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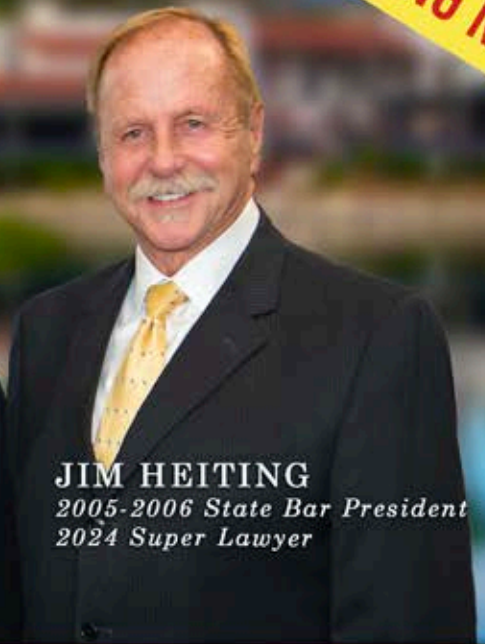
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RIVERSIDE LAWYER

MAGAZINE

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PRESIDENT'S Message

by Mark A. Easter



Installation of RCBA and Barristers' Officers for 2024-2025

On January 23, I was privileged to be sworn in as RCBA president for the 2024-2025 year, along with the other officers of the RCBA and Barristers boards. I sincerely appreciate the RCBA postponing the installation dinner for four months, due to my five months of hospitalization for complicated intestinal surgery in which there were a number of setbacks to my recovery. I still have a final corrective surgery scheduled in early March and hope to be fully recovered shortly thereafter. I look forward to continuing to serve as RCBA president the rest of this year and as past-president next year.

Without a doubt, during my health struggles over the past six months, I asked myself whether it was better for me to just resign as RCBA president. I decided against it, in large part because of the fantastic job that Executive Director Charlene Nelson, President-Elect Megan Demshki, and the rest of the RCBA Board members were doing to cover for me in my absence and keep me informed. But also, I thought about what the RCBA means, and has meant to me, during my 35 years practicing in Riverside County. And what it really comes down to is that the RCBA, and some of its related programs and services, have given me great opportunities to form relationships with other local attorneys, and work with them on programs and projects that served the community in ways unrelated to my day-to-day law practice. Three examples come to mind of programs that became part of my life at the ideal time.

Mock Trial

In 2004, my colleague, Victor Wolf, asked if I would assist him coaching Woodcrest Christian's mock trial team. I agreed and it opened me up to a whole new world, variously functioning as not only a coach, but a counselor, comedian, and crazy uncle to high school students. This invitation came at a time in which I had spent the two previous years recovering from a difficult divorce. Mock trial coaching basically gave me a new focus and identity, and for the next 16 years, I was able to coach and form friendships with some incredible students, first at Woodcrest, then Valley View in Moreno Valley, and most recently at North High School. I think 12 or 13 students, that I'm aware of, are now attorneys, practicing all over the country.

RCBA Elves

In 2009, my daughter was in middle school and needed service hours. I found out that the RCBA Elves program needed wrapping elves and that she could earn service hours by wrapping presents. That year we wrapped presents and delivered presents, and from that I learned about the wonderful Elves program. I then started organizing an annual "money elves" drive at BB&K, complete with raffle prizes for those who joined the "team." The RCBA Elves was a great opportunity for bonding with my daughter and it continues to be a great opportunity for our legal community to work together to help those far less fortunate in Riverside County.

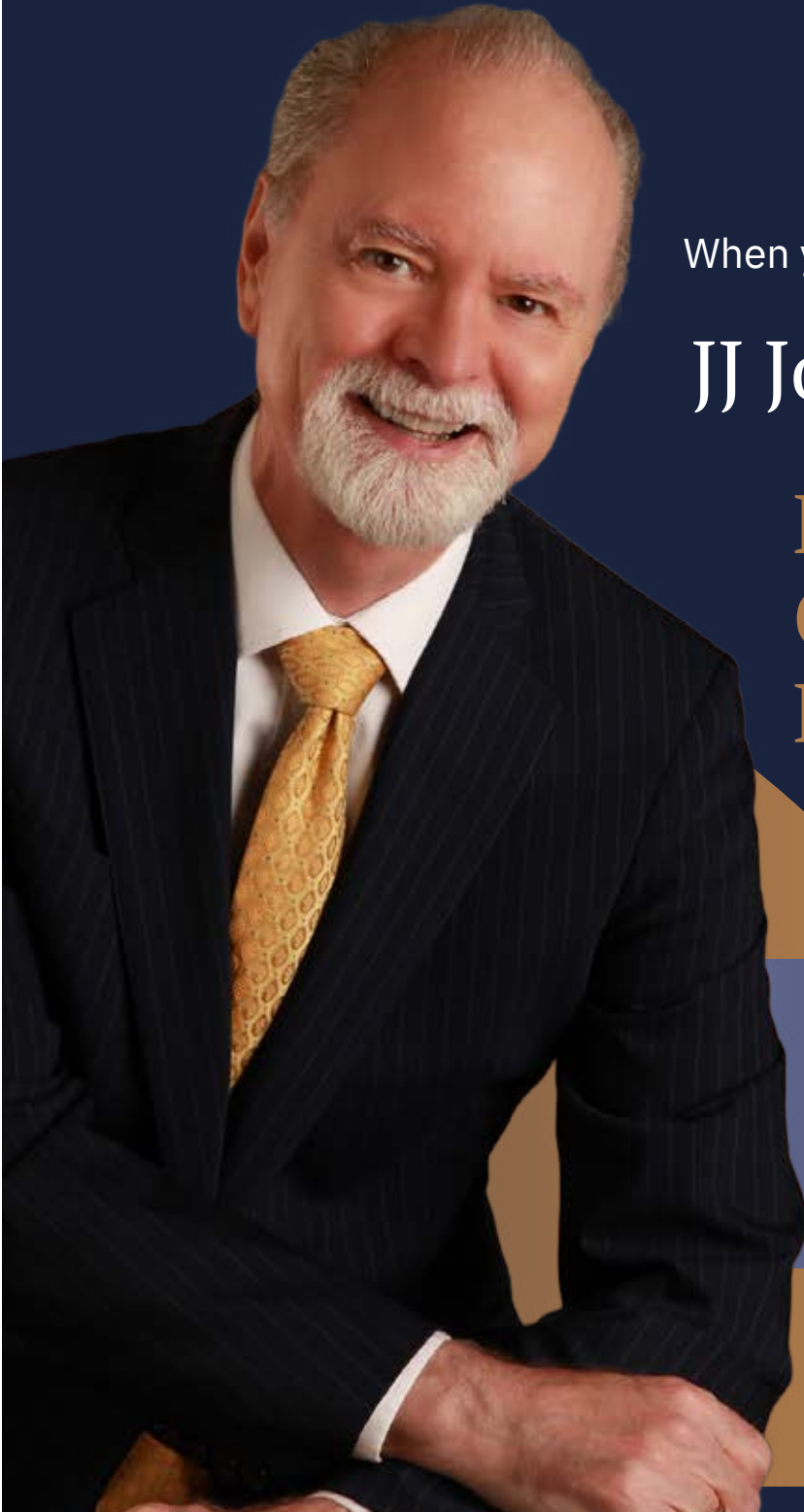
The Other Bar

In 2014, when it became apparent that my inability to drink alcohol responsibly was going to cause me severe consequences, and that somehow, I needed to part ways with drinking and get sober, I was welcomed into The Other Bar by Jim Heiting and others. I've now enjoyed over ten-and-a-half years of sobriety.

So that is part of what RCBA means to me, and as I regain my health and continue my tenure as president, I look forward to more opportunities to encourage our members, especially our younger members, to look for opportunities to get involved with RCBA's various committees, programs and projects. I believe that it will bring you balance, new relationships, and more fulfillment in your careers.

Our next General Membership meeting will be on February 21, and our speaker will be Riverside Superior Court Presiding Judge Jacqueline Jackson who will be speaking on the State of the Court.

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



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BARRISTERS

President's Message

by Summer M. DeVore



It's official! On January 23, 2025, the 2024-2025 Barristers Board was officially sworn in by attorney Ted Stream at the annual RCBA Installation Dinner. The Barristers Board would like to give a big THANK YOU to Ted for being the Barristers Board installing officer. And on a personal note, I have worked with Ted for almost 20 years, including 8 years as his legal assistant (before and during law school), and now, going on 7 years as an attorney. Needless to say, over the many years working with Ted, I have gained invaluable experience and knowledge about the practice of law—for which I will be forever grateful! Thanks, Ted!

Interested in being a member of the 2025-2026 Barristers Board?

The Barristers Board is also officially halfway through the 2024-2025 term. This means nominations for the 2025-2026 Barristers Board are just around the corner. In order to be nominated for next term's Board, you must: 1) be a Barristers member (i.e., an RCBA member in good standing who has been in practice fewer than seven years and/or is younger than 37 years of age), and 2) have attended at least three Barristers events in the 2024–2025 term. If you have any questions about Barristers, nominations, or being a member of the Board, please don't hesitate to contact me. I would be happy to share my experience and answer any question you may have.

Join us at our upcoming events in 2025!

Interested in being a part of the 2025-2026 Barristers Board, but have not been able to attend three Barrister events this term? Don't worry! There's still time. Here are some of our upcoming events:

- Scoring Attorneys for Mock Trial (followed by lunch): Saturday, February 8, 2025, from 8:30 a.m. to 11:00 a.m. at the Robert Presley Hall of Justice. For more details and

to register, please visit: <https://Barristers2025MockTrialScoring.eventbrite.com>.

