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# RIVERSIDE LAWYER

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The Life Cycle of a Habitability Dispute***

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***Licensed and Bonded and Insured; Oh My!!***



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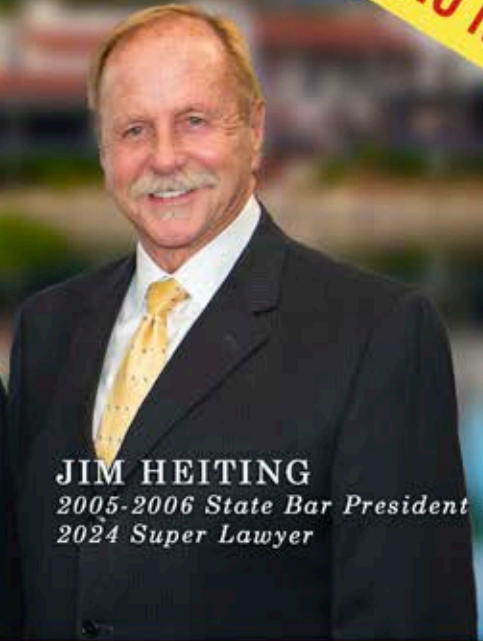
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**Design and Production** PrintMyStuff.com (PIP Riverside)

**Cover Design** PrintMyStuff.com

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4129 Main Street, Suite 100  
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www.riversidecountybar.com

# RIVERSIDE LAWYER

MAGAZINE

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# PRESIDENT'S Message

by Mark A. Easter



## Donning the Black Robe: Three Perspectives

Obtaining qualified applicants to replace current and projected vacancies on the superior court in Riverside County continues to be a challenge. Accordingly, I thought it might be helpful, to attorneys that are considering applying for a judicial position, to obtain the perspective of some recent appointees to our bench. I reached out to Superior Court Judges Sophia Choi, Mona Nemat, and Jerry Yang, each of whom were appointed in the last several years, to get their thoughts on the process and transition.

### **What was the biggest adjustment you had to make upon taking the bench?**

For Judge Choi, it was basically the adjustment to a new career, and "making sure I put in the work" to learn it. Judge Yang said it was the reality that even when not on the bench, you "still need to act like a judge." Judge Nemat put it this way: "[You] are always a judge before anything else. The vocation determines who you can be friends with, what you can or can't say, and what you can and can't do, even in your personal life."

### **What have you enjoyed most about being a judge?**

Judge Nemat, who has spent a lot of her time on the bench working with youth in the county foster system, responded, "The ability to ensure a just result, case by case." For Judge Choi, it was her ability to still engage with the community, "especially when I am able to speak to large groups of jurors." Judge Yang appreciates the opportunity to develop "a skill to make significant decisions with often limited information." Judge Yang also expressed to me that he was pleased to see that jurors, for the most part, are attentive and work really hard to try and reach the right result.

### **Was there an area or areas of the law that were previously unfamiliar to you that you had to learn? How did that process go and what was helpful to you?**

Judge Yang, who was a federal prosecutor before he was appointed, indicated that transitioning from the Federal Rules of Evidence to the California Evidence Code was not difficult because they are similar. However, it was a challenge for him to get up to speed on State sentencing laws. Judge Nemat has had two assignments since taking the bench: juvenile dependency and domestic violence restraining

orders. Both of these assignments were "out of her wheelhouse," since the vast majority of her practice as an attorney was civil and litigation. Judge Nemat said she benefitted not only from online resources and trainings, but most importantly, from great judicial colleagues who went out of their way to help her. Judge Choi responded that although in her 18 years as an attorney, she practiced in criminal, appellate, civil and juvenile dependency, her current assignment is in family law. She read a lot of materials to become familiar with family law.

### **Do you have any advice for attorneys who are interested in applying for a judicial position?**

For Judge Yang, it was about temperament: "Be aware of how you are conducting yourself" towards attorneys and judges, and don't "get carried away with trying to win every argument at all costs." Judge Nemat identified three things: 1) Get the perspective of what it is like to be a judge by serving as a pro tem judge. 2) Understand that there are "a lot of limitations imposed on bench officers and it can be very isolating." 3) "Get yourself known" by people, and "do good things for your community." In addition to all of the above, Judge Choi encouraged seeking a mentor, because as she said "Mentorship is the key to success."

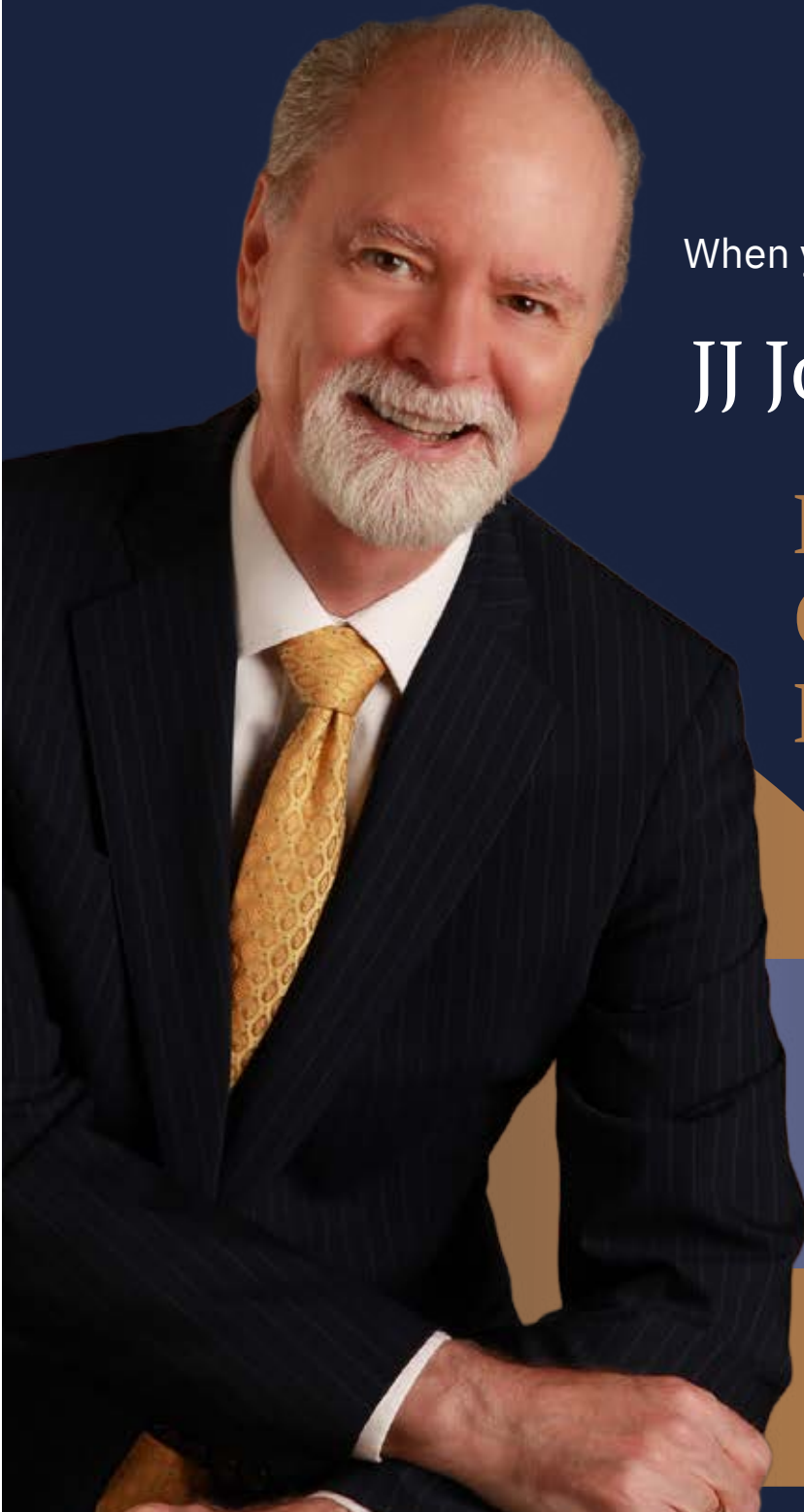
For those of you who are considering applying for a judicial position, hopefully the above insights from these three judges are helpful. I would add that based on my experience on RCBA's Judicial Evaluation Committee, your reputation and interactions with opposing counsel and judges matters, and your involvement in the community and "well-roundedness" is also considered. And I would echo Judge Choi's emphasis on mentorship. If you have a good working relationship with one of our judges, seek out their guidance. He or she will more than likely be happy to give you advice on the process and might even assist you with the written application, which is lengthy.

