest thing ever.)

- Don't be afraid of failure. You will learn more from your losses than your wins.
- Keep it simple-stupid.
- A diet of potato chips and milk is perfectly acceptable during trial.

Working with Wylie has been one of the most influential experiences of my life. He challenges the way I think on a daily basis, while valuing my opinion and helping me develop my own style. He truly cares wholeheartedly about our clients, the impact we have on creating safer communities, and access to justice. Wylie is a fierce advocate, and an exceptional person.

He is excited to be spending more time in the Inland Empire legal community. Next time you see him around, walk right up and introduce yourself. I promise you're in for a warm smile, a wholehearted laugh and a great story.

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; and is president of the RCBA Barristers. Megan can be reached at megan@aitkenlaw.com or (951)534-4006.



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NOMINEES FOR RCBA BOARD OF DIRECTORS, 2019-2020

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2019. (See biographies below, which have been submitted by each candidate). Please watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting on June 14.



Jack B. Clarke, Jr.
President

As President-Elect for 2018-2019, Mr. Clarke will automatically assume the office of President for 2019-2020.



Sophia Choi
President-Elect

Sophia Choi is a deputy county counsel for Riverside County and has been with the office since 2006. She graduated from Notre Dame High School in Riverside as Valedictorian. She received her B.A. degree from the University of California, Los Angeles with highest Latin honors. She was a member of the Alpha Kappa Delta Sociology Honors Society and served as the general manager for the Southern California Korean College Students Association. Sophia received her J.D. degree at the age of 22 from Southwestern University School of Law in the SCALE two year J.D. program and was co-editor in chief for the *Advocates*. She received the CALI Excellence for the Future Award in Constitutional Perspectives. During law school, Sophia did an externship with the California Attorney General's Office in the Criminal Appeals, Writs, and Trials Division.

Sophia was the co-founder and inaugural president of the Asian Pacific American Lawyers of the Inland Empire. She has received special recognition from the City of Riverside, being honored as a recipient of the HRC Riverside Heroes Award by the Human Relations Commission and Mayor Ron Loveridge for her community involvement.

Sophia has been active in the Riverside County Bar Association for more than a decade. She has been a contributing writer of the Riverside County Bar Association's Bar Publications Committee, for which she has written numerous articles, including judicial and attorney profiles and feature articles. She has also been the co-chair of the Law Day Committee, through which efforts were made to contribute to the general public of the Riverside County community. Sophia participated as a scoring attorney in the Mock Trial program for several years. She further served as the member-at-large for the Riverside County Barristers Association and is currently the vice president of the Leo A. Deegan American Inns of

Court. She has also served as a director-at-large, secretary, and chief financial officer of the Riverside County Bar Association and currently serves as its vice president. Sophia would love the opportunity to continue to serve the Riverside community as the Riverside County Bar Association's president-elect. Riverside has been her home since the age of seven, and she would love to work actively to contribute to the advancement of the RCBA. Please vote for Sophia Choi.



Neil Okazaki
Vice President

Each month, the *Riverside Lawyer* prints our Mission Statement which declares that we "proudly serve our members, our community, and our legal system." There are so many ways the RCBA makes a difference in our legal community, as well as our greater community at large. I am proud to be a member of this organization because of the services that are provided, the impacts that are made, and the people involved in these efforts.

I am employed with the Riverside City Attorney's Office, where I serve as legal advisor to our city's Police and Fire Departments. I am also tasked with managing the City Attorney's Neighborhood Livability Program, which strives to strategically solve quality of life challenges using a coordinated approach which engages our communities and stakeholders. Our work plays a role in helping Riverside continue to be a first-class city with vibrant and livable neighborhoods.

I earned my undergraduate degree locally at UC Riverside. During my subsequent time at Loyola Law School on a partial scholarship, I was an editor of the *Loyola Law Review*. My published law review article was cited by the California Court of Appeal, the Texas Court of Appeals, *American Law Reports* (A.L.R.), and *California Criminal Law* (Witkin). Since being sworn in as an attorney here in Riverside, I have tried 18 cases (including 15 as sole trial counsel).