- Barristers "Happy Hour" Mixer: Friday, February 21, 2025, beginning at 5:00 p.m. at Hangar 24 located at 5225 Canyon Crest Dr., Unit 58, Riverside.
- Disneyland Day: March 1, 2025. For more information, please visit: <https://RCBABarristersDisneyland2025.eventbrite.com>. Please note: Each attendee is individually responsible for the full price of his or her ticket, parking, meals, and all other costs related to their visit.
- Barristers "Happy Hour" Mixer: Friday, March 14, 2025—Save the date.

If you have an idea for Barristers or are interested in joining a Barristers committee (CLE, social, or community outreach) for the 2024-2025 term, I encourage you to contact me or any of the other Board members. I can be reached at (951) 783-9470 or summer.devore@streamkim.com

Stay up to date by following us!

For additional information about our upcoming events and updates, please visit Barristers:

Facebook: <https://www.facebook.com/RCBABarristers/>

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Website: <https://rcbabarristers.wixsite.com/rcba-barristers>

Barristers Board Spotlight: Derek M. Diemer, 2024-2025 Member-at-Large

Derek M. Diemer is an attorney with Thompson & Colegate LLP in downtown Riverside where he is a member of the firm's commercial department, specializing in trust and estates administration and litigation, conservatorships, financial elder abuse litigation, real estate and construction disputes, and business transactions and litigation. This is his first year serving on the Barristers Board. In his spare time, Derek enjoys writing screenplays, playing golf, and watching football.

Summer M. DeVore is an attorney with Stream Kim Hicks Wrage & Alfaro, PC in downtown Riverside where she specializes in business litigation. She is also a member of the Leo A. Deegan Inn of Court. Summer can be reached at summer.devore@streamkim.com.

Betting on Balance in California Gambling

by Mary Shafizadeh

There are both advantages and disadvantages to gambling in California. On the positive side, it is a major economic driver, generating substantial revenue, supporting tribal communities, creating tens of thousands of jobs, and funding essential public programs such as education, healthcare, and housing. In 2023, the commercial gaming industry generated \$328.6 billion in economic output and created 1.8 million jobs, with California accounting for \$34.56 billion of the revenue and 184,701 of those jobs.¹

Tribal casinos, in particular, are central to this success. They contribute over \$8 billion annually to California's economy and fund a wide array of public programs through the General Fund. These programs include education, healthcare, human services, transportation, corrections and rehabilitation, environmental protection, business and housing services, local government operations, and initiatives aimed at addressing problem gambling.²

The California Lottery also plays a key role in educational funding. Since 1985, it has provided more than \$46 billion to public education, with a record-breaking \$2 billion raised in the 2023-2024 fiscal year alone. This funding is crucial for schools, supporting efforts to attract and retain quality teachers, purchase state-of-the-art equipment, improve learning environments, and maintain critical programs.³

Although gambling has its economic advantages, it also brings significant challenges to California – including the risks of problematic gambling and addiction, which can have devastating personal and familial consequences. According to the National Council on Problem Gambling (NCPG), an estimated 2.5 million U.S. adults meet the criteria for problem gambling, with associated social costs reaching an estimated \$14 billion annually. These costs include gambling-related criminal justice and healthcare expenditures, as well as broader consequences such as increased crime, job loss, bankruptcy, burden on social services, and more. Therefore, while gambling contributes to the state's economy, it also requires careful oversight and a robust regulatory framework.⁴

California's gambling laws are shaped by a combination of constitutional provisions, state and federal laws,

and legal interpretations. Prohibited gaming activities are defined as:

Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any **banking or percentage game** played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.⁵

In short, this section prohibits "banking and percentage games," where the house or bank takes a cut or rake.⁶

Penal Code section 337j(e)(2), provides clarification for the law by specifically excluding certain activities from the definition of "controlled games," which are regulated under separate statutes or constitutional provisions. Penal Code section 337j(e)(2), further provides that "controlled game" does not include the following:

(A) The game of bingo conducted pursuant to Section 326.3 or 326.5. (B) Parimutuel racing on horse races regulated by the California Horse Racing Board. (C) Any lottery game conducted by the California State Lottery. (D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.⁷

In addition, activities for nonprofits, such as charitable gaming, including bingo and raffles, is permitted under Article IV, Section 19(c), allowing the Legislature to "authorize cities and counties to provide for bingo games, but only for charitable purposes."⁸ Similarly, Article IV, Section 19(f), generally permits eligible organizations to hold raffles, with further regulations under Penal Code sections 326.3 and 326.5.

Horse racing is also excluded from the definition of controlled games under Penal Code section 337j(e)(2), but is regulated by Division 8 of the Business and Professions Code and governed by the California Horse Racing Board

1 American Gaming Association, *State of Play: The Nation's Commercial Gaming Industry Report* (2023), <https://www.americangaming.org/state-of-play/>.

2 American Gaming Association, *State of Play: California Report* (2023), <https://www.americangaming.org/state/california/>.

3 California Lottery, *Who Benefits?, California Lottery* (last visited Jan. 21, 2025), <https://www.calottery.com/who-benefits>.

4 National Council on Problem Gambling, *FAQs: What Is Problem Gambling?*, *National Council on Problem Gambling* (last visited Jan. 21, 2025), <https://www.ncpgambling.org/help-treatment/faqs-what-is-problem-gambling/>.

5 Cal. Penal Code § 330

6 Cal. Penal Code § 330

7 Cal. Penal Code § 337j(e)(2)

8 Cal. Const. art. IV, § 19(c)

(CHRB)⁹ to ensure the safety and fairness of all activities. The regulation of horse racing is constitutionally supported by Article IV, section 19(b), which states, *The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.*¹⁰

The California State Lottery is also excluded under Penal Code section 337j(e)(2), deriving its legal authority from the California State Lottery Act of 1984, codified in California Government Code § 8880 et seq. This legislation establishes the California State Lottery Commission, which is tasked with ensuring transparency and that proceeds from activities such as scratchcards, Powerball, and Mega Millions are allocated to public education programs.¹¹

Federally recognized tribes can also legally conduct gaming under the authority of the Indian Gaming Regulatory Act (IGRA)¹² and negotiated compacts as outlined in California Constitution Article IV, Section 19(f).¹³ This provision grants the governor the power to “negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law.”¹⁴ The California Gambling Control Commission¹⁵ ensures compliance with state compacts, while tribal governments oversee day-to-day operations.

Licensed card rooms operate under California Penal Code section 330, but unlike casinos, they are prohibited from offering “banking” games where players compete against the house. Instead, these establishments focus on games like poker and pai gow, where players compete against one another. The California Gambling Control Commission oversees regulation within these card rooms,¹⁶ while the California Department of Justice handles licensing and enforcement.¹⁷

In private settings, social poker games are typically allowed, as long as no “banking” occurs. According to Penal Code section 330, games played in private homes or residences are lawful if the host does not take a rake or percentage of the pot as a fee. This distinction ensures that these types of games are not considered commercial gambling operations.

9 Cal. Horse Racing Bd., <https://www.chrb.ca.gov/> (last visited Jan. 21, 2025).

10 Cal. Const. art. IV, § 19(b)

11 Cal. Gov’t Code § 8880 et seq.; Cal. Penal Code § 337j(e)(2); see also California State Lottery, <https://www.calottery.com/who-benefits> (last visited Jan. 21, 2025).

12 25 U.S.C. § 2701 et seq.

13 Cal. Const. art. IV, § 19(f)

14 *Id.*

15 California Gambling Control Commission, Tribal Information, <https://www.cgcc.ca.gov/?pageID=tribalinfo> (last visited Jan. 21, 2025).

16 California Gambling Control Commission, Cardrooms, <http://www.cgcc.ca.gov/?pageID=cardrooms&pageName=Cardrooms> (last visited Jan. 21, 2025).

17 California Department of Justice, Cardroom Gambling, <https://oag.ca.gov/gambling/card> (last visited Jan. 21, 2025).

Conversely, Daily Fantasy Sports (DFS) occupy a less defined legal space, as California has yet to pass specific legislation addressing their legality. The debate centers on whether DFS should be classified as a game of skill or chance. Proponents of DFS argue that it should be seen as a game of skill, as participants must use data analysis and strategy to create virtual teams based on real-life athletes and their statistical performances in actual games. This process involves a level of expertise and decision-making that sets it apart from traditional games of chance.¹⁸

Despite these exceptions, many forms of gambling remain prohibited under California law. These include unlicensed casinos, most types of sports betting,¹⁹ internet gambling (with limited exceptions), the private ownership or operation of slot machines, and games involving “banking” or “raking.” These restrictions are due to concerns about fraud, unregulated activities, competing economic interests, and potential social harms.

Efforts to expand gambling in California have been made, but to no avail. Proposition 26, which sought to allow in-person sports betting at tribal casinos, and Proposition 27, which aimed to legalize online sports betting through partnerships with tribal casinos and major sportsbooks, both failed to pass in 2022.²⁰ A key concern with both propositions was that they would create direct competition with existing tribal casinos, potentially threatening their economic interests. Tribal casinos have long been the primary source of legal gambling in California, and these proposals raised fears about diluting their revenue streams and impacting the economic support they provide to local communities.

In conclusion, gambling in California represents competing economic benefits, cultural significance, and legal constraints. While it serves as a substantial economic contributor—supporting public programs, tribal communities, and creating tens of thousands of jobs—it also presents regulatory challenges and social risks, such as problem gambling and addiction. The state’s careful balance between allowing certain forms of gambling under stringent regulations and prohibiting others reflects an ongoing effort to maximize benefits while mitigating harm. Despite efforts to expand gambling through propositions like 26 and 27, public and legislative resistance takes a cautious approach.