I also wanted to let our members know that three lawyers—Greg Wilkinson, Steven Becker, and James Seff—each of whom have decades of experience dealing with the state's courts and the federal courts, (including the United States Supreme Court), have notified the federal court that they are organizing a public meeting in front of the George E. Brown Federal Building and United States Courthouse on March 12, 2025, between 11:30 a.m and 1:30 p.m

The purpose of the public meeting is to show support for our federal judges, assistant U.S. attorneys, and FBI investigators. These experienced attorneys are concerned that efforts are currently underway in Washington D.C. to undermine and intimidate those who pursue, apply and enforce the Rule of Law, and jeopardize the preservation of our Republic. The intention is that this meeting will be orderly and respectful. Accordingly, if you share the concerns expressed by these attorneys, please consider attending the public meeting on March 12th.

Well, we've made it to March, which means that SPRING is near! Our next General Membership meeting will be on Friday, March 14th, and will feature a panel discussion on the Riverside County Superior Court mediation program.

*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



Barristers has been busy! In January, Barristers hosted its first social networking mixer of the year at ProAbition. While Barristers is known for its monthly "happy hours," these social mixers are designed to bring new attorneys together in an informal and relaxed environment. The goal is to provide opportunities to create meaningful connections that can extend beyond the event itself. Many of the friends and connections I have in the Riverside legal community began at a Barristers happy hour!

In February, Barristers volunteered to be scoring attorneys for mock trial. To be completely candid, I had never been involved with mock trial and was not quite sure what to expect. But let me tell you, it is exactly how everyone describes it—a very rewarding experience. I was extremely impressed by the preparation and dedication that these high school students clearly put into presenting their case. If you have not been a scoring attorney for mock trial, I highly recommend it. You won't regret it!

In March, Barristers (and their family and friends) had a day out at Disneyland! Treats were eaten, rides were ridden, shows were watched, Disney characters were met, laughs were had, memories were made, and, most importantly, friendships were formed! This is really what Barristers is all about! Keep an eye out for our next outing, like wine tasting.

### Join us at our upcoming events in 2025!

- Barristers "Happy Hour" Mixer: Friday, March 14, 2025, beginning at 5:00 p.m. at Hangar 24 located at 5225 Canyon Crest Dr., Unit 58, Riverside.
- CLE: "Should I Fake it Till I Make it?" (1 hour of general credit re common mistakes made by new attorneys) presented by Eugene Kim, Esq. of Stream Kim Hicks Wrage & Alfaro, PC on April 2, 2025. Networking: 5:30 p.m.; CLE: 6:00 p.m.-7:00 p.m. For more details and to register, please visit: <https://RCBABarristersCLE-2025.eventbrite.com>.

- Barristers "Happy Hour" Mixer: Friday, April 18, 2025 beginning at 5:00 p.m. at Retro On Main located at 3744 Main St, Riverside, CA 92501.
- Barristers "Happy Hour" Mixer & New Attorney Academy Graduation Celebration: Friday, May 16, 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](mailto: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/>

Instagram: <https://www.instagram.com/rcbabarristers/>

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

### Barristers Board Spotlight: David P. Rivera, 2024-2025 Past President

David recently closed his solo practice in business transactional law to join Atkinson, Andelson, Loya, Ruud & Romo. He provides counsel and representation to California school districts, county offices of education, and other related agencies in general education law matters. He also drafts and negotiates contracts for property and general service matters.

David is serving his sixth term on the Barristers board. He has served as a Member-at-Large, Treasurer, President-Elect, President, and now serves as Past President.

David sucks at yoga. But he loves Snoopy (and all dogs)!

*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](mailto:summer.devore@streamkim.com).*

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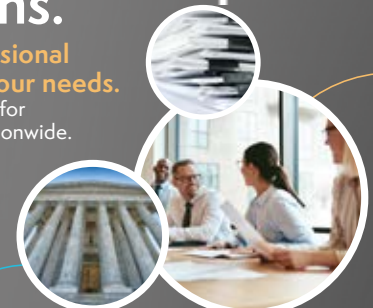


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# Building Decarbonization: A California Climate Imperative

by David C. Smith

The staff at the California Air Resources Board (CARB) is asking for help.<sup>1</sup> They are under a legislative mandate<sup>2</sup> to reduce the carbon intensity of building materials in California by 40 percent by 2035, and they are not sure how to do that. Truth be told, it may be that no one does, at least yet. While building decarbonization has long been recognized as a core imperative in California's comprehensive climate strategy, the core of this effort – embodied carbon – is a relatively new concept. So new, in fact, that it is never even mentioned in California's climate "Bible," the Scoping Plan that underwent its most comprehensive update and revision in 2022.<sup>3</sup>

Stepping back, California's climate strategy is economy-wide. CARB has identified major greenhouse gas (GhG) emission sources by economic sector and allocated a percentage of the existing emissions load to each. According to the Scoping Plan, the top emissions sector is transportation at 40 percent, having recently surpassed power generation. According to a different attribution and calculation cited by CARB staff, building operations account for 28 percent of global emissions and building materials and construction contribute 11 percent.<sup>4</sup>

Previously, California's strategy for building decarbonization, per the Scoping Plan, focused on energy efficiency, electrification of new and existing buildings, and the elimination of any reliance on natural gas in new construction.<sup>5</sup> But more recent analysis claims that 50 percent of a building's life-cycle carbon intensity is established and locked upon construction, prior to commencing intended operations.<sup>6</sup> Accordingly, the legislature and governor have directed CARB to reduce the car-

bon intensity of buildings at the construction stage and not wait for greater operational efficiency. "Embodied Carbon," defined by CARB as "the carbon dioxide equivalent emissions associated with a product as determined using life-cycle assessment,"<sup>7</sup> is now a primary focus.