I have been a member of the Leo A. Deegan Inn of Court (8 years), the Attorney Settlement Officer panel for the United States District Court for the Central District of California (7 years), and the UCR Chancellor's Advisory Committee for Asian Pacific Islanders (5 years). I have also been a presenter for League of California Cities statewide conferences, the International Municipal Lawyers Association, Legal Secretaries, Inc., UCR Extension, and UCR Law Day. Additionally, I have prepared updates to the California Municipal Law Handbook and the LSI Law Office Procedure Manual.

Being a member of the RCBA allows all of us to serve our community, grow relationships with colleagues from all areas of practice, and enhance our professional talents. This is why the RCBA is the heartbeat of our local legal community. It has been an honor to serve on the RCBA Board of Directors for several years. Because of the pride I have in being a member of our organization, I would be honored to continue to serve on the board. Thank you for your consideration.



Lori Ann Myers
Chief Financial Officer

Lori Ann Myers was born in Huntington Beach, California and grew up in Lake Forest. She received her law degree from Western State University College of Law. She has practiced exclusively in the area of criminal defense. Working as a clerk for the Orange County Public Defender's Office in law school, cemented her belief that criminal defense was her calling. Lori's first job as an attorney was with the Riverside County Public Defender's Office.

Currently, Lori has a vibrant private practice, which includes representation of clients in the counties of Riverside, San Bernardino, Los Angeles, Orange, and San Diego. She has tried multiple homicide cases and meets the State Bar requirements to represent clients charged in capital cases in which the death penalty is sought. She has tried, to verdict, cases involving sexual molestation, rape, driving under the influence, vehicular manslaughter, assault, robbery, and gang allegations. Lori was recognized by AVVO with an award as Top Attorney for 2017 with a superb Attorney rating by the Legal Community and was also recognized by the American Institute of Criminal Law Attorneys as one of the 10 Best Attorneys in 2017 for Client Satisfaction in Criminal Law in California

Her involvement in the community has included participation as a scoring attorney for various Mock Trial competitions and a volunteer with VIP Mentors. This organization, formerly called Volunteers in Parole, contracts with the California State Bar Association to provide volunteer attorneys who serve as mentors to parolees. The program helps facilitate a successful re-entry into society by providing the parolee with much needed guidance and advice from a reliable mentor. Currently, she is on the Board of Directors as the secretary and is the co-chair of the Criminal Law Section for the RCBA.

In addition to her private practice, Lori provides representation to indigent criminal defendants. The Public Defender has many cases in which a conflict of interest is present. In these situations, the defendant is still entitled to a defense attorney. The County of Riverside contracts with entities to provide defense attorneys to indigent defendants who cannot be represented by the Public Defender. Lori has been working within this system of court-appointed counsel for almost 15 years.



Stefanie G. Field
Secretary

Stefanie Field has been an active member of the Riverside County Bar Association since October 1999 and is currently serving her second year as a director-at-large. Over the years, her involvement has grown from Mock Trial volunteer to participation

in several committees, providing numerous contributions to the *Riverside Lawyer*, chairing the Business Law Section, and for the last two years, co-chairing the Civil Litigation Section. She has also volunteered to provide MCLE presentations for the RCBA, including a nuts and bolts primer on dispositive motions and dealing with disputes between business owners. She is a long-standing member of the Leo A. Deegan Inn of Court. Ms. Field is proud to practice law in the Inland Empire and welcomes the

opportunity to further serve the legal community and the RCBA as the secretary on the Board of Directors.

Having been an active member of the community and involved with several nonprofit organizations, Ms. Field is aware of the obligations associated with sitting on the board of directors and acting as its secretary and is ready, able, and willing to make that commitment. In fact, she has been a director on the board of several other organizations, including holding officer positions, where such positions are not empty titles, but positions of significant responsibility and authority. Likewise, she has spent the last two years on the RCBA Board as a director-at-large and is familiar with its workings and the demands placed upon its officers. This experience will enable her to fulfill the obligations and duties of secretary.