Mary Shafizadeh, of the Law Office of Maryam Shafizadeh, practices criminal law, family law, and intellectual property. Committed to helping individuals and entrepreneurs navigate new chapters, she provides robust defense in criminal cases, compassionate guidance through family law matters, and strategic support for creative and digital ventures in intellectual property.



18 *Cantech Letter*, “Is FanDuel Legal in California?” (2024), <https://www.cantechletter.com/2024/11/is-fanduel-legal-in-california/>.

19 *BetCalifornia.com*, Is Sports Betting Legal in California?, <https://www.betcalifornia.com/> (last visited Jan. 21, 2025).

20 *Id.*



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Gambling: *Maverick* to *Molly's Game*

by Boyd Jensen

I was about seven years old when my family finally purchased a TV, albeit black and white. For the next few years, besides watching *Zorro* on Sunday evenings, during the week I would watch the western *Maverick*, about a sharp-shooting poker player, Bret Maverick, played by James Garner. Of course, we all knew playing poker was gambling, but *Maverick* always seemed to lean towards conscience, even around card tables in saloons and on riverboats; and even when he had to enforce ethics with his gun. (The movie *Maverick* in 1994, also with James Garner, though more loosely, yet tipped towards conscience.)

In those black and white TV days, there were no tribal casinos, video slot machines, or online sports betting. At the fair, we could bet on marble shooting games or who would get the blue ribbon for horsemanship. Some would host card games, where betting occurred but to me it never seemed illegal, though certainly indecorous.

In 2017 the movie, *Molly's Game*, brought us current and unveiled the existence of underground poker empires run by celebrities, athletes, business tycoons, and mobsters ... even from other countries. Ethics were an afterthought, and both the celebratory status and money created gaming empires, with 7 figure stakes, supported by local casino employees, compensated for referring and spreading the word about Molly's games. The FBI became involved and the glamour and grit of illegality clash on the screen in that same digital world, where we spend many hours daily.

Nationally, legal gambling activities include state lotteries; parimutuel betting on horses, greyhounds and jai-alai; sports book-making; card games; keno; bingo; slot machines; progressive slot machines; video poker machines; video keno machines; video blackjack machines; and video roulette machines. Not all of these are legal in all places. This growth of gambling has been remarkable: in 30 years gambling has transformed itself from sinful to well accepted. Illegal gambling still exists and by many accounts, flourishes. The most popular forms of illegal games are "numbers," which is essentially a lottery, and betting with bookies, typically sports betting. Some analysts think it is the largest category of gambling after casino games.¹

California Gambling: Gambling laws and regulations are complex, and in California the laws are expressed in Penal Code section 330. Forms of gambling which are lawful, include tribal casinos, playing card rooms, betting on horses, and some forms of lotteries, sports betting and charitable gaming. California has an administrative reg-

ulatory *Division of Gambling Control*, under the direction of California's Attorney General. In the 1980s, in Riverside County the Cabazon Band of Mission Indians began their effort to create their tribal casino, which started with bingo games. Today, there are over 75 tribal casinos or mini casinos in California.

Gambling in the Statutory Neighborhood: But what about the other states that surround California and in Mexico, our closest international neighbor. Many people travel, and many businesses simultaneously work both within and outside of California, and may interact with the opportunities of legal gambling.

In Arizona, the Department of Gaming reports that over 25 "Class III" gaming facilities were operated by 16 different tribes. In Arizona, all forms of gambling are illegal unless specific statutes state otherwise. One exception is the Indian Gaming Regulatory Act, which permits over 20 tribal casinos to operate in the state. Like in California, some forms of horse racing betting are legal in Arizona. In September 2021, Arizona passed a bill to legalize sports betting online.

While the National Indian Gaming Commission disclosed that of Nevada's 36 tribes, only two tribes owned casinos in Nevada. The home of Las Vegas, Nevada, has a fully regulated legal gambling industry, with over 440 legal land-based casinos. Online gambling is also partially legal in Nevada, with sports betting and some online poker games permitted.

Like Nevada, Oregon permits all forms of legal gambling. In the state, you're permitted to gamble in person at tribal casinos, play bingo, place sports bets, and participate in social gambling.

Our southern international neighbor, Baja, Mexico, hosted the highest number of casinos with 44. In Mexico, all gambling matters are governed by: (i) the Federal Gaming and Raffles Law; and (ii) the Regulations of the Federal Gaming and Raffles Law. The law stipulates that all games of chance and betting games are prohibited in Mexico, except for: (a) games such as chess, checkers and similar activities, as well as dominos, darts, bowling, pool, ball games in all forms, races involving people, vehicles or animals, and, in general, all kinds of sports; and (b) draws – broadly defined as procedures where a bet is placed – which rely on fortuitous or random events to reach a resolution based on chance.

Additionally, although gaming laws fall under federal jurisdiction, local governments – political entities with their own government and jurisdiction over specific geographic areas within Mexico – play a role in casino gaming through

¹ *Gambling in California* by Roger Dunstan, Library.Ca.Gov/CRB/97/03/crb97003.htm

property law, which is within their exclusive jurisdiction. In some cases, these local governments have imposed constitutional zoning restrictions to prevent the opening of new land-based casinos. But the state of Baja California, has implemented such non-retroactive restrictions or prohibitions in their legislation for the establishment of new casinos.²

Gambling: Barack Obama said: "We didn't become the most prosperous country in the world just by rewarding greed and recklessness. We didn't come this far by letting

² *Gambling Laws and Regulations Mexico 2025*, PR&A Portilla, Ruy-Diaz y Aguilar, S.C.

the special interests run wild. We didn't do it just by gambling and chasing paper profits on Wall Street. We built this country by making things, by producing goods we could sell."Uhm.... but then again, according to Benjamin Disraeli, "There is no gambling like politics." In January 2025, after recent social movements and expressions, I can think of nothing more relevant than considering **ALL** of the varieties of gambling.

Boyd Jensen is a member of the RCBA Publications Committee, an Advocate Member of the American Board of Trial Attorneys, and has been rated AV Preeminent for over 35 years..



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Rolling the Dice: Loot Boxes, Video Games, and Gambling

by Shane Duncombe

The rain patters across the open battlefield delivering a cadence of war drums as your heartbeat races and adrenaline courses through your veins. Explosions and gunfire fill the void between breaths as you draw the warm hard plastic that is your weapon closer to your body. You study the dancing of the soldier dressed in opposing colors, jumping, weaving, and crawling across the battlefield. You take a deep breath and feel the trigger of your weapon excitedly leap at the chance for the final moment. The screen in front of you flashes with congratulatory confetti and fireworks while triumphant music blares over your headset. You are once again presented with a screen offering a discount on the in-game tokens used to purchase loot boxes containing extravagant paint schemes for your weapons and fanciful outfits for your character.

You quickly hit the "purchase" button front and center on the screen while crunching on the last chip from the crumpled bag. The token is bought, the loot box presented, the box spins and bursts open. You are sadly presented with your fourth repeat of the same jester hat that you received last game. You jump right back into another match, get the same token, and this time, however, after weeks of playing, you finally receive your favorite golden paint job for your weapons. Your endorphins circle through your mind, you close your eyes and shout in triumph. What you believe to be eustress exhumes from your being. But your mind itches towards the next match. Maybe one more game. Maybe you will be lucky two times in a row and get the brand new and extremely rare crown for your character.

This is loot boxes in video games; gambling or game?

Loot boxes first appeared in United States published games in 2009's FIFA 09 by Electronic Arts and in 2010 in Team Fortress 2 by Valve. The first two major massively multiplayer online games featuring loot boxes appeared in 2011, in Star Trek Online and Lord of the Rings Online.

In laymen's terms, a loot box is a virtual, in-game commodity that provides some sort of reward after its purchase. You buy or earn loot boxes that provide in-game rewards or currency that can enhance your experience, change the appearance of characters, or provide helpful upgrades to make the game easier or your player more powerful. More specifically, Congress, when considering legislation regarding loot boxes, has considered the definition of loot boxes as: "a virtual item that can be redeemed to receive other virtual items within a video game." Before diving into congressional considerations of loot boxes in video games, a brief dip into the comparison

of psychological effects of gambling and loot boxes must be done.

There have been several studies over many, many years that try to answer important psychological questions about video games and their effect on people, including our children. Studies that span the topics of violence, desensitization, and importantly to loot boxes, whether video games are a gateway to gambling.

In a 2018, a Norwegian study was conducted to determine whether there was a higher likelihood that a person who was a heavy or avid gamer would exhibit problematic gambling addiction behaviors and whether such a link could be predicted. The study concluded, after two years of monitoring and research, that there was a statistical link between problematic video game behaviors and gambling behaviors. Interestingly, however, there was not an inverse relationship presented in the data. In other words, gamers with problematic addictive behaviors were likely to exhibit those same problematic addictive behaviors in gambling, but gamblers were not doing the same in video games.

Many concerned parents across the world have also turned to their local governments seeking legislation and regulation on video games. With respect to loot boxes, parents' concerns primarily fall within predatory practices of video game developers as well as the exposure of minor children to chance based gambling within video games.

From a parental perspective, letting a young child experience the same addictive nature of gambling when such addiction may be prevalent genetically can certainly raise substantial and material concerns as to whether that child may further negatively develop those behaviors. Such exposure may lead many children down the dark path of problematic gambling problems, leading to financial, emotional, and even physical debilitations.

While these voices of concern for gambling in video games are being heard, worldwide governments are slow to react. In the United States, there are several House and Senate bills proposed, but none of which have yet to be signed into law, that directly deal with loot boxes. Among the proposed bills, for example, House Bill 2943 would require a warning to be displayed before access to the loot box section of a video game that warns parents of the existence of loot boxes in the game. Most of the proposed bills address the fact that loot boxes are similar to slot machines. That is, a game of chance following a purchase using real currency. Additionally, these proposals recog-

nize that loot boxes can present the same psychological, addictive, and financial risks as gambling.