A "life-cycle assessment" (LCA), according to CARB, is a "compilation and evaluation of the inputs, outputs, and the potential environmental impacts of a product system throughout its life cycle (e.g., from cradle to grave)."<sup>8</sup> An Environmental Product Declaration (EPD) is "a document that communicates the life-cycle assessment of a product based on defined rules," according to CARB.<sup>9</sup> An EPD is not unlike a "Nutritional Facts" label on food products. But rather than disclosing carbohydrates and calories in a particular ingredient in a recipe, it discloses information such as embodied carbon and toxicity. The total LCA of a construction project is the sum total of the quantities disclosed in the EPD for each and every material involved in that construction project. The problem is, very few EPDs for conventional construction materials exist.<sup>10</sup>

But as energy efficiency standards and building electrification progress, reducing embodied carbon becomes increasingly essential in meeting California's targets. Presently, according to CARB, the carbon intensity of a typical commercial building is 54 percent operational and 46 percent embodied. Residential construction, on the other hand, is 41 percent operational and 59 percent embodied.<sup>11</sup>

Pursuant to AB 2446 and AB 43, both authored by Assemblymember Holden in 2022 and 2023, respectively, CARB is subject to three legislative deadlines on its road to reducing embodied carbon in building materials for both residential and commercial construction projects statewide.

- By December 31, 2026, CARB must adopt a framework for measuring carbon intensity of building materials;
- By December 31, 2028, CARB must develop a comprehensive strategy to reduce GhG emissions; and

1 Survey request for development projects: [https://forms.office.com/Pages/ResponsePage.aspx?id=7qrlnYh3sUcK0MDMyYyHzCIsYYUOR0FDn5QQ2UGusJtJUNVZSNkhYSDdNN0E2QVdWSTIUU0hKV1c3QyQlQCNOPlWcu&utm\\_medium=email&utm\\_source=govdelivery](https://forms.office.com/Pages/ResponsePage.aspx?id=7qrlnYh3sUcK0MDMyYyHzCIsYYUOR0FDn5QQ2UGusJtJUNVZSNkhYSDdNN0E2QVdWSTIUU0hKV1c3QyQlQCNOPlWcu&utm_medium=email&utm_source=govdelivery).

2 Survey request for building material manufacturers: [https://forms.office.com/Pages/ResponsePage.aspx?id=7qrlnYh3sUcK0MDMyYyHzCIsYYUOR0FDn5QQ2UGusJtJUNVZSNkhYSDdNN0E2QVdWSTIUU0hKV1c3QyQlQCNOPlWcu&utm\\_medium=email&utm\\_source=govdelivery](https://forms.office.com/Pages/ResponsePage.aspx?id=7qrlnYh3sUcK0MDMyYyHzCIsYYUOR0FDn5QQ2UGusJtJUNVZSNkhYSDdNN0E2QVdWSTIUU0hKV1c3QyQlQCNOPlWcu&utm_medium=email&utm_source=govdelivery)

3 AB 2446 (Holden – 2022): [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2446](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2446)

4 AB 43 (Holden – 2023): [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB43](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB43)

5 <https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents>

6 CARB, "Embodied Carbon in Buildings, Workshop 1," September 19, 2024 (Staff Report), slide 14 <https://ww2.arb.ca.gov/sites/default/files/2024-09/Building%20Embodied%20Carbon%20September%202024%20Workshop%20Final%20with%20Poll%20Results.pdf>

7 Scoping Plan, pg. 212.

8 Staff Report, slide 16.

7 *Id.*, slide 50.

8 *Id.*

9 *Id.*

10 *Id.*, slide 50.

11 *Id.*, slide 16.



- By December 31, 2035, CARB must achieve a forty percent reduction in GhG emissions of building materials.<sup>12</sup>

But to demonstrably show you have cut 40 percent of something, one must first know the quantification of the baseline from which one is making such a cut. And CARB has no idea how much carbon is currently embodied in the stockhold of building materials currently used by developers of all kinds in California. This is the first reason CARB staff is actively soliciting the input of developers and producers and manufacturers of construction materials on estimating the baseline of the carbon intensity of the universe of existing building materials. Critical existing data gaps according to CARB staff include: comprehensive facility-specific EPDs; quantities of material and products used for new construction; supply chain details for products and materials; costs of manufactured products; and "GhG mitigation interventions available to manufacturers and project developers."<sup>13</sup>

AB 2446 and AB 43 are not the only active measures seeking to decarbonize the building sector in California. Effective in July 2024, the Building Standards Commission adopted revisions to the California Green Building Code, CALGreen, that mandate new embodied carbon standards for large commercial construction

<sup>12</sup> *Id.*, slide 12.

<sup>13</sup> *Id.*, slide 24.

projects. For new construction or retrofitting/demolition of existing buildings over 100,000 square feet, the project must demonstrate one of three criteria: reuse of at least 45 percent of the original structure, construction utilizing select low-carbon building materials as certified by CARB, or conducting an LCA on the building demonstrating it is at least 10% better in terms of emissions than similarly situated buildings.<sup>14</sup>

Developers and owners of buildings have grown familiar with increasing energy efficiency standards, sourcing renewable energy generation, and even efforts to ban natural gas infrastructure and appliances in new construction. But the focus on embodied carbon is a relatively new frontier, not only for the regulated community but for the regulators themselves. It remains to be seen how cooperative and collaborative the development community intends to be with CARB in advancing a new regulatory regime with which they will soon have to comply.

*David C. Smith is a partner with Manatt, Phelps & Phillips, LLP, practicing out of the firm's Orange County office. After more than 25 years practicing land use, complex entitlement, and regulatory entitlement, David obtained a master of laws degree in Energy and Climate where he now focuses much of his practice..*



<sup>14</sup> <https://www.dgs.ca.gov/bsc/calgreen>

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# Construction During Probate

by Jeremiah Raxter

Probate is rarely straightforward. If there is such a thing as simple probates, I don't meet them very often. Managing testamentary documents, heirs, accounting, and court proceedings is already complex, but in rare instances, the situation becomes even more challenging when construction or unfinished property improvements must be addressed during probate administration.

In a recent case, the administrator I was assisting had to deal with a commercial property that burned down. The administrator was faced with the decision to rebuild with the insurance money or distribute the insurance proceeds and not rebuild the property. When administering a probate estate in California, attorneys must carefully navigate issues related to real property maintenance, repair, and construction. The personal representative or Administrator is charged with managing and preserving estate assets under Probate Code section 9600, which would include addressing necessary repairs and possibly improvements to the property. However, the extent of the personal representative's authority depends on whether they operate under full or limited authority under the Independent Administration of Estates Act (IAEA) (Prob. Code §§ 10400-10592).

If granted full authority, the personal representative may undertake routine maintenance and minor repairs without court approval. However, significant renovations or alterations that materially impact the estate's value would certainly necessitate a Notice of Proposed Action (NOPA) and may even require judicial oversight, particularly under Probate Code section 9611, which allows a personal representative to seek court instructions regarding the administration of estate property. With limited authority, the personal representative would likely be required to petition the probate court before making any major decisions regarding construction, renovations, or repairs that extend beyond ordinary maintenance or emergency repairs.

Routine maintenance and emergency repairs are generally permissible without prior court authorization. Examples include fixing plumbing or electrical issues, replacing damaged roofing, or securing the premises from vandalism. These actions are often necessary to preserve the property's value and ensure that it remains marketable during probate administration. However, substantial modifications, such as structural remodels, expansions, or discretionary aesthetic upgrades, may require court oversight due to their potential impact on estate assets. In such cases, the personal representative should file a Petition for Instructions under Probate Code section 9611,

outlining the necessity of the project, the estimated costs, and the anticipated effect on the estate's value.