As general background, Ms. Field is a senior counsel at Gresham, Savage, Nolan & Tilden. She graduated from the Georgetown University Law Center in 1995 and was admitted to the California Bar in February 1996. While not a Riverside native, Ms. Field has made this community her home. Since 1999, she has practiced law in Riverside and has embraced the Riverside legal community. Riverside has a robust legal community where professionalism, civility and community matter. That attitude is one of the RCBA's strengths and is part of the reason Ms. Field has been so active in the RCBA.

In sum, Ms. Field's lengthy history with the RCBA, her commitment to the Riverside legal community, and her past experience with nonprofits makes her an ideal candidate for the position of secretary. Ms. Field would embrace the opportunity to use her experience to benefit the RCBA and serve her legal community and requests your support in this regard. Thank you.



Kelly Moran
Secretary

I am incredibly honored to have been nominated for a position on the Riverside County Bar Association Board of Directors. I have had the opportunity to serve as a board member for three years, first as the 2013-2014 Riverside County Barristers president and later as a director-at-large from 2015-2017, and would be privileged to continue that experience in the future as the 2019-2020 secretary of the RCBA.

As a Riverside native, I strive to give back to the community that I am so proud to call my hometown. I am a proud graduate of Notre Dame High School and UC Riverside. After obtaining my JD and a Certificate in Dispute Resolution from Pepperdine University School of Law, I was fortunate enough to return to Riverside to begin my career at Thompson & Colegate LLP. I now serve as a deputy county counsel for the County of Riverside, practicing in the area of public safety litigation.

Throughout my time as an attorney, I have had many wonderful experiences in the Riverside legal community. Most near and dear to my heart has been my work in helping to establish and coach the Mock Trial team at my alma mater, Notre Dame High School. This experience has been a challenging and rewarding endeavor that has allowed me to form deeper friendships in the legal community, strengthened my appreciation for the law, and has given me a continued sense of pride and optimism for the future of the Inland Empire.

In addition to my work with Mock Trial, I am also privileged to have been included as a member of the Court's Civil Bench and

Bar Panel and the Leo A. Deegan American Inns of Court. I have also had the chance to help facilitate both the Riverside County Bar Association's Mentoring Program and the Riverside County Bar Foundation's Adopt-a-High School program. Outside of the legal community, I volunteer as a "Wish Granter," member of the Speaker's Bureau, and member of the Medical Outreach Team for the Orange County and Inland Empire chapter of Make-A-Wish.

I am proud to be a member of the Riverside legal community and would be honored to have the opportunity to serve as the next secretary of the RCBA Board of Directors.



Amanda Daams
Director-at-Large

Amanda Daams is an associate in Best Best & Krieger's Environmental Law & Natural Resources practice group, where she assists public and private clients in navigating complex issues related to the California Environmental Quality Act, the National Environmental Policy Act, and associated environmental and land use laws.

Amanda grew up in Riverside and graduated from Notre Dame High School as valedictorian. She graduated summa cum laude from the University of San Diego and is a member of Phi Beta Kappa. Amanda received her law degree from the University of Notre Dame in 2009. During law school, she participated in the San Diego Volunteer Lawyer Program, providing a variety of pro bono legal services as part of the HIV/AIDS Legal Services Project. After finishing law school, she knew she wanted to return to Riverside to practice law. She began her legal career at Gresham Savage Nolan & Tilden before joining Best Best & Krieger in 2017.

Amanda became active in the RCBA since her first days as a young lawyer. She was Barristers president in 2012-2013, contributed to *Riverside Lawyer* magazine, and served as a mentor for the New Attorney Academy. She is also a member of the Leadership Riverside Class of 2019.