In 2022, the United Kingdom's government under Prime Minister Johnson published its response to a loot box consultation. Within its response, the government stated that while it wanted to see increased protections for children and young adults when buying loot boxes, the government would not be expanding on its Gambling Act of 2005 because of significant implementation limitations and hurdles.

These implementation limitations also expand into the United States. With the wide diversity of video games and in-game reward systems, and the global video game development and distribution cooperations, implementing protections and enforcing those protections are substantially costly.

There are other countries, however, that have implemented bans on loot boxes. After international lawsuits against Blizzard Entertainment, Inc., developer of the online team shooter, Overwatch, China banned loot boxes from video games, including those on the Apple App Store and Google Play Store. In 2012, Japan banned video games that were similar to gambling, such as Puzzle & Dragons, which contained forms of loot boxes or "randomized" prizes with increasing or decreasing odds based on strength of the virtual items. In 2015, South Korea expanded regulation against mobile and video games, seeking to remedy gambling concerns. Many other countries, including the European Union, have called some of the practices by certain video game developers as predatory and exploitive, specifically citing loot boxes as a major concern. While the United States has not enacted any legislation, the concern still exists.

However, that has not stopped parents and citizens from seeking help from the judicial branch. While there are a limited number of published cases touching on gambling and video games, there stands approximately seven unpublished appellate decisions that primarily deal with class actions against video game distributors and their loot boxes, like Apple and Google, on theories of violation of Unfair Competition, California's Consumers Legal Remedies Act, and simply unjust enrichment. However, each of the seven unpublished opinions have resulted in a granting of a motion to dismiss filed by the developers or distributor generally on the lack of actual damage suffered by the consumer.

In each of the aforementioned cases, the consumers brought actions because of the existence of a loot box system in the video game that caused that consumer to expend money to purchase virtual currency to buy the loot box or exchanged real currency for the loot box outright. The courts in these cases dismissed the complaints because the consumers purchased exactly what they contemplated – the loot box. The courts recognized that while no current legislation provides any alternative the-

ories of recovery, there exists pending and contemplated legislation regarding regulation and remedies available for loot boxes within video games, which most courts analogized with gambling.

Thus, the question remains. Are loot boxes in video games a form of gambling? As of the United States and California's current gambling regulations, no. But will that change and if so, to what degree?

Video games have always found themselves at the end of controversial tales, gambling being one of the more recent. Video game acceptance in society has grown with the expansion of people's desire for experiential entertainment, the ability to escape our harsh realities and live in one of fantasy, and the ever-expanding power of technological capabilities. With such rapid growth and acceptance in today's society, are video games being left behind by Congress?

So, the next time you sprint through the open field, ducking and dodging the opponents to score a goal and win your next loot box, video game controller in hand, snacks in tow, ask yourself this: Are the behaviors and feelings you experience exactly the same as playing a slot machine warranting regulations and limitations on exposure to our youth?

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Bugsy Siegel's Flamingo Dreams

by Abram S. Feuerstein

The flamingos kept dying. They couldn't tolerate the Las Vegas heat. What seemed to Benjamin (aka Bugsy) Siegel like a great idea to promote the new Flamingo Hotel had turned into another expensive failure.

The original projected \$1 million cost to build the Flamingo had ballooned to \$6 million. To raise money for its construction, Siegel had borrowed heavily from his organized crime colleagues, leaned on friends for loans, and peddled several hundred percent of



Pink flamingos at the San Diego Zoo.

the hotel's corporate stock to almost everyone he knew. Then, several months after the hotel's opening in December 1946, Siegel, a gangster, gambler, drug dealer, and murderer as well as the man most associated with building a Monte Carlo-styled casino in the Nevada desert, was as dead as his flamingos.

He had been shot multiple times by an unknown assailant while at the Beverly Hills home of his lover, Virginia Hill, who was in

Europe at the time. The murder remains unsolved more than 77 years later.

Siegel's rise from the poverty-stricken but vibrant streets of Manhattan's Lower East Side to Hollywood and Las Vegas fame is well charted by Michael Shnayerson in his short biography, *Bugsy Siegel: The Dark Side of the American Dream*.¹ The biography is part of the Jewish Lives Series issued by the Yale University Press. Based on the logarithm created when the book is ordered, Amazon advises that the next volume for purchase in the series is a biography of the



Biography of Bugsy Siegel by Michael Shnayerson.



New York Police Department Mugshot of Benjamin "Bugsy" Siegel.

Public Domain

influential 17th Century Jewish/Dutch philosopher, Baruch Spinoza.

Of course Siegel is no Spinoza. He was far less rational. Born in 1906 to parents who a few years earlier had emigrated from the Russian/Czarist Empire,² school played a much smaller role in Siegel's education (he dropped out by the eighth grade) than the craps games taking place in the alleys behind the densely packed neighborhood streets. He would in short order meet up with

budding gangsters like Lucky Luciano (future boss of the Genovese crime family) and Meyer Lansky (think the fictional Hyman Roth from *Godfather Part II*), his closest friend. Petty theft crimes yielded soon to extracting protection payments from pushcart vendors who, if they failed to pay, might find their pushcarts set ablaze.³ Prostitution, auto theft, and gambling rounded out the portfolio. But with the enactment of the 18th Amendment (Prohibition), the streets truly became paved in gold. Money from bootlegging allowed unorganized crime to become organized. For their part, Siegel and Lansky, under the tutelage of Arnold "The Brain" Rothstein,⁴ cashed in and could be counted on initially to drive illegal liquor shipments to speakeasy destinations, then onwards to guarding the liquor trucks, and then to operating liquor stills, and then to engaging in gang warfare.

Becoming Bugsy

During this time Ben Siegel was given his nickname, "Bugsy," mostly because his temper had a quick switch causing him to act impulsively and erupt violently and unhesitatingly. In other words, crazy as a bedbug.⁵ "His big problem was that he was always ready to rush in first and shoot. No one reacted as fast as Benny," Lansky later recounted.⁶ But Siegel hated the nickname passionately, and those who used it in his presence became objects of his wrath. The semi-fictional, semi-true 1991 movie, *Bugsy*, starring Warren Beatty in the title role, depicts a character receiving a vicious beating from Siegel after using the nickname.

In 1931, Lansky, Siegel and Luciano along with other Italian, Jewish and even a few Irish gangsters decided to

1 Michael Shnayerson, *Bugsy Siegel: The Dark Side of the American Dream* (Yale University Press 2021) (hereinafter, "Shnayerson"). The author has relied upon Shnayerson's book for much of his information about Siegel's life, together with the even shorter audio volume, *Bugsy Siegel: A Biography of the Famous Mobster*, by Cliff Thompson (released July 2020 by Flaneur Media).

2 There is a dispute as to whether the parents instead were from Galicia, a region in the Austro-Hungarian empire. Shnayerson, p. 1.

3 Shnayerson, p. 7.

4 Shnayerson, pp. 12-13.

5 Shnayerson, p. 15.

6 Shnayerson, p. 10.

join forces and formed the National Crime Syndicate or, more simply, The Syndicate. By doing so, they minimized the body count while adding structure to their “business-es.”⁷ Before any important mobster could be executed, the Syndicate’s leaders had to give their approval. Once given, the execution frequently was farmed out to enforcers or contract killers such as Murder, Inc., which Siegel founded along with other, mostly Jewish mobsters such as Louis “Lepke” Buchalter. In the decade that it was active, Murder, Inc. may have carried out as many as 1000 murders.⁸ Siegel himself admitted to murdering 12 people but may have supervised dozens more contract killings.⁹

But all good (and bad) things come to an end, and Prohibition’s repeal in 1933 meant the mob needed to branch out and find other sources of revenue. The Syndicate sent Siegel to Los Angeles to assert control over the city’s gambling action. He was successful in taking over the numbers racket and muscled in on the wire services crucial to bookmaking operations and illegal off-track betting. He invested in the ownership and operation of the SS Rex, a gambling ship stationed three miles off-shore and just beyond LA’s jurisdiction.¹⁰ He daily gambled and with inside knowledge won large sums at Santa Anita Racetrack. He also took over the labor union responsible for supplying “extras” for the film industry, and if studios didn’t meet his financial demands labor strikes would force them to halt production.¹¹ They paid up. By the late 1930s, Siegel’s success enabled him to build a 23-room, 10,000 sq. ft. mansion on a 1.7-acre lot at 250 Delfern Drive, above Sunset Boulevard in the Beverly Crest neighborhood of Holmby Hills.¹² He moved his wife and two children to the home.

Seeing Stars

Siegel loved – and was fascinated by – Hollywood, and Hollywood in turn was fascinated by him. Tall, well-groomed, physically fit, and expensively dressed, biographers have described Siegel’s “movie-star good looks.”¹³ Once in California, he re-united with his childhood friend, mob-connected actor George Raft who, ironically, was known for portraying gangsters on the big screen. Raft, in turn, introduced Siegel to other Hollywood celebrities. Siegel hosted grand parties at his home. Hollywood’s stars wanted to hear about the exploits of “bad boy” Siegel, even as Siegel yearned to be associated with them. Siegel’s young daughter, Millicent, took it for granted that a Cary Grant, Clark Gable, or Jimmy Durante might be at the house. Another frequent guest, Jean Harlow became Millicent’s godmother.¹⁴

7 Schnayerson, pp. 27-28.

8 Schnayerson, p. 51.

9 Schnayerson, p. ix.

10 Schnayerson, p. pp. 56-7.

11 Schnayerson, pp. 44-45.

12 Schnayerson, p. 41.

13 Schnayerson, p. xiv. At one point, Siegel himself seems to have had acting ambitions and filmed himself in several audition tapes. Schnayerson, p. 45.