A key consideration for legal practitioners advising fiduciaries is the potential personal liability that may arise from unauthorized or excessive construction expenditures. Under Probate Code section 9601, if a personal representative mismanages estate funds by engaging in unnecessary or overly costly construction, they may be personally surcharged. This can occur if beneficiaries challenge the expenditure and demonstrate that they were not justified as necessary estate expenses. For the reasons discussed, it is generally recommended that fiduciaries take a conservative approach to property modifications, ensuring that all work is essential for estate preservation or enhances marketability in a probate sale. Moreover, personal representatives must maintain comprehensive documentation regarding all construction decisions, including obtaining multiple bids, keeping records of contractor agreements, and justifying how the expenses align with the estate's best interests.

The documentation will be required when you prepare the accounting. All expenses must be accurately recorded and included in estate accountings under Probate Code section 1061. When you prepare an accounting, you are normally at the finish line. However, with one objection by an interested party, you can be standing at the beginning of litigation. Best practice would say that to avoid disputes with beneficiaries or objections during the probate accounting, obtaining court pre-approval for major construction projects serves as a protective measure for fiduciaries.

If the property that is being administered is subject to construction defect issues or workmanship claims the administrator must decide if it's advantageous to the estate to pursue those claims. Just as a NOPA would be advisable before any substantial actions, it would be advisable to issue a NOPA if the administrator is considering abandoning a claim relating to the property.

In summary, educating administrators and fiduciaries to distinguish between necessary maintenance and discretionary improvements, ensuring thorough documentation of all expenditures, proactively issuing NOPAs, and seeking court approval when required are essential best practices.

*Jeremiah Raxter is the principal attorney at Raxter Law, P.A., a member of the Bar Publications Committee and is the Chair of the RCBA Estate Planning, Probate & Elder Law Section.*





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# Landlord/Tenant – The Life Cycle of a Habitability Dispute

by Darrell Moore

A one-bedroom apartment with a broken window somewhere in Riverside County. What a story! The window has a hole all the way through, some jagged edges, allows for a draft, and simply does not look very nice. Our tenant wants the landlord to repair the window.

Our landlord, believing that the window was broken by the tenant, feels that the tenant should pay for the repairs. The tenant, paying full market rent, claims that they do not know how or when the window was broken. The tenant believes that it is the legal obligation of the landlord to make the repair.

Who does have the legal obligation to make the repair?

Generally, the legal obligations between landlords and tenants are established by the rental agreement, *which can be written or oral*, applicable California statutes and applicable case law.

Assume that in the case of our broken window, the tenant and the landlord have a written rental agreement that requires the tenant to properly use and maintain the rental property but is silent as to any obligation the landlord may have to provide a habitable premises or to make repairs when needed. The landlord relies on this provision in telling the tenant that it is the tenant's obligation to repair the window.

The tenant informs the landlord that the California State Legislature enacted a series of statutes beginning with Civil Code section 1940 that impose a duty upon the landlord to provide premises that are in a condition fit for human occupation. The tenant further explains that Civil Code section 1941, subdivision (a)(1) specifically provides that rental units intended for human habitation **shall** have effective water-proofing and weather protection and must be free of broken windows. The tenant relies on this statute in telling the landlord that it is the landlord's obligation to repair the window.

The landlord responded that Civil Code section 1941 allows for the parties to enter into an agreement that is "contrary" to the requirement that the landlord provide a premises that is fit for human occupation and reiterates the position that the rental agreement requires the tenant to maintain the premises. The tenant points out that the tenant protections established by Civil Code section 1941, et seq., cannot be waived by the parties and further argues that any agreement purporting to relieve the landlord of the obligation to provide a premises fit for human occupation must be in the context of consideration for the rental unit. Here the tenant is paying full market rent. (Civil Code § 1942.1.)

The window is broken, *along now with the landlord-tenant relationship*, and still needs to be repaired. The landlord refuses to make the repairs, what can the tenant do? The tenant has two basic options, **repair** the window with their own funds

**and deduct** the cost of the repair from the next month's rent payment. Alternatively, the tenant could withhold payment of any future rent until such time that the landlord makes the repair to the window.

For the first option, to properly rely on the repair and deduct procedure set forth in Civil Code section 1942, the tenant must provide reasonable notice to the landlord, in writing preferably, but oral notification is statutorily acceptable, that the tenant will repair the window at their out-of-pocket cost if the landlord fails to do so and that the cost of the repair will be deducted from next month's rent. What is reasonable notice to the landlord?

A presumption arises that the tenant acted reasonably if they waited 30 days after giving the landlord notice of their intent to make the repair. A shorter period of time can be found to be reasonable if the circumstances warrant quicker action. (Civil Code § 1942.) Significantly, the "repair-and-deduct" remedy can only be invoked twice in any 12-month period and the amount of the repair cannot exceed one month's rent.

The second option, *arguably* available to the tenant, would be to withhold payment of rent. But can the tenant really withhold the rent? A cursory review of Civil Code section 1942.4 appears to set a high bar for the tenant. This code section prohibits a landlord from collecting rent, but only when three conditions have been satisfied.

- First, the dwelling unit must substantially lack any of the affirmative standard characteristics listed in Civil Code section 1941.1.
- Second, a public officer who is responsible for enforcement of housing law inspected the premises and notified the landlord in writing of the obligation to repair the substandard condition.
- And third, the landlord failed to make the necessary repair within 35 days after the notice was given by the public officer.

If unable to satisfy all three of the requirements set forth in Civil Code section 1942.4, the resourceful tenant may argue that it's common law. The case of *Green v. Superior Court* 10 Cal. 3d 616 (1974), provides the same remedies without the need to satisfy the statutory requirements. *While this is theoretically correct, my personal experience has been that when a tenant attempts this legal theory a very high threshold is set by the trier of fact as to what factually constitutes a dilapidated condition.*

The tenant, opting to be conservative, elected to pursue the first option and to follow all of the procedures required to properly "repair and deduct" the cost of fixing the window and

then deducted the actual cost incurred from the next month's rent bill. The tenant timely submitted the next month's rent payment subtracting out the actual cost of repairing the window. The landlord accepted the partial payment of rent reiterating to the tenant that the responsibility for the window's repair was the tenants and demanded the balance owing on the rent.

When the tenant refused to pay the balance of the monthly rent claimed to be owed, the landlord served the tenant with a "3-day notice to pay rent or quit." The tenant, believing their legal position to be correct, refused to make any additional payment in response to the 3-day notice. The landlord proceeded with an unlawful detainer complaint alleging that the defendant failed to pay all the rent when due. The tenant filed an answer to the unlawful detainer complaint raising the affirmative defenses of habitability and "repair and deduct." Thereafter, the landlord requested the matter to be set for trial.

At the trial, the landlord presented a straightforward case of having entered into a rental agreement with the tenant establishing the amount of the monthly rent to be paid and that for the month in question the tenant failed to pay the full amount of rent that was due. In proof of this claim, the landlord put into evidence the rental agreement, the 3-day notice served upon the tenant and a proof of service establishing that the tenant was served with the 3-day notice.