In addition to writing and speaking on environmental law issues, Amanda has served as the chapter director of the Inland Empire Chapter of the Association of Environmental Professionals (AEP) since 2010. AEP seeks to enhance, maintain, and protect the quality of the environment through research and education and advising on legislative matters. She represents the Inland Empire on AEP's state board of directors.

Amanda enjoys spending time with her husband and their three children. She is excited to give back to Riverside's legal community through increased involvement in the RCBA and would be honored to use her talents on the RCBA board of directors.



Megan Demshki
Director-at-Large

Megan Demshki is a trial lawyer at Aitken Aitken Cohn in Riverside. Megan was born and raised in the city of Riverside. Megan left Riverside for six years to attend Chapman University for her undergraduate and law school studies. Upon graduating from law school, Megan returned to join the Riverside legal community.

Megan has been active in the Riverside County Bar Association for several years. She is currently finishing her term as president of the Barristers, the new and young attorney organization of the RCBA. Megan also serves as a co-chair for the RCBA Civil Litigation Section. Megan participates in the RCBA Publications Committee and the RCBA CLE Committee.

Megan is a proud member of the Deegan Inn of Court. Last year, Megan was presented with the Biddle Book Award by the Inn. The Biddle Book Award recognizes an outstanding attorney who exemplifies the goals of the Inn and for her professionalism and dedication to the legal community.

Megan serves as the first vice-president of the Consumer Attorneys of the Inland Empire (CAOIE) and the education chair of the Consumer Attorneys of California New Lawyers Division. Megan was awarded the 2018 CAOIE Presidential Award for Distinguished Service.

Outside of her involvement with the legal community, Megan serves as the treasurer for the Pick Group of Young Professionals, on the board of directors of the Janet Goeske Foundation, and on the executive leadership team for the American Heart and Stroke Association's Go Red for Women.

Megan is eager to continue her involvement with the RCBA as a director-at-large by bringing quality opportunities for members of the RCBA to network and form meaningful relationships.



Chris Johnson
Director-at-Large

As a lawyer for over twenty-five years, Chris has handled transactional and litigation matters in real estate, land use & development, title review, bond (re)financing, merger & acquisitions, and business law.

After receiving his Juris Doctorate from the University of San Diego cum laude in 1993, he obtained his initial training as an associate working with the trial lawyers in the San Diego law firm formerly known as McInnis, Fitzgerald, Rees & Sharkey. In 1998, he worked as in-house counsel for the Insurance Company of the West. From 2002-2015, he was the principal of his own law practice: Single Oak Law Offices in Temecula. In November of 2015, Chris joined Reid & Hellyer. He became a partner in February of 2017. Chris is the senior attorney responsible for the Temecula/Murrieta office.

Chris has been a member of the Riverside County Bar Association since 2010. Since that time he has participated as a panel member during a day of "Access to the Courts" for the public and as a scoring attorney in the high school mock trial competitions. Chris co-chaired the Solo/Small Firm Section of the Riverside County Bar Association from 2014-2017.

As a director-at-large, Chris would strive to enhance several facets of the ongoing enterprise:

- Increase the participation and coordination of private, public, and governmental practitioners in the Association;
- Garner greater inclusion of those practitioners who practice outside of the traditional downtown area such as southwest county and the desert communities;
- Emphasize greater civility and professionalism in practical legal training curriculum such as the ongoing academy training program. Also explore the possibility of bringing that program to other regions of the county.

Chris has lived in Temecula with his wife and their two daughters since 2003. Because the daughters now attend college out-of-the-area (UCLA and Point Loma Nazarene University), Chris and his wife spend a lot of their “free” time meeting the needs of their 2-year-old English bulldog “Titus.”



Elisabeth Lord
Director-at-Large

I am honored to have been nominated to serve as a director-at-large for the Riverside County Bar Association. I love being able to participate with my fellow bar members in helping our community and feel that I will be able to do more in this position.