14 See May 24, 2011 Interview of Millicent Rosen, retrieved at <https://www>.

Then in 1939 mobster Harry “Big Greenie” Greenberg was killed after apparently demanding money from his bosses to remain silent in the face of law enforcement probes. Accused of the murder, Siegel received front page publicity, causing most of Hollywood’s A-list to drop him as fast as possible. Siegel escaped conviction because of a lack of witnesses – or at least those who might testify – but he remained persona non grata to his former Hollywood friends.¹⁵

Nevada Scheming

Nevada legalized gambling in the early 1930s as a measure to help the state out of its Great Depression woes. By 1940, there were several small roadside casinos in Reno and Las Vegas frequented by local residents.¹⁶ Then a man named Thomas Hull, who owned several California hotels, decided he could attract motorists traveling to Las Vegas from Los Angeles with a 110 room Old West-themed hotel and casino. He built the El Rancho, which opened on the soon-to-be “strip” in April 1941.¹⁷ Another hotel, the El Cortez, opened its doors six months later. The success of these early hotel casinos caught Siegel’s attention. He tried to buy the El Rancho,¹⁸ but the owner refused. However, he was able to buy and sell ownership interests in most of the Las Vegas hotel/casinos in the early 1940s.¹⁹ This enabled him to place his race wire service in the hotels, and guests in turn could gamble at all hours on the results from racetracks around the country.

But Siegel hoped to own his own hotel. In 1945, on behalf of Syndicate “investors” Siegel purchased the El Cortez for \$600,000.²⁰ He then sold it in 1946 for \$766,000, generating a profit that pleased his investors. As a result, they later were happy to lend him the money for his Flamingo venture.



*The famous Flamingo Hotel and its neon sign at night (June 2012).
photo by travelview/Shutterstock*

The initial idea for the Flamingo likely belonged to an individual named Billy Wilkerson, the owner of the

[youtube.com/watch?v=sG4shsMOK_Y](https://www.youtube.com/watch?v=sG4shsMOK_Y).

15 Schnayerson, p. 86.

16 Schnayerson, p. 85.

17 See generally, https://en.wikipedia.org/wiki/El_Rancho_Vegas.

18 Schnayerson, p. 97.

19 Schnayerson, p. 89.

20 Schnayerson, p. 108.

Hollywood Reporter as well as several Los Angeles nightclubs, including the Trocadero and Ciro's.²¹ A compulsive gambler, he thought if he lost money gambling at his own casino he essentially would recover the losses by repaying himself in profits.²² He purchased the land and in 1945 began construction, but he suffered huge gambling losses and soon needed other investors.²³ He sold the controlling interest to Siegel and his Syndicate investors.

Siegel lacked any experience in managing a major construction project but nevertheless began to supervise the Flamingo one. Almost immediately he ran afoul of post-war regulations that reserved scarce building materials for veteran-owned projects. Lawyer and architectural bills escalated as Siegel battled the federal Civilian Production Administration.²⁴ Further, revisions to building plans that did not meet Siegel's standards added to the money pit. For instance, Siegel insisted at great cost that each room needed a separate sewer system. Kitchen ovens that took up too much space needed to be replaced with smaller ovens. Another \$30,000.²⁵ A new boiler was too small to heat all of the rooms. Siegel brought in a larger one. It had to be housed in a separate structure. \$115,000.

Aside from the first-class casino hotel envisioned by Siegel, there was another layer of expense. Siegel had always been somewhat of a playboy. He had numerous affairs while in Hollywood,²⁶ which were tolerated by his wife, Esta. But in the mid-1940s he fell head-over-heels in love with Virginia Hill, a woman long associated with organized crime, and Siegel divorced his wife.²⁷ The relationship with Hill was tumultuous and chaotic. She was as buggy as Bugsy. Their arguments were loud, public, and famous. Hill, too, was a lavish spender, and Siegel allowed her a seemingly free hand in designing the Flamingo's interior. As the project's costs skyrocketed, Syndicate members had a growing sense that either Hill, or Siegel, or both, were skimming money from the enterprise.²⁸

In an effort to stop the bleeding and generate revenues, Siegel made the decision to open the Flamingo, prematurely, on December 26, 1946, the day after Christmas. Entertainers included comedian Jimmy Durante and band-

leader Xavier Cugat and his orchestra.²⁹ Aside from travel and scheduling difficulties associated with the holiday period, bad weather prevented celebrities and high rollers from flying to Las Vegas from Los Angeles for the opening. Guest rooms were not yet ready, so gamblers departed from the Flamingo's gaming tables early in the evening for other hotels at which they were staying. Siegel failed to vet the gaming staff and widespread cheating at the tables resulted in substantial losses. As deficits mounted, at the end of January 1947 Siegel opted to close the hotel temporarily until he could finish the guest rooms and complete the hotel's other construction needs.

The Flamingo reopened in March. By then, the construction budget reached new heights, with cost overruns of approximately \$5 million. The pressure on Siegel had been intense. Members of the Syndicate met in Havana, Cuba and discussed their "Siegel" problem.³⁰ He had received warnings to turn the Flamingo's finances around from Lansky, and ultimatums from other Syndicate members. Remarkably, in the next few months after it reopened, the Flamingo generated modest profits.³¹ It probably was too little, and certainly too late to satisfy the Syndicate.

Siegel was killed on the evening of June 20, 1947, after returning from Las Vegas to Los Angeles to handle some business affairs. Within minutes of his shooting, Syndicate members back in Las Vegas announced that the hotel was under new management.³² Numerous theories about his death circulated. Did the Syndicate order his death? Were any of his victims, including those forced by violence to "subscribe" to his racing wire, seeking retribution? Although she was away in Paris at the time of the shooting, was Virginia Hill involved? In his short 41 years, Siegel had curated a long list of enemies. Any number of them, of course, might have been responsible for his death.

The Flamingo hotel continues in operation. Over the decades, other more spectacular hotels have far eclipsed its original grandeur. It has gone through periods of deterioration and decline, as well as renovations that have maintained its relevancy. Bugsy & Meyer's Steakhouse, located at the Flamingo, opened in July 2020. It serves dry and wet aged premium steaks. There is a hidden speakeasy located behind the dining room.³³

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21 Schnayerson, p. 111.

22 Schnayerson, p. 112.

23 Schnayerson, pp. 113-15.

24 Schnayerson, pp. 124-34.

25 Schnayerson, p. 120.

26 The most significant was his relationship with Countess Dorothy di Frasso, a wealthy socialite from an Italian family. In Bugsy mob lore, Siegel supposedly traveled with her to Italy in 1938 as part of a scheme to sell a new type of explosive to Mussolini. On that trip, Siegel met Nazi leader Hermann Goring. In some versions, Siegel is described as contemplating killing either Mussolini or Goring or both but is dissuaded by di Frasso. See Schnayerson, pp. 66-67.

27 Schnayerson, pp. 121-23. Some believe that the name for the hotel, "Flamingo," is related to the way that Siegel described Hill's legs, or the color "pink" that she turned when imbibing alcohol. But the most likely explanation for the name is that Siegel and Lansky went to Miami frequently, sat at the Hialeah racetrack, and enjoying watching the flamingos crowding the infield. It also seems that the flamingo is a Seminole Indian symbol of good luck. See Schnayerson, p. 116.

28 Schnayerson, p. 151.

29 Schnayerson, p. 147.

30 Schnayerson, pp. 151-52.

31 The hotel generated profits of \$250,000 in May 1947. Schnayerson, p. 163.

32 Schnayerson, p. 172.

33 See <https://www.caesars.com/flamingo-las-vegas/things-to-do/nightlife/the-count-room>.



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The Gamble of Gambling in California: What's Legal and What's Not

by Evan H. Goldsmith and Jonathan C. Magno

While watching any sporting event, you will almost certainly see ads for DraftKings, Caesars Sportsbook, or a variety of online gambling websites. But you will come to find that these gambling sites are very limited or do not operate at all in California. That is because California has some of the strictest anti-gambling laws in the nation. Essentially, all forms of gambling are illegal in California and are subject to criminal prosecution except for what is discussed below.

Lottery

The lottery, including scratch cards and number drawing games, was legalized in California by the California State Lottery Act of 1984. The act only permits the state-operated lottery, which means all other lotteries remain illegal. Raffles, which are strikingly similar to lotteries, may be operated by eligible non-profit organizations, but they must first register with the Attorney General's Registry of Charities and Fundraisers beforehand. So, unless your raffle is hosted by a registered non-profit organization, it is likely illegal in California.

Slot Machines and Coin Pushers

In California, almost all gambling devices that a person pays to play and offers anything of value for playing are illegal. Common types of illegal gambling devices are slot machines, claw machines, coin pushers, and games that include any element of chance. Essentially, if the machine requires something of value to play (either money or anything else of value) and a player can win anything of value (money, tokens, tickets, free replays, etc.) by chance or hazard, it is illegal in California. You may find this surprising based upon what you see at arcades, amusements parks, and maybe even your local grocery store, but most of these machines are not being legally operated.

There are few notable exceptions. California Tribal Casinos are permitted to operate slot machines based upon Tribal-State Compacts and California law. Additionally, there is an extremely narrow exception, which excludes "pinball" or "amusement devices" from being considered illegal gambling devices. Essentially, the device is legal if the game is predominantly a game of skill and the only prize you could win, if any, is additional free play. In other words, even if the game is based entirely on skill, it is still illegal if you can win something such as food, tickets, toys, or anything of value.