The tenant defended the action by arguing that the balance of the rent claimed to be owed was properly deducted. In proof of this defense, the tenant put into evidence a photograph of the broken window, a second photograph of the window after it was repaired, a repair bill from the contractor that made the repair, proof of payment by the tenant to the contractor, and a copy of the notice sent by the tenant to the landlord setting forth the tenant's intention to invoke the repair and deduct remedy.

By way of rebuttal, the landlord first argued that the rental unit did not have a broken window at the time it was initially rented to the tenant; second, it was the tenant's responsibility to make repairs for damages that occurred while the tenant was the resident; and finally, the broken window does not rise to a level of significance that renders the rental unit unfit for human occupation.

The tenant argued that there was no proof at trial as to how the window was broken or by whom the window was broken, or when the window was broken; secondly, the tenant argued that the rental agreement does not absolve the landlord for making the premises habitable; and finally, that the trier of fact is required to find, at least to some degree, that the broken window does render the property untenantable. (Civil Code § 1941.1.)

In sorting this out, the court consulted the statutory framework and reasonably concluded that, absent a showing that the tenant wantonly or willfully destroyed the property, it was the landlord's obligation to make the repair to the window. And therefore, concluded that the tenant properly deducted the cost of repairing the window from his rent pay-

ment and ruled in favor of the tenant at the conclusion of the unlawful detainer trial.

But would the result have been the same if the tenant chose the less conservative position and chose instead to withhold all the rent demanding that the landlord make the requested repairs first. Would the trier of fact place greater emphasis on determining what kind of condition actually constitutes a **significant** health and safety concern? Would the tenant's conduct be more closely scrutinized? *In my experience the answers to these questions tend to be in the affirmative.*

Assuming the trier of fact ultimately determines that the tenant's conduct was not a contributing factor to the broken window and determined that the broken window was a violation of the Civil Code that did rise to the level of a health and safety concern, although obviously favorable findings for tenant, would not result in ruling that the tenant was relieved of the obligation to pay the rent.

After having made these findings, the trier of fact would then need to make a determination as to the reduced value of the rental unit. There are three recognized approaches the trier of fact could use:

- (1) Determine the difference in rental value of the rental unit without the habitability problems and the value of the rental unit with the habitability problems.
- (2) Determine the value of the discomfort and annoyance suffered by the tenant.
- (3) Determine by what percentage the rental unit has been unusable.

Once the court has determined an appropriate amount by which to reduce the monthly rent, the court would enter a conditional judgment in favor of the tenant requiring the tenant to pay all of the past due rent, minus the amount now deducted, within five days. Typically, the conditional judgment would further provide that the future rent will be at the reduced amount until such time as the repairs have been made.

If the tenant fails to make that payment within five days, the conditional judgment becomes a judgment in favor of the landlord.

In closing, a single broken window is the simplest habitability case you would ever see. Look over Civil Code section 1941, and you can quickly see that these cases are factually complex, the evidentiary issues are challenging, and the cost of repairs are prohibitive. Just remember, talk is cheap, for both the landlord and the tenant. And all of this is to say nothing about the issues arising out of a claim of mold or the tenant who does not raise issues of habitability until after the service of a 3-day notice to pay rent or quit. For another day!

*Darrell K. Moore is an attorney with Inland Counties Services Incorporated specializing in Housing Law.*







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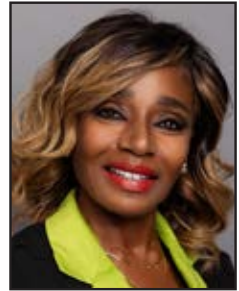
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# Money Pits and Pendulums

by Abram S. Feuerstein

New Year's resolution: to live long enough to complete home repairs and renovations. Second New Year's resolution: to save and have enough money to achieve the first resolution.

So, forget the make-believe HGTV world, where home improvements usually stay within budgets, and then conclude thirty or sixty minutes later, commercials included, as contented homeowners praise the TV host's work. In real life, expect to fork over twice as much money as initial construction estimates, and that you will need to endure hammering, foot traffic and dirt 3X longer than you thought. [Note: Add another "X" for future repairs in the fire-ravaged Los Angeles area].

The frustrations, absurdities, and aggravation that go along with fixing up a home, as well as the humor that enables surviving the undertaking, are the stuff of numerous books, plays, movies and TV sitcoms. Think *Green Acres* (1965-1971), where a New York attorney, named what else, Oliver Wendell Douglas, moves from his penthouse city apartment to Small Town, USA (actually, Hooterville) to take up farming and fix up a dilapidated house. Although a real estate agent has conned him into buying the property, really it is his dream of escaping Manhattan for a simpler, live-off-the-land, lifestyle that has blinded him to the home's obvious flaws. His socialite wife, Lisa, played by Eva Gabor, is horrified but packs her mink coats and jewelry and goes along with the plan. The Douglasses employ the ever-bickering Monroe Brothers, Alf and Ralph, to do the home renovations. Their work is inferior and never gets completed. When the TV show had a revival in 1990 twenty years after CBS cancelled it, the Monroe Brothers were still working away on the house.



Cary Grant and Myrna Loy starred in *Mr. Blandings Builds His Dream House*  
Public Domain/wikimedia

Similar city to rural dislocations — and home restorations — are featured in Steven Spielberg's 1986 comedy, *The Money Pit* (Tom Hanks and Shelley Long) as well as the great Cary Grant and Myrna Loy



Playwright George S. Kaufman  
circa 1928.  
Public Domain/wikimedia

comedy, *Mr. Blandings Builds his Dream House* (1948).

In *Blandings*, an advertising executive decides that he can no longer tolerate the family's cramped New York City apartment. With the assistance of an unscrupulous realtor, the couple buys an old Connecticut house that dates from the Revolutionary War only to learn that the house is unsound and must be demolished. Tensions mount as the couple encounters myriad building obstacles while construction costs escalate. Eventually, to use P.G. Wodehouse's words, happy endings get dished out in heaping handfuls<sup>1</sup> and

*Blandings* concludes that all the trouble and money had been worthwhile. "You do buy with your heart and not your head. Maybe those are the things that really count," a battle-worn *Blandings* remarks.

## George Washington Slept Here

But before *Green Acres*, *The Money Pit*, and *Blandings*, there was Moss Hart and George S. Kaufman's *George Washington Slept Here*. The Pittsburgh-born Kaufman, who by 1917 had become the drama editor of the *New York Times*,<sup>2</sup> collaborated with numerous well-regarded writers and artists, including Edna Ferber, Marc Connelly, Ring Lardner, the Gershwins and the Marx Brothers. But the Algonquin Hotel "round table" wit<sup>3</sup> achieved near-comic greatness mostly when he partnered with Moss Hart. Together they would write such plays as *Once in a Lifetime*



Facade of the Algonquin Hotel, American historic hotel built in 1902, site of the daily meetings of the Algonquin Round Table, in midtown Manhattan  
Alex\_Mastro/Shutterstock

- 1 P.G. Wodehouse, *Joy in the Morning* (Doubleday & Co. 1946).
- 2 Kaufman & Co.: *Broadway Comedies* (Library of America 2004), p. 852.
- 3 For a decade beginning in approximately 1919, a group of young writers, including Kaufman, began to have lunch at a round table in the dining room of New York's mid-town Algonquin Hotel. They famously traded barbs and conversationally tried to outdo each other in wordplay. For example, in playing a word game where she was given the word "horticulture" to use in a sentence, Dorothy Parker quipped: "You may lead a horticulture, but you can't make her think." In addition to the writers mentioned in the text, some of the group's regulars included Alexander Woolcott, Franklin P. Adams, Harold Ross, Noel Coward and Robert Benchley. See Howard Teichmann, *George S. Kaufman: An Intimate Portrait* (Dell Publishing Co., Inc. 1973), p.70-71 (hereinafter, "Teichmann").