I am a partner with the law firm of Bratton, Razo & Lord and have been a Certified Family Law Specialist since 2014. I have been a part of the Riverside County legal community since 2005. I received my B.A. in language studies from University of California Santa Cruz. I received my J.D. from Santa Clara University and was admitted to the California Bar in December 1999. Prior to moving to Riverside County, I practiced juvenile dependency, criminal law, and family law in Santa Cruz and Santa Clara counties. In 2005, I relocated my family and practice to Riverside County.

Since that time, I have been involved in the local legal community serving as president and vice-president of the Mt. San Jacinto Hemet Bar Association and as a volunteer mediator to assist the court with resolving family law cases involving self-represented litigants. I have been an active member of the Riverside County Bar Association for many years. I am a regular participant in the Elves program having served as money, wrapping, and shopping elves. I participate in our excellent mock trial program by serving as a scorer. I have been a member of the Leo Deegan Inn of Court for four years and currently serve as an attorney master. I am a participant in the Youth Court program helping to supervise high school students with presenting the sentencing phase of a case.

I welcome the opportunity and would consider it a privilege to be selected to serve as a director-at-large. I thank you for your consideration to allow me to continue to serve our great legal community and our community at large.



NaKeshia Ruegg
Director-at-Large

NaKeshia Ruegg is the co-chair of the Family Law Section of the RCBA and practices family law at Holstrom, Block & Parke. NaKeshia has been active with the RCBA and legal community as a whole for the last 10 years. She began volunteering with Public Service Law Corporation and was first asked to chair the Family Law section in 2011. Even prior to her legal career, NaKeshia volunteered as a CASA (Court Appointed Special Advocate) for abused and neglected children in Milwaukee County, Wisconsin.

NaKeshia wants to see the RCBA expand its reach, become even more involved and be able to give back to the community and its members. Under NaKeshia's leadership, the Family Law Section has been able to do just that. This year will be the section's 3rd annual Winter Gala—a formal evening of dinner, dancing, and awards held jointly with the SBCBA and several other

legal organizations throughout the Inland Empire. Last year, the event raised over \$26,000, one of the largest fundraising efforts in RCBA history, which was donated in support of children and other victims of domestic violence, a cause very close to the family law community.

NaKeshia participated with judicial officers and other members of the family law bar on a committee designed to assist our courts in implementing the recommendations of the Elkins Task Force; a statewide effort to address the volume of family law cases and pro per litigants and balance the limited resources with the increased demands for services within the Family Court system.

In recent years, NaKeshia helped form the Inland Empire legislative committee that reviews and offers feedback to FLEXCOM, regarding pending family law legislation. This statewide group lacked input or involvement from the Inland Empire until the establishment of our legislative liaison. The Committee is now involved in the statewide effort to ensure family law legislation addresses the needs of the state and our county as well.

NaKeshia wants to continue to work to bring bigger events and expanding opportunities to the RCBA and its members. The Family Law Section has done incredible work in the past few years and the experience and contacts NaKeshia has developed there will greatly serve the RCBA as a whole moving forward.



Gabriel White
Director-at-Large

Gabriel White is a senior appellate court attorney at the Court of Appeal, Fourth District, Division Two, in the chambers of Justice Michael J. Raphael. Prior to Justice Raphael's confirmation in 2018, Gabriel worked for Justices Thomas E. Hollenhorst and Carol D. Codrington. As an appellate court attorney, Gabriel assists the justice to whom he is assigned in resolving issues before the court and particularly in preparing tentative and final opinions.

Gabriel attended Amherst College (B.A. 1998), and studied Slavic languages and literatures as a graduate student at University of California, Berkeley (M.A. 2000) before switching to the law. He received his J.D. from University of California, Hastings College of the Law in 2008. As a law student, he spent his 1L summer as an extern at the San Francisco Superior Court (Judge Peter J. Busch), and a semester of his 2L year as an extern at the California Supreme Court (Justice Carlos R. Moreno). After receiving his J.D., he clerked for Judge Edward C. Reed of the United States District Court for the District of Nevada for two years. After clerking, and until he was hired by the Court of Appeal in 2013, he practiced business litigation with an emphasis on attorney liability matters as an associate, first at the San Francisco law firm Howard Rice, and later at the San Francisco and Los Angeles offices of the national firm Arnold & Porter, which combined with Howard Rice in January 2012.