Horse Racing

Betting on horse racing in California is legal at race-tracks, at authorized satellite wagering facilities, and online gambling sites, so long as the wagers are parimutuel (which is a betting system where all bets of the same type are

pooled together). In horse racing, for example, all wagers for a particular horse winning would be pooled together. The payout for a particular bet is not known when the bet is placed. After the outcome of the race is determined, the house typically takes a percentage of the total pool of bets, and the remainder of the pool is divided among the people who correctly picked the winner. This differs from fixed-odds betting, where the payout for a particular bet is known when the wager is placed. Fixed-odds betting on horse racing is illegal in California.

Sports Betting

Sports betting is a multi-billion-dollar international industry, but it remains illegal in California. However, daily fantasy sports betting is legal. The difference between the two is substantial, though they do have some similarities. With traditional sports betting, bets are often placed on a team winning outright, or by a certain amount of points. The outcome of the game determines whether a bet wins or loses. In daily fantasy sports betting, the outcome of the game is irrelevant. Gamblers instead bet on how individual players will perform. Making matters more confusing, the same companies often operate sportsbooks (which are illegal in California), and facilitate daily fantasy sports betting (which is legal). DraftKings and FanDuel, for example, both have sportsbook apps, and fantasy sports apps. While it is perfectly legal to use one, you may be subject to prosecution for using the other. In 2022, California voters rejected Prop. 26 and Prop. 27, which would have legalized sports betting in-person at authorized locations and online. Since both Propositions were rejected, sports betting remains illegal in California except for daily fantasy.

Cardrooms and Poker

Licensed cardrooms can offer approved card games, like poker, in which players vie against each other, but not games in which they vie against the house. California currently has 80 licensed cardrooms, though only 47 of them are active and operating. None of these licensed, active, and operating cardrooms are located in Riverside County. Bruce's Bar and Casino, located in Blythe, is categorized by the Gambling Control Commission as "Active, Not Operating", but they may soon be operational. Lake Elsinore Hotel and Casino, located in Lake Elsinore, has received a provisional license. They too, may soon be operational. But for now, if you find yourself gambling at a cardroom in Riverside County, you may be doing so illegally. Even if you are in a licensed cardroom, you should be mindful of the games you are playing. Several casino-owning Native American tribes recently filed a lawsuit in Sacramento

County, alleging that dozens of licensed cardrooms are offering illegal card games, such as blackjack and pai gow poker.

As for your weekly poker night at your friend or family's house? Those games are completely legal in California, so long as the host or anyone else is not charging a rake. A rake is essentially an automatic fee and/or percentage of the winnings that each player must pay to play in the current game or future games. You can all voluntarily chip in money for food and drinks, but if it is a requirement that you pay the host to play, it's illegal in California.

Non-profits may host poker night fundraisers, but they must register with the Attorney General's Registry of Charities and Fundraisers and are limited to one poker night per calendar year.

Native American Tribal Casinos

Tribal casinos are separate and distinct from licensed cardrooms. Federally recognized tribes are allowed to operate casinos in California, but must comply with the Indian Gaming Regulatory Act (IGRA). The IGRA separates gaming into three classes. The first class, cleverly named Class I, includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations. The regulatory authority for Class I games is exclusively vested in tribal governments and are not subject to federal or state laws.

Class II games include bingo (and similar games of chance), and card games that are either explicitly authorized,

or not explicitly prohibited, but only if those card games are operated in compliance with state laws and regulations. Banking card games, where players play against the house, like baccarat and blackjack, are expressly excluded from the definition of Class II gaming. Slot machines are also excluded. In California, this essentially means that non-banked card games, where players play against each other instead of the house, like poker, are Class II games. Class II games can be conducted by tribes in any state where such games are legal for any purpose. Tribes retain regulatory authority over Class II games, but under the oversight of the National Indian Gaming Commission.

Class III games include all other types of gaming. This includes slot machines, roulette, craps, and blackjack. While Tribal Casinos are allowed to operate slot machines and have blackjack tables, roulette and craps remain illegal throughout California. In nearby Las Vegas, Nevada, craps and roulette annually generate nearly a billion dollars in revenue for casinos, but these games cannot legally be found in California. Instead, Tribal Casinos in California offer modified versions of those well-known games.

Specifically, in California, a ball cannot legally determine the outcome of a game, so Tribal Casinos have created "California Roulette." While different casinos may offer slight variations on the game, in general, "California Roulette" uses a wheel filled with numbered, color-coded cards, and a flipper to stop the wheel from spinning. Whatever card the flipper is pointing to determines the winning number and color. Is this functionally different



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- *Former President of the San Bernardino/Riverside Chapter of ABOTA*
- *Available for mediations, arbitrations, and private judging assignments*

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than a ball selecting the winning number and color? No. Is it technically legal? Yes. The modification is a distinction without a difference.

California law also prohibits casino game outcomes from being determined by dice rolls, so Tribal Casinos have created "California Craps." Again, different casinos offer slightly different versions of the game, but in general, the numbers on a die will be randomly assigned cards valued 1 through 6. Dice are then rolled, and the numbers on the dice will then be converted to the card values assigned to them. Those values are then added together to determine what was "rolled." Much like "California Roulette," "California Craps" is functionally the same game as its Las Vegas counterpart, but with a minor change that makes it technically legal.

Criminal Punishments for Illegal Gambling

California has codified the crimes and punishment for illegal gaming and gambling in Penal Code sections 300 through 337z. These crimes include operating illegal poker games, bookmaking, accepting wagers, doping racehorses, operating illegal gambling devices, and others. Depending on the type of illegal gaming or gambling being conducted, an individual could be charged with a misdemeanor and face up to a year in jail with a monetary fine, or a felony and could face up to three years in prison.

For example, under Penal Code section 330, any person who deals, plays, opens, or carries on any game that is considered illegal gambling under the statute is guilty of a misdemeanor and shall be punished by a fine under \$1,000

or imprisonment in a county jail up to six months, or both. Under Penal Code section 330b, an individual that owns or operates an illegal gambling device, such as a slot machine or coin pusher discussed above, is guilty of a misdemeanor and if there are more than two offenses could face a fine up to \$25,000, a year in county jail, and (if there are multiple machines) and additional fine up to \$5,000 per machine per location. An individual engaged in illegal bookmaking (taking bets) or pool selling (selling or distributing shares or chances in a betting pool) can be charged with either a misdemeanor or a felony, the latter being subject to a prison sentence up to three years.

Overall, California has one of the strictest anti-gambling laws in the United States. Almost all forms of gambling and gaming are illegal in California. With the evolution of technology, gambling is becoming more accessible and popular than ever before. While many states have become more permissive of gambling, California and its voters have consistently rejected expanding gambling availability. There are significant consequences for illegal gambling, gaming, and bookmaking, so it is important to remain educated on the evolving legal landscape.

Evan Goldsmith is a Supervising Deputy District Attorney in the Special Prosecutions Section of the Riverside County District Attorney's office.

Jonathan Magno is a Deputy District Attorney with the Riverside County District Attorney's office.



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What Happens in Federal District Court . . .

by Gabriel White

After law school, I clerked for two years at the United States District Court, District of Nevada, in the Reno chambers of Judge Edward C. Reed, Jr. My first ever trip to Nevada was for my initial interview with Judge Reed, so I can't say I knew what to expect of either the town or the job. After I moved to Reno, one of my larger moments of culture shock was realizing many grocery stores had a little casino room. Not just a slot machine next to the ATM, but a dedicated space for gaming while your kids or spouse go grab the milk and bread. Gambling was just a part of everyday life in Reno—particularly for visitors, but also some locals—to a much greater extent than I imagined would be the case.

I also did not expect to have gambling come up often at work. There are federal laws that address gambling directly, of course, and they have presented some interesting questions. (I will spare you a dive into the extended dispute over whether the Interstate Horseracing Act of 1978, which allows interstate off-track wagering, or the Interstate Wire Act of 1961, which prohibits it, should have taken precedence.) Occasionally, the United States Supreme Court has addressed issues arising from conflicts between state and federal gambling laws,¹ or closely related matters like advertisements for gambling at casinos.² And illegal gambling activity can give rise to charges under the RICO act, say, or tax law, or other federal criminal laws. But I did not expect too many such cases to cross my desk during my clerkship.

I wasn't entirely wrong. I do not recall ever seeing a case that dealt directly with gambling activity as such. But because the economy and everyday life in Reno (and some other parts of Nevada) are so tied up with the gaming industry, cases with a background or underlying facts related to gambling often make their way to federal court. So, for example, if we have a trademark case, it might well be a dispute between two casinos.³ A patent infringement case was likely to be about technology used in gaming machines or running a gaming floor.⁴ An ordinary slip and fall case might end up in federal court on diversity if it's a tourist tripping at a casino.⁵

1 In *Murphy v. National Collegiate Athletic Association* (2018) 584 U.S. 453, 458, the United States Supreme Court considered the constitutionality of the federal Professional and Amateur Sports Protection Act, which generally made it "unlawful for a State to 'authorize' sports gambling schemes." The Court found that prohibition unconstitutional under "the anticommandeering rule": "It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine." (*Id.* at p. 474.) Of course, the states also can choose not to authorize sports gambling, which is why even online sports betting is only legal if you are physically located in certain states.

2 See *Greater New Orleans Broadcasting Association, Inc. v. U.S.* (1999) 527 U.S. 173 (federal prohibition on broadcasting lottery information could not be applied to advertisements of legal private casino gambling in state that allowed it).

3 See *Kerzner International Ltd. v. Monarch Casino & Resort, Inc.* (D. Nev. 2009) 675 F.Supp.2d 1029 (dispute over "Atlantis" mark for casino services).