(1930), *You Can't Take it With You* (1936), and the oft-revived *The Man Who Came to Dinner* (1939). Later, Kaufman would say of the younger Moss Hart, "As soon as I met him I knew on which side my bread was buttered."<sup>4</sup>

For a while it seemed like all of Manhattan's smart set was moving to Bucks County, Pennsylvania, located about two hours Southwest from the city (and less than an hour from Philadelphia). This included both Hart and Kaufman, who in the later 1930s decided to purchase and refurbish summer country estates in the area known for its historic homes. They would both suffer the slings, arrows, and misfortunes – and unavoidable humor – associated with renovating the properties. Their personal experiences would equip them to write a play about a fictional family, the Fullers, who flee New York to pursue a dream of home ownership in the country.

According to the stage notes for their play, *George Washington Slept Here* ("GWSH"), the play's setting is "An abandoned farmhouse somewhere in Pennsylvania – Bucks County, to be precise. It is one of those old stone houses that go back to Revolutionary days, and it has evidently seen much better ones than the present. The plaster has come off the wall in patches; one window has been roughly boarded up, and it is clear than no one has lived there for quite some time."<sup>5</sup>

The play begins with Newton Fuller taking his family on an excursion to the country. Newton shows his family a 200-year-old house and exclaims to his wife, Annabelle: "Just think? George Washington slept here. George Washington!" Looking around at the dilapidated structure, an unimpressed Annabelle replies: "Martha wasn't a very good housekeeper."<sup>6</sup> Newton then confesses to his wife that he has taken their savings and purchased the house.

Newton's revelation stops Annabelle in her tracks. She is apoplectic. Newton tries to explain that he wanted something "permanent" for their family to hang onto. Something "that lasts as long as anything lasts." "Look at this house," he tells Annabelle. "It was standing here when this country started and it's standing here today... I wanted it for all of us. Annabelle, don't be angry. Say you're not angry," he pleads. Annabelle replies curtly: "Angry? I could spit from here to Mount Vernon."<sup>7</sup>

Newton tries another angle. He says: "But it was a terrific bargain, Annabelle. I got it at a terrific bargain." "More than a dollar?" she asks.<sup>8</sup> Annabelle then learns that the home has no working bathrooms and wonders how the family will cope. Are they supposed to run back

4 Teichmann, p. 97.

5 *George Washington Slept Here: Comedy in Three Acts* By Moss Hart and George S. Kaufman (Dramatists Play Service, Inc., 1968), p. 5.

6 GWSH, p. 6.

7 GWSH, p. 9.

8 GWSH, p. 9.

to the apartment in Manhattan? Annabelle observes that apparently when George Washington slept at the house, he "never had to go to the bathroom."<sup>9</sup>

Newton's enthusiasm is not yet crushed. He tells his family that he "can hardly wait" to get to work on the house. "Let's take these boards down right now. Ouch! I didn't see that nail,"<sup>10</sup> Newton says as he encounters the first of many mishaps and mis-steps. Here's a short list: they need to dig hundreds of feet deep for a new well because the old one is dry; kitchen walls are missing; staircases need replacing; glass panes on windows must be replaced; trees require spraying for insects; the road is on a neighbor's property and he is refusing to grant the Fullers access; and train schedules do not enable Newton to commute to his Manhattan job conveniently without waking up at 3 a.m., and arriving back home late in the evening. To top it off, a local historian tells the Fullers that she knows there is a legend that Washington had slept at the house. But the story is untrue; instead, she tells the Fullers it was Benedict Arnold.<sup>11</sup>

Then of course there is the money problem. When told that they will need to purchase more gravel, a couple of truckloads of manure, and six truckloads of dirt, Annabelle asks her husband, "Where is the money coming from to pay for all of this?" "I was just thinking of little things like eating. Because when manure costs more than a sirloin steak, Newton, it kind of makes you stop and think."<sup>12</sup>

By play's end, the home has been beautified and even Annabelle has fallen in love with it. However, the money pit has enlarged to the point where the Fullers are facing foreclosure by their bank. In the 1940 Broadway stage version of the play, they trick a neighbor into lending them the money to pay off the mortgage. In a movie version made two years later, the Fullers' money problems are solved when they discover in an old boot an extremely valuable letter from George Washington evidencing his presence at the property.<sup>13</sup> The letter can be sold to satisfy the mortgage and home renovation bills.

### **To Own or Not to Own: That is the Question**

Humor aside, budget-busting mortgage, property tax, insurance, utility, and maintenance and renovation expenses have caused the dream of home ownership to

9 GWSH, p. 13.

10 GWSH, p. 13.

11 GWSH, p. 25.

12 GWSH, p. 23.

13 Comedian Jack Benny and Ann Sheridan play the married couple in the film version. Of note, when Benny attended the Broadway play he noticed that the wife had all of the funny lines. So as a condition of starring in the film, he required the play to be re-written and the roles reversed: the wife would purchase the home without consulting her husband, and Benny would play the urban enthusiast frustrated by his wife's decision. See Philip G. Harwood, "To Be or Not to Be: Jack Benny in Hollywood 1940-1945," collected in *Well!: Reflections on the Life and Career of Jack Benny*, edited by Michael Leannah (BearManor Media 2007)



lose much of its luster. Existing homeowners may feel trapped by their purchases and regret their decisions, while would-be owners get cold feet. The math currently weighs heavily towards renting and not owning. For retirees, the math trumpets moving and downsizing.

On a personal note, having recently tackled roof repairs, re-piping, cement work, and bathroom renovations in a hundred-year-old house, the author has no suggestions or advice but will defer to Mr. Blandings: Sometimes you do buy with your heart and not your head, and maybe those are the things that really count.

Even so, it would help to find a winning lottery ticket or a valuable letter by George Washington on your property.

*Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.*



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# Licensed and Bonded and Insured; Oh My!!

by Stacy Fierman-Cribbs

As properties are cleared, temporary facilities are located and insurance claims are settled from the recent wildfires and subsequent mudslides, California will begin the re-building process. Once these daunting and time-consuming initial steps are completed, property owners and contractors need to understand their respective roles, potential responsibilities, and how credentialing and insurance are vital and necessary to the success and assurance of construction projects. Property owners are always given the old adage of "licensed, bonded, and insured," but what exactly does this mean and how does this impact the rights, duties and obligations of the parties to a construction contract?

Whether starting a new construction business or looking to hire construction professionals for a project, this is the long-established catch phrase for safest practices within the construction industry. While each word is synonymous with one another, they have their own specific meanings and implications.