Gabriel has been an active member of the Riverside County Bar Association for the past several years. He has also participated in the most recent two program years of the Leo A. Deegan Inn of Court. He spends most of his vacation days volunteering as a temporary judge for the Riverside Superior Court. He is honored to have been nominated to serve as director-at-large, and he welcomes the opportunity to serve the Riverside legal community in that capacity.



THE RCBA ELVES PROGRAM 2018

by Brian C. Percy

On December 24, 2018, the RCBA's Elves Program concluded its eighteenth annual program of bringing Christmas joy to needy families throughout Riverside County. This year we were able to serve 69 families. The Elves provided Christmas gifts and a holiday dinner to 303 individuals (214 children and 89 adults).

This year we worked with the following organizations to identify families in need: the Victim Services Division of the Riverside County District Attorney's office, the Riverside County Probation Department, the U.S. Vets program at March Air Force Base, the Riverside Police Department, the Hemet Rotary, and the Family Justice Centers in Riverside, Murrieta, and Indio.

Every year the success of the RCBA Elves Program is solely due to the great support and generosity of you, our membership. Helping others is infectious and Elf participation has grown beyond the RCBA members, to include their office staff, their families, clients, and friends.

We received many words of appreciation from families that we were able to help during the holidays season.

A Special Thank You to the Following:

The Money Elves

Our funds came from direct donations and monies raised during several bar association events held throughout this past year. The money provided gifts for each family member, along with a Stater Bros gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the family's holiday travel. I would like to thank the following Money Elves for their support:

Best Best & Krieger; Varner & Brandt; Stream Kim Hicks Wrage & Alfaro; Thompson & Colgate LLP; Reid & Hellyer; Aitken Aitken Cohn, LLP; Bratton, Razo & Lord; The Chandler Law Firm; Cota, Cole & Huber; Holstein

Taylor & Unitt; Ward & Ward; Attorneys to Go; Judge William Bailey, Ret.; Ret. Justice Barton & Merla Gaut; Ret. Judge Dallas and Pat Holmes; Judge Meredith Jury, Ret.; Judge Kenly Kato, US District Court; Judge John M. Monterosso; Judge Richard Van Frank, Ret.; Judge Kira Klatchko; Judge Craig & Maria Riemer; Judge Gary Tranbarger, Ret.; Judge Sharon Waters; Margaret Barns; Kimberly Byrens; Pam Crawford; Scott Ditfurth; Bernard Donahue; Eunoia Pacific, Inc.; Stefanie Field; Kaye Family; Karen Fogarty; Sandra Freedman; Michael G. Gouveia; Elizabeth Han; Timothy Haynes; Tammy Ingram; Roxana Jimenez; John Wahlin; Mary Karlson; Ron Kaufman; Diana Renteria; Kirsten Shea; Jo Larick; Sandra Leer; Cheryl Madaris; Jennifer Oberg; Neil Okazaki; Colleen Ojeda; Juan F. Ornelas; Mr. Kay Otani; Mary Jean Pedneau; Sylvia Perez; Glen Price; Rob Schelling; Barrie Roberts; Riki Rivera; Lisa Ruiz-Cambio; Isabel Safie; Sally Griepsma; Carol Sanchez; Cheryl Seaman; Charity Schiller; Kristi Smith; Monica Smith; Steven Smith; Robert Swortwood; Stacy Albelais; Greg Snarr; Bruce Todd; Janet; Diana Valdez; Ward Simmons; David and Ginger Werner; Deborah Vivian; Randi Walseth; Jacklyn William; Howard Golds; Diane Huntley; Dan Hantman; Cindy Lomeli; Cynthia Germano; Mark Easter; Bruce Varner; Rabia Chaudhry; Ted Stream; John Boyd; Erica Alfaro; Bill and Pam Bratton; Marie and Nolan Chandler; and Robert Chandler.