4 E.g., *Bally Gaming, Inc. v. IGT* (D. Nev. 2008) 623 F.Supp.2d 1213 (case involving patent for technology used in slot machines); *Shuffle Master, Inc. v. MP Games LLC* (D. Nev. 2008) 553 F.Supp.2d 1202 (case involving patents for gambling chip recognition system, apparatus and method for monitoring gambling chips, apparatus and method for monitoring casinos and gaming).

5 E.g., *Zander v. Tropicana Entertainment, Inc.* (D. Nev. Feb. 26, 2014, No.

My favorite example of a case that is gambling adjacent, even though it does not directly deal with gambling per se, was addressed by the United States Supreme Court in *Walden v. Fiore* (2014) 571 U.S. 277 (*Walden*). The facts read like the final exam question in a civil procedure class. Professional gamblers with California driver's licenses, but claiming residences in both California and Nevada, take a work trip from Las Vegas to Atlantic City, New Jersey, and then on to San Juan, Puerto Rico.

On the way back to Las Vegas from San Juan, they must change planes in Atlanta, Georgia. In Atlanta, a Georgia police officer, deputized as a DEA agent, seizes \$97,000 in cash from the gamblers after using a drug-sniffing dog to perform a sniff test on the money, despite their explanation that the money was legitimate, consisting of the "bank" they brought with them plus winnings. The gamblers then continue to Las Vegas. About six months later, the government returns the seized money, without a forfeiture complaint ever being filed. The gamblers nevertheless bring a *Bivens*⁶ action for money damages against the Georgia police officer in federal district court in Nevada. May the Nevada district court exercise personal jurisdiction over the Georgia police officer?

The analysis is a little more involved, but basically the Nevada district court—my boss at the time, Judge Reed—said no.⁷ The Ninth Circuit Court of Appeal twice—first by a divided three judge panel, and again in a modified opinion on denial of rehearing that generated two dissents signed by a total of eight judges—said yes, and reversed the district court.⁸ A unanimous United States Supreme Court said no, the district court had it right, exercise of jurisdiction would be improper in these circumstances.⁹

My time living in Reno did not make me a gambler, and I am skeptical our society is on balance better off for having sports betting and other forms of gambling become common and legal outside of Nevada. The only reliable way to walk out from a casino with a dollar is to walk in with two, etc. And lotteries (and grocery store casino rooms, for that matter) seem to me more like highly regressive forms of taxation than a good time. But I do enjoy the dicey legal questions and high-stake fact patterns that gambling can generate.

Gabriel White is a senior appellate court attorney at the California Court of Appeal, 4th District, Division 2, assigned to the chambers of Justice Michael J. Raphael. He clerked at the United States District Court, District of Nevada, for Judge Edward C. Reed, Jr., from August 2008 to September 2010. The views expressed in this article are his own.



2:13-cv-00848-GMN-PAL) 2014 WL 794212.
6 *Bivens v. Six Unknown Fed. Narcotics Agents* (1971) 403 U.S. 388.
7 *Fiore v. Walden* (D. Nev. Oct. 17, 2008, No. 2:07-CV-01674-ECR) 2008 WL 9833854.
8 *Fiore v. Walden* (9th Cir. 2011) 657 F.3d 838 (withdrawn panel opinion); *Fiore v. Walden* (9th Cir. 2012) 688 F.3d 558 (amended opinion issued on denial of rehearing en banc).
9 *Walden, supra*, 571 U.S. at p. 279.

Betting on Bankruptcy: The Dischargeability of Gambling Debts in the Online Sports Era

by Misty Perry Isaacson

As the Super Bowl approaches, millions of Americans prepare for one of the most significant betting events of the year.¹ With the explosion of online sports betting platforms, wagering on games has never been more accessible. Yet, this accessibility has also led to a sharp increase in financial difficulties for individuals who find themselves unable to pay their gambling debts. For those in dire straits, the question arises: Can gambling debts be discharged in bankruptcy?

Gambling in the Online Sports Era

The legalization of sports betting in numerous states has significantly transformed the gambling landscape. More than 39² states and the District of Columbia now permit in-person and/or online sports betting, with billions of dollars wagered annually.³ The rise of online platforms has removed many barriers to entry into the gambling arena, allowing users to bet from the comfort of their homes. According to the American Gaming Association, Americans bet more than \$121 billion on sports in 2023.⁴

For some, the thrill of betting and the lure of big wins create a cycle of compulsive gambling that leads to significant financial hardship. According to a research study by professors at UCLA and USC, in states where online sports gambling was legal, bankruptcies increased approximately 28 percent, debt collection rose 8 percent, and credit scores decreased .3 percent between 2018 to 2023.⁵

For individuals overwhelmed by debt, bankruptcy can provide a fresh start. While I am often asked whether gambling debts are dischargeable in bankruptcy, the answer to the question is not as clear-cut as some may want and depends entirely on the circumstances surrounding the debt and the debtor's intent when it was incurred.

The Legal Framework for Dischargeability

Gambling debts are generally dischargeable in a bankruptcy case and are typically treated like credit cards, personal loans, or medical debts. However, under 11 U.S.C. section 523(a)(2), certain debts are excepted from discharge, including those obtained by: (1) false pretenses, a false representation, or actual fraud; (2) debts owed to a single creditor totaling more than \$800 for luxury goods

or services incurred within 90 days prior to the filing; or (3) cash advances totaling more than \$1,100 within 70 days prior to the filing. These provisions are particularly relevant to gambling debts. If a creditor—such as a casino, credit card company, or online betting platform—can prove that the debtor incurred the debt without intending to repay it, the debt may be deemed nondischargeable.⁶

Proving Fraud: The Creditor's Burden

To succeed on a complaint seeking a determination of nondischargeability under Section 523(a)(2)(A), the creditor must prove the following elements:⁷

1. The debtor made a representation (explicit or implicit);
2. The representation was false;
3. The debtor knew the representation was false;
4. The debtor made the representation with intent to deceive the creditor;
5. The creditor justifiably relied on the representation; and
6. The creditor suffered damages as a result.⁸

In gambling debt cases, creditors often argue that the debtor implicitly represented their ability and intention to repay by incurring the debt. However, proving fraudulent intent can be challenging, as courts typically require evidence beyond mere inability to pay.⁹

Key Factors in Gambling Dischargeability Disputes

Courts consider several factors when determining the dischargeability of gambling debts, including but not limited to:

1. **Timing of the Debt:** Courts may examine whether the debt was incurred shortly before the bankruptcy filing. Large gambling losses just before filing can raise red flags, as they may suggest that the debtor never intended to repay the debt.
2. **Consultation with Counsel:** Whether or not a bankruptcy attorney was consulted before the debt was incurred.

1 While I consider myself more of an Angels baseball enthusiast, there is something undeniably thrilling about coming together with friends and family to celebrate Super Bowl Sunday.

2 Missouri is the 39th state to allow sports betting. In November 2024, voters in Missouri approved a ballot measure that authorized sports betting.

3 In 2018, the U.S. Supreme Court ruled that the Professional and Amateur Sports Protection Act (PASPA), which prohibited states from authorizing and regulating sports gambling, was deemed unconstitutional.

4 Kevin Hardy, "Growth of Sports Betting May Be Linked to Financial Woes," *Stateline* (Dec. 5, 2024), <https://stateline.org/2024/12/05/growth-of-sports-betting-may-be-linked-to-financial-woes-new-studies-find>.

5 Brett Hollenbeck, Poet Larsen & Davide Proserpio, *The Financial Consequences of Legalized Sports Gambling*, UCLA Anderson Sch. of Mgmt. & Univ. of S. Cal., Marshall Sch. of Bus. (Oct. 2024).

6 A creditor who wishes to challenge the dischargeability of a gambling debt must file a lawsuit against the debtor in the bankruptcy case within 60 days after the first § 341(a) creditors' meeting. The creditors' meeting is typically held about 30 days after the voluntary bankruptcy filing. Fed. R. Bankr. Proc. 4007.

7 In *Grogan v. Garner*, 498 U.S. 279, 291 (1991), the Supreme Court held "that the standard of proof for the dischargeability exceptions in 11 U.S.C. § 523(a) is the ordinary preponderance-of-the-evidence standard."

8 In *Field v. Mans*, 516 U.S. 59 (1995), the Supreme Court determined that when Congress used the term "actual fraud" in § 523(a)(2)(A), Congress was referring to the general common law of torts.

9 "We emphasize that the representation made by the card holder in a credit card transaction is not that he has an ability to repay the debt; it is that he has an intention to repay." *Anastas v. Am. Sav. Bank (In re Anastas)*, 94 F.3d 1280, 1285 (9th Cir. 1996).

3. **Debtor's Financial Condition:** A debtor's financial situation at the time of the gambling can also be indicia of fraudulent intent. Was the debtor already insolvent or had no realistic means of repaying the debt?
4. **Use of Credit:** Gambling debts are often incurred through credit cards or lines of credit and may trigger a presumption of nondischargeability of luxury goods and services or cash advance provisions found in 11 U.S.C. section 523(a)(2)(C).
5. **Debtor's History:** Patterns of gambling activity may also play a role. A history of compulsive gambling or evidence of financial recklessness may help support a creditor's claim of nondischargeability.