## Licensed

As with any business, the purpose of the license law is to protect the public from incompetence and dishonesty in those who provide building and construction services. The obvious statutory intent is to discover persons who failed to comply with the licensing law from offering or providing their unlicensed services for pay . . . (*Hydrotech Systems, Ltd. v Oasis Waterpark* (1991) 52 Cal. 3d 988, 955 [277 Cal. Rptr. 517, 803 P.2d 370].) All businesses and individuals who construct or alter, or offer to do so in California must be licensed by the California State Contractors Licensing Board if the total cost of the labor and materials for a project is \$500 or more. California Business & Professions Code section 7031, subdivision (b) provides that an unlicensed contractor is required to disgorge any compensation it has previously been paid for performing work requiring a license. This means that if construction services are performed by an unlicensed person or entity for another person or entity and charged \$500 or more for these services, all compensation as paid must be refunded. If monies are not returned, any person or entity who utilized the services of an unlicensed contractor or subcontractor can bring a court action to recover the compensation paid for that unlicensed work. (*Asdourian v Araj* (1985) 38 Cal. 3d. 276, 282.)

It makes sense that if a construction "professional" is being hired and paid, that individual or entity should have specialized knowledge, training, and experience. A dentist can perform a root canal but should not be extricating tree roots from an obstructed drainage pipe. An unlicensed contractor is also unable to procure construction insurance.

Most contractors prominently list their contractor's license number on their business paperwork. Just because a contractor's license number is provided does not necessarily mean it is valid. Property owners need to confirm that the license number coordinates with the contractor's business and that it is active, not suspended or expired. It is not uncommon for contractors to "utilize" licenses that are not issued to them. This can raise significant civil and criminal exposure to the unlicensed and licensed contractor.

## Bonded

California contractors are required to maintain an active \$25,000.00 license bond (or cash equivalent) on file with the California State Contractors Licensing Board. This bond amount is fixed by law, meaning a contractor cannot request a higher or lower bond amount. The bond must be issued by an admitted surety and filed with the registrar by the licensee or applicant.

There are restrictions as to who can make claims against a construction bond. The bond can be for the benefit of the following:

- (1) a homeowner contracting for home improvement upon the homeowner's personal family residence damaged;
- (2) a property owner contracting for the construction of a single-family dwelling who is damaged as a result and shall only recover if the single-family dwelling is not intended for sale or offered for sale at the time the damages were incurred;
- (3) a person damaged as a result of a willful and deliberate violation by the licensee; or
- (4) by the fraud of the licensee in the execution or performance of a construction contract.

(See California Business and Professions Code Section 7071.5.)

If the property and property owner do fit within one of these categories, irrespective of the dollar amount of the contract or the actual damages as incurred, the monetary "cap" is \$25,000.00. Any payment made by a surety on a construction bond requires indemnity by the contractor. This means if a bond company has to pay out as a result of a contractor's actions, the contractor is required to repay the surety the amount of the claim, plus expenses.

## Insured

Construction insurance encompasses several different types of policies designed to cover various aspects and potential risks of a construction project. Contractors should seek assistance from established insurance professionals to confirm the insurance coverage procured actually pro-



vides coverage for the types of construction performed. Insurance policies contain coverage exclusions which many contractors do not realize or understand until a claim is denied. If a contractor's work includes construction of condominiums and townhouses then having exclusions for these types of structures is in essence, like having no insurance at all. Just because policy premiums are paid, does not guarantee coverage. Likewise, if a contractor can provide proof of insurance this does not automatically mean there is actual coverage for the work performed.

The following is a brief summary of 3 types of construction insurance policies available for the benefit of the contractor and the property owner and the general parameters of coverage:

#### **General Liability Insurance**

This is the most common and foundational type of construction insurance. It provides coverage for third-party claims of bodily injury or property damage caused by the contractor's operations. These policies can have self-insured retentions (deductibles) which the contractor will have to pay first in order to trigger coverage by the insurance company. Depending upon the type of policy purchased they have insurance limits on a per occurrence and aggregate basis.

#### **Professional Liability Insurance**

Also known as Errors and Omissions insurance, this policy protects contractors and trade professionals, like architects and structural engineers, against claims of negligence or inadequate work that result in the property owner's

financial loss. These policies have monetary caps correlated to the type of trade professional and policy restrictions.

#### **Builder's Risk Insurance**

This policy covers damage to buildings under construction due to theft or weather-related events. It ensures that the project can continue without financial disruption.

Contractors take into consideration insurance as one of their costs when calculating bids. Contracts should specify and identify insurance(s), the limits of those policies, exclusions and who are the covered insureds.

This introductory information regarding the meaning behind licensed, bonded and insured is a good starting point for construction introduction. License, bond, and insurance information should be reviewed, understood and independently confirmed before contracts are signed and work commences. These practices help set the precedent for a successful construction relationship and building completion for the benefit and protection of all parties.

*Stacy Fierman-Cribbs of the Law Offices of Stacy Fierman-Cribbs in Los Angeles is a practicing construction and real estate attorney with more than 30 years' experience representing developers, general contractors, subcontractors, and property owners in California. She is also a licensed real estate broker in California and Arizona and managing broker of CFC Realty. Stacy, who along with her team, represents clients in commercial and residential real estate transactions throughout California and Arizona.*



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# The RCBA Christmas Elves Program 2024

by Brian C. Percy (aka Head Elf)

On December 24, 2024, the RCBA's Elves Program concluded its twenty-third annual program of bringing Christmas joy to needy families throughout Riverside County. The RCBA Elves provided Christmas gifts, a holiday dinner and gas cards to 45 families (120 children and 53 adults). For those keeping track, this year we reduced our service area (we did not serve the east end of the County), which reduced the number of families served. The big benefit was we were able to more than double the amount of money spent on each child, which greatly increased the quality and quantity of the gifts provided. (The Shopping Elves were most appreciative as it made their task a bit easier.)

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. This year we worked with the following organizations to identify families in need: Supervising Probation Officers in Riverside, the SAFE Family Justice Centers in Riverside, Temecula, Hemet, Lake Elsinore and Murrieta, the Victim Services Division of the Riverside County District Attorney's office, the Riverside County Probation Department, the Lighthouse Social Services organization, and the FSA at Norton Younglove.

As you can see by some of the images, all the hard work you did was worth it!



Megan Demshki and Harper



Bertha Hicks, Hailey Hicks and Karl Hicks

Now for some recognition.