I would also like to provide a very special "Thank you" to Rabia Chaudhry and Bruce Varner of Varner & Brandt, who were able to secure a large donation from Stater Bros. This generous donation covered our food card needs and allowed much much more of the cash raised to go toward gifts. Also, a huge shout-out to Mark Easter. Mark has once again done a fantastic job of rallying a large number



Shopping Elf
Diana Renteria



Shopping Elf
Barbie Trent



Shopping Elf
Jo Larick



Shopping Elf
Marty Nicholson



(l-r) Lynette Solorio, Casey Wilkerson, Gabriel Razo, Michael Razo (holding Benjamin), Pamela Bratton, William Bratton, Carissa Razo (holding Jonathan), Elisabeth Lord, Alex Lord Droge, Jessica Diaz, Sara Tavakoli, Danielle Hunt and Josh Linker

of his colleagues at Best Best & Krieger to the cause. And a special thank you for Kirstie Donaldson (spouse of RCBA member Mike Donaldson) and her mother, Jodi Helms and the Helms Christian Pre-School in Murrieta. Kirstie and Jodi conducted their own toy drive at their school and donated several boxes of toys to our cause.

The Shopping Elves

This year we had a change-up of locations due to the Kmart Corporation announcement of their plans to shut down our usual shopping location in Mission Grove. Fortunately, we were able to secure our shopping night at the Big Kmart in Jurupa Valley. This location provided several staff members dedicated to our night and a generous discount. Thanks to the help of the numerous Shopping Elves, Charlene, and a very helpful Kmart staff at Limonite Avenue, we were able to shop, bag, tag, and deliver hundreds and hundreds of presents to the bar association in just over three hours, a new record!

It was a joy to experience the festive mood of various individuals, firms, and families as they put on their Elf hats and their best bargain-hunting caps to find deals for our families. This year's Shopping Elves were:

Andy & Rasmi Graumann, Christine Renken, Judi Murakami, Rosalie, Stan & Terri Dale, Diane Huntley, Marty Nicholson, Robert Alfaro, Erica Alfaro, Bill and Pam Bratton and their staff at Bratton Razo & Lord, Casey Wilkerson, Danielle Hunt., Elisabeth Lord, Gabe Razo, Jessica Diaz, Kris A., Kyle H., Lynette Solorio, Jo Larick, Mr./Mrs. Saadon, Trish Gordon Family, Marie Myers, Kelly Powell, Judge Sunshine Sykes & her daughters, Alexandra Fong, Lachelle Crivello, Diana Renteria, Jesse Male & Family, Michael R., Sara Tavakoli, Carlos Mathus, Toni Lorenz, Candi Erwin, Alyssa Waters, Barbie Trent, Laura Mau, Paula Leveratto, Aleva Alaina, Michelle DeJohnette, Mia Molley, Nadine & Brianna Vargas, Jeff Lee and Melissa Montoya, Veronica & Marcos Reynoso, Kim B., Kari M., Tracy Duncan, Faapouli Family, Bruce Larsen & Christina Sovine, Judge Bailey and Ruben Escalante.

As always Big Kmart stepped up to the plate providing us with an additional discount on every item purchased. Big thanks to Marcos and Veronica Reynoso, Bruce Larsen, Christina Sovine and Charlene Nelson, who organized all the bagging and Bruce Larsen for his help in transporting of all the gifts after shopping was done. Walter's Auto Sales & Service donated the use of a very large Mercedes Sprinter van and was our sleigh for the night. Once again a great big thank you to General Manager Steve Kienle and his parts manager Scott Eisengberger for making the transport of the vast number of gifts so much easier.