Practical Considerations for Debtors

Debtors with significant gambling debts should consider several factors before filing for bankruptcy:

1. **Transparency:** Full disclosure of all debts and financial activities is critical. Attempts to conceal gambling activity may lead to the denial of a debtor's discharge under 11 U.S.C. section 727. Clients are often reluctant to advise their counsel that they have a gambling problem.¹⁰
2. **Documentation:** Debtors should compile and maintain records of their gambling activity, including account statements and receipts. This information can help demonstrate the absence of fraudulent intent.
3. **Counseling:** A debtor may wish to seek treatment for compulsive gambling as it is beneficial not only for the client's financial recovery but also in showing the court that he/she is taking responsibility for their actions.
4. **Legal Advice:** An experienced bankruptcy attorney can help debtors navigate the complexities of gambling debt dischargeability and prepare a compelling case if a creditor challenges the discharge.

State Law Considerations

Although a debtor *may* personally discharge gambling obligations owing to a casino, the discharge will not protect a debtor from potential criminal liability imposed by state statutes. In Nevada, unpaid gambling debts may lead to criminal charges. For instance, unpaid casino markers are treated like bad checks and may have criminal implications for a client.¹¹ Under Nevada Revised Statutes section 205.130, knowingly writing a bad check is considered criminal fraud. The Bankruptcy Court cannot prevent the State of Nevada from prosecuting debtors under this statute,¹² and a debtor's obligation to pay criminal restitution is not dischargeable in a bankruptcy.¹³

¹⁰ I frequently notice multiple withdrawals on my client's financial statements made to both in-person and online gambling companies.

¹¹ "Casino Markers" are lines of credit provided to casino patrons.

¹² 11 U.S.C. § 362(b)(1) provides that the filing of a bankruptcy petition does not operate as a stay of the commencement or continuation of a criminal action or proceeding against the debtor.

¹³ 11 U.S.C. § 523(a)(7) provides that a discharge under chapter 7 does not discharge a debtor from any debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

Conclusion

The Super Bowl represents a peak moment in America's sports betting frenzy, but it also highlights the risks associated with the growing accessibility of online gambling. For those who find themselves overwhelmed by gambling debts, bankruptcy may offer relief—but not without challenges. The dischargeability of these debts depends on a nuanced analysis of intent and financial circumstances. As the online sports betting era continues to evolve, so too will the legal and financial questions surrounding gambling debts.

From a bankruptcy perspective, the challenge lies in balancing the fresh start principle with the need to prevent abuse of the system. Courts must carefully assess each case to distinguish between honest debtors and those who exploit bankruptcy as a means to escape gambling losses.

Misty Perry Isaacson is with the firm of Pagter and Perry Isaacson in Santa Ana, CA and is a California Certified Specialist in Bankruptcy Law.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2025.

- Jacob T. Barham** – Varner & Brandt, Riverside
- Dess A. Benedetto** - Family TLC Inc, Palm Springs
- Daniel B. Burbott** – Gaudy Law Inc, Upland
- Stuart Carter Gannon** – Solo Practitioner, Palm Desert
- Jason L. Gaudy** – Gaudy Law Inc, Upland
- Xiaoli "Shirley" Li** – Stream Kim Hicks Wrage & Alfaro, Riverside
- Jooyeong "Esther" Jeon** – Stream Kim Hicks Wrage & Alfaro, Riverside
- Patricia A. MacAdam (A)** – The MacAdam Company, Riverside
- Bria Miles** – Miles & Hatcher, Rancho Cucamonga
- Saul Silverio Reyes** – Law Student, Norco
- Jessica E. Rico-Zuber** – Office of the City Attorney, Riverside
- Dominique Faith Salazar** – Law Student, San Diego
- Michael J. Thies** – Best Best & Krieger, Riverside
- Elia Marie Vazquez** – Varner & Brandt, Riverside
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Judicial Profile: Judge Melissa Hale

by Mary Gilstrap

THINK!
Are your words
Kind?
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No? Keep them to yourself

When Judge Melissa Hale takes the bench, the above words, written in brightly-colored paint on a small black canvas that only she can see are a constant reminder to demonstrate these principles to all litigants and counsel appearing in Department 32 in Riverside.

Judge Hale has just completed her first year as a sitting judge, presiding over the felony vertical calendar, which she really enjoys. "I like working the calendar," she said. "It's different every day. It gives me an opportunity to interact with the parties, and there is a lot I can do to help people. They are getting a chance to be heard."

A career Public Defender in Riverside for 17 years, Judge Hale received the news from the Governor's appointment secretary in December of 2023, via a text from Riverside County Public Defender Steve Harmon that she was being reconsidered for the job. He prefaced the good news with the quip, "You're not in trouble," which was music to her ears after the years-long application and vetting process for a judgeship. Once the appointment was made public, Judge Hale excitedly called one of her best friends who was engaged to be married, asking her "Now that I'm a judge, can I do your wedding?"

One of the words that best describes Judge Hale is driven. She's known that she wanted to be a lawyer since she was six-years-old. At age 14, while babysitting for a lawyer here in Riverside, he told her that she needed to join a mock trial team. That was all she needed – she became an active participant with Norte Vista High School's mock trial program and went on to win multiple awards, local and state, for best defense attorney.

Her ambition and drive did not stop there. Graduating with dual majors in political science and administrative studies from UC Riverside, she went on to Whittier Law School less than three weeks after giving birth to her second child, graduating magna cum laude while parenting a kindergartener, an infant, and a toddler with her husband, Ron Hale. Judge Hale went to the Riverside County Public Defender's office directly after graduat-



Judge Melissa Hale

ing from law school and worked in almost every assignment in that office, eventually culminating in nine years trying cases in the department's complex litigation unit. "I always just gravitated that direction," Judge Hale said with a grin.

Not surprisingly, given her initial introduction to the trial process, Judge Hale has remained active with mock trial, acting as a mentor and coach to high school students in mock trial competitions since 2014. She has been a member of the Mock Trial Steering Committee since 2023, and in 2024, Judge Hale helped judge the

Riverside County's 42nd annual mock trial competition, in which 22 county-wide high schools vied for the top honor of being the best in the county (Poly High School in Riverside won).

Judge Hale has also been an adjunct professor at the University of La Verne School of Law, where she taught trial advocacy including how to conduct a criminal jury trial from opening statements to closing arguments, how to admit evidence (or prevent evidence from coming in), and the proper use of objections.



Judge Hale has the further distinction of being married to one of the best and most creative haunted house builders in California. Ron, an IT project manager, formed "Straite to Hale" with his partner Mark Straite, to design and build haunted houses and mazes. In 2022, Straite to Hale built "Demon Creek" in the Hales' own suburban front yard, a miniature western ghost town painted in shades of purple and red and replete with a multi-story water tower, animatronic heads, a maze, dancing ghosts, and ghoulish costumed characters who spring from the shadows to frighten haunted house visitors. Last October, their haunted

carnival "Horrorrama" drew more than 5,000 people. Moreover, the haunted house business has taken off, resulting in "Straite to Hale" being commissioned to design and build haunted houses for businesses such as Magic Mountain and the Winchester Mystery House.



In her free time, Judge Hale is an active fitness enthusiast. A vegan, she has a yoga mat in chambers, rides a bike regularly, has studied martial arts and hikes. One of her bucket list items is to

hike Mt. Whitney and Half Dome. If that wasn't enough, she also enjoys gladiator runs.

Judge Hale and Ron have three children: Sam, aged 25, who has a BS in Hospitality Management and works at Disneyland; Danica, aged 22, who has a BA in Film Production and Design and who also works at Disneyland; and Peter, the baby, a philosophy major at UC Riverside who wants to be a public defender just like his Mom.

Judge Hale was assisted in her Indio courtroom by Erica Torres and Margarita Martinez, court reporter Christina Morton and Riverside County Deputy Sheriff Kenny Villa. In Department 32, she is being assisted by Melina Sevilla, her court reporter Kathy David, and Riverside County Deputy Sheriff William Torres.

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



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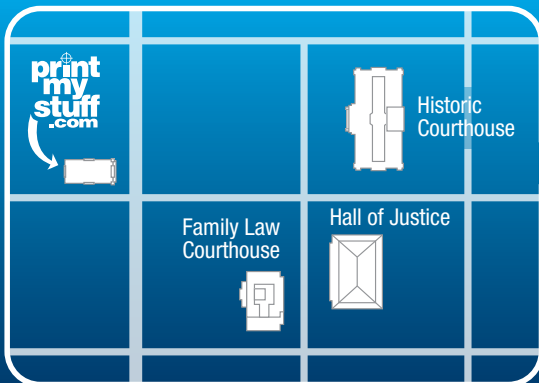
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- 4** Mock Trial – Round 3
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Riverside Hall of Justice
- 8** Mock Trial – Round 4
9:00 AM
Riverside Hall of Justice
- 11** Mock Trial – Elite 8
6:00 PM
Riverside Hall of Justice
- 13** Criminal Law Section Section Meeting
Noon, RCBA Gabbert Gallery
Topic: “Establishing a Nexus Between the Crime and Military Service”
Speaker: Judge Mark Johnson (Ret.)
MCLE
- Mock Trial – Semi Finals
6:00 PM
Riverside Historic Courthouse
- 18** Family Law Section Meeting
Noon, RCBA Gabbert Gallery
MCLE

Mock Trial – Championship
6:00 PM
Riverside Historic Courthouse

- 19** Estate Planning, Probate & Elder Law Section Meeting
Noon, RCBA Gabbert Gallery
Topic: “State of the Probate Court”
Speakers: Judge Fernandez, Judge Harmon,
Tom Johnson, Sheri Gulino
MCLE

- 21** General Membership Meeting
Noon, RCBA Gabbert Gallery
Topic: “State of Riverside Superior Court”
Speaker: Presiding Judge Jacqueline Jackson
MCLE

MARCH

- 3** Roundtable with Judge Hopp
12:15, Zoom
MCLE

Events Subject To Change

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

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 \$30.00 and single copies are \$3.50.

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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 Statement

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

Membership Benefits

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

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

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

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



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