## The Money Elves

As always, our funds came from direct donations and monies raised at bar association events held throughout the year. The money raised provided wrapped gifts for each family member, a Stater Bros gift card to buy food for a holiday dinner and a Union 76 gas card to help each family's holiday travels. We once again raised more money than at any time in the past, but this year we ended without the usual cushion to use to start for next year. I'd like to thank the following Money Elves for their support: Mark Easter, Charity Schiller,

Chris Moffitt, Kim Byrnes, Glen Price, Greg Snarr, Roxana Jimenez, Amanda Brusca, Amy Hoyt, Christina Abbate, Haviva Shane, Brandon Kline, George Reyes, Brittany Reese, Sandra Rosales, Valeria Franklin, Cynthia Germano, Veronica Gamba, Isabel Safie, Ward Simmons, Megan Kilmer, Anne Galvin, Julia Hernandez, Pamela Crawford, Carol Swanson, Sylvia Perez, Patsy Hincosa, Alexandra Baca, Ruben Duran, Sonia Carvalho, Jose Martinez, Michael Thies, Scott Dittfurth, Thomas Rice, Christina Boltinghouse, Mandy Villareal, Kay Otani, Lord & Brooker, Kathleen Peach, William Domnarski, David & Ginger Werner, Judge William Bailey, Judge Craig & Maria Riemer, Judge John Monterosso, Abe Feuerstein, Erica Alfaro, Daniella Hernandez, Judge Jack Lucky, Nesa Targhibi, Bruce & Lisa Todd, Chris Johnson, Judge Jean Leonard & Jim Wiley, Sandra Leer Mackey, Christine Renken, Rosa Marquez, Aitken Aitken Cohn, Judge Jacqueline Jackson, Judge Chris Harmon, Brian Unitt, Heather Seiden, Judith Murakami, Michael Ortiz, Malcom & Cisneros, Julianna Tillquist, Marion Donovan-Kaloust, Leila Santamaria, Anna Sacco-Miller, Judge Sharon Waters, Arturo Cisneros, Antionette Galvan, Bratton & Razo, Diane Huntley, Judge John Vineyard, Raxter Law, Stream Kim Hicks Wrage & Alfaro.

I would also like to provide a very special "Thank You" to Sean Varner and Kevin Varner and their assistant Anh Lowestein of Varner & Brandt, LLP, who were able once again this year to provide and secure a large donation from their firm in cooperation with Stater Bros. This generous donation covered most of our food card needs for the families and allowed much more of the cash raised to go toward gifts.

Once again, another huge shout out to Mark Easter of Best Best & Krieger and his team. They did a fantastic job of stepping into the breach during his absence to help raise some of the largest amounts ever. This really helped refill our empty coffers from last year.

And a very special thank you to Kirstie Donaldson (spouse of attorney Michael Donaldson) and her mother, Jodi Helms and the Helms Christian Pre-School in Murrieta. For many years, Kirstie and Jodi have conducted their own toy drive at their school and were able to donate several boxes of toys for our families this year.

## The Shopping Elves

This year we changed locations and the staff at Walmart really came through in helping out with the checkout process. Everyone was happy to see how much smoother it was this year. We also tried out an earlier start time and it appears that also was a successful change that we will continue to implement next year.

It was a joy to experience the festive mood of various individuals, firms, and families, put on their Elf hats and used their best bargain-hunting skills to shop and find great deals for our families. The Bratton & Razo Law Firm provided a very large group of shoppers, thank you; and to Judge Keen and



his family along with Commissioner Kelly Moran and the Moot Court volunteers who showed up for shopping. Thank you to those who moved carts, emptied them and bagged individual family bags. With the help of Charlene Nelson, Bruce Larsen and Christine Sovine, and Lucy Velez Garcia with her husband Pedro, we were able to assist and bag, tag, and deliver the hundreds of presents purchased to the RCBA offices in record time.

This year's Shopping Elves were: Aniko Felsen, Karen Moore, Adrian Armstrong, Rodney Woods, EvanRae Easter, Waylynn and Emma Senn, Theo Smalley, Nesa Targhibi, Leila Parviz, Judi Murakami with Rosalie, Jackie and Barbara, Christina Renken, Priscilla George, Megan Demshki, Brenton Burke, Linday Jeffers, Diana Lorenzana, Marley Lorenzana, Delfina Alfaro, Jess Male, Madeline Male, Margaret Hogenson, Cortney Shoemaker, Goushia Farook, Ramona Lopez Pereyra, Tania Duncombe, Christine Sovine, Christine Voorhis, Judge Eric & Darla Keen, Barbie Trent, Laura Galvan, Danielle Linker, Toni Lorenz, Jonathan Medrano, Mike Razo, Alma Suarez, Kyle Haas, Jeannette Singh, Said Tavakoi, Juanita Loera, Malvina Ovanezova, Elisabeth Lord and Silvana Radules.

Walter's Auto Sales & Service once again provided a large hightop Mercedes Sprinter Van to use to transport our purchases from Walmart to the Bar Building for the night. A great big "Thank You" to owner Steve Kienle and his Parts Manager Scott Eisengberger for providing our "sleigh".

### The Wrapping Elves



Krysten Steele, Courtney Jones and Maggie Wilkerson



John Pomeroy

After the shopping was finished, all the gifts were delivered to the Bar. Once again we filled the RCBA Board Room wall to wall. And the Wrapping Elves really came through in their efforts to make the gifts beautiful for the kids. A huge thank you to this year's Wrapping Elves:

Theresa Arrendono, Maria Pezer, Jacob Guerard, Sandra Lattouf, Traci Kim, Katherine Tanaka, Judge Kiya Kato and staff, Ronni Vogelsang, Matthew Knez, Fred Knez, Myra Knez, Sherri Godfrey, Christina Renken, Courtney Jones, Krysten Steele, Leila Santamaria, Antoinette Jauregui, Neelamjeet Kahlon-Pfister, Priscilla George and Derek, Elizabeth Duran, Malvina Ovanezova, Xavier Wagner, Derek Diemer, Megan Kilmer, Christina Abbate, Betty Fracisco, Megan Demshki, Diana Lorenzana, Valeria Franklin, Delfina Alfaro, Alan Zelaya, Ms. Zelaya, Erica Alfaro, Mari Payad, Michael Thies, Daisy DeAnda, Emmanuel Castellanos, Damian Gutierrez, Deborah Song, Alejandro Barraza, Amanda Perez, Ellen Peng, John Baffel, Janate Venezuela, Leonardo Alcaraz, Henry Adriano, Summer Devore, John Rafter, Leonardo Alcaez, Donna

Brandt, Eileen Hards, Leila Santamaria, Esther Jeon, Shirley Li, Danielle Angell, Kimleigh Roderigues, Edy Nolasco, Janette Valenzuela, Amanda Perez, Karl Hicks, Bertha Hicks, Hailey Hicks, John Pomeroy, Maggie Wilkerson, Allyson and Oscar Castellanos, and Tania at the Lighthouse Centers.



The Knez Law Group

### Delivery Elves

In many instances our Wrapping Elves also became Delivery Elves, making the trip back to the RCBA unnecessary. Our Delivery Elves sprinkled gifts and good cheer throughout Riverside County, including the cities of Riverside, Nuevo, San Jacinto, Corona, Moreno Valley, Perris, Hemet, Temecula, and Murrieta. A special big thank you to our intrepid Delivery Elves who donated their time and fuel before Christmas. These Delivery Elves were: Kathleen Peach, Aniko Felsen, David Werner, Judge Sunshine Sykes, Desiree Lewis, Lisa Sanchez, Yesenia Guerrero, Adrian Armstrong, Rodney Woods, Ronni Vogelsang, Ramona Lopez Pereyra, Tania Duncombe, Serma Silverman, Kathleen Juarez, Diana Renteria, Anthony Beaumon, Margeaux Mernick, Jeremy Roark, Veronica Garcia, Leila Parviz, Daisy DeAnda, Judge John Molloy and family, Arlene Cordoba, SAFE Family Justice Centers' Luz Sotelo and Kathy S., Charlene Nelson, and Lighthouse's Tania Johnson.

### Special Thanks

Once again, big kudos to the RCBA staff, especially Charlene Nelson and Lisa Yang (who lended a needed hand in organization and assistance in computer work). A jumbo sized thank you to Lucy Velez