The Wrapping Elves

After the shopping was finished, all the gifts were delivered to the Bar and filled the RCBA Board Room and several other workrooms. Over the course of two evenings, the Wrapping Elves wrapped the mountains of toys, clothes and household goods. A huge thank you to this year's Wrapping Elves:

Arianda Tajoya, Krystal Rodriguez-Campo, Lesly Mendoza, Cindy Moran-Aguirre, Sharon Anderson, Samantha Larkin, Matthew Knez, Mary Hayes, Elaine Torres, Alfonso Maldonado, Erica Alfaro, Robert Alfaro Family, David Rivera, Goushia Farook, Mary Ruiz, Lahae Pih, Jeremy Heng, Patricia Mejia, Homan Hosseiniou, Alisha Ansari, Marika Myers, Lindsey Alverson, Jennifer Ko, Gisele Ibrahim, Liz Ditfurth, Steve Anderson, Laura



Shopping Elves Judge Sunshine Sykes & Family

Anderson, Ruby Anderson, Mike Donaldson, Daisy DeAnda, Vivian Duarte, Christianne Kirk, Judge Kenly Kato, Koji Cephas, Ellisah Cronin, Payam Fakhararam, Steven Farset, Kristine Santos, Lachelle Crivello, Aneka Amezcua, Aaron Chandler, Nolan & Marie Chandler, Robert Chandler, Alexandra Fong, Crista Haynes, Christine Renken, Trish Gordon, Sharon Greene, Susan Exon, Shaana Ramos, Alexis Rivera, Tony Gaines, Marie Myers, Joy Chen, Larry Cabrera Jr., Stefanie Field, Kizzy Moore, Susan Cardenas, Ruben Escalante, Charlene Nelson, Megan Demshki, Priscilla & Dylan Soules, Anna Gherity, Gabriella Torres, Paul Lin, Braden Holly, Yoko Townsend, Rabia Chaudhry and Shumika Sookdeo.

Delivery Elves

Our Delivery Elves delivered our gifts throughout Riverside County, including the cities of Corona, Norco, Lake Elsinore, Perris, Hemet, Riverside, Moreno Valley, Palm Springs, Indio, Nuevo, Banning, and other locations in the Coachella Valley. This year's Delivery Elves who donated their time and gas were:

Judge Charles Koosed and Family, Margeaux Mernick, Michelle DeJohnette, Lachelle Crivello & Staff, Trish Gordon Family, Scott & Liz Ditfurth, Diana Renteria, John @ Banning Probation Department, Riverside County Probation Department, Family Justice Center Riverside, Katie Gilbertson, Family Justice Center Indio, Family Justice Center Murrieta, Palm Springs Probation, Alexa Marquez, Milca Meza, Cristina Kayvon, Veronica Hewitt, Daisy DeAnda, Priscilla Soules, Robert Chandler, Charlene Nelson, Lisa Yang, Jake Husen, Robert Swortwood, Anna Gherity, Anthony Beauman, Timothy Goodwin, Luis Escobar, Fatima Guerra, Liliana Chavez, Kourtnee Gervasi and Elizabeth Keane.

Special Thanks

Once again, big kudos to the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang, for all their energy and assistance; my assistant Anna, to the management and social workers of Light House Social Services, Riverside Police Department, Riverside Family Justice Center and the Probation Department of the Riverside County District Attorney's Office for spreading the word and connecting the Elves Program to the families that were having a very difficult time this holiday season. Once again, "Thank you" to the Kmart and its staff on Limonite Avenue in Riverside.

Finally, a jumbo sized "Thank you" to the Elves themselves. Your wonderful spirit and camaraderie, which are represented in the photos accompanying this article, make this entire endeavor so rewarding to yours truly.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for 2019. Ladies and gentlemen, I submit to you, this is a wonderful opportunity for you, your family, and your staff to share the joy of the holiday season.

Brian C. Percy is past president of the RCBA and is the chairperson (i.e. "Head Elf") of the Elves Program.



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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.

Now Hiring Executive Director - Riverside Legal Aid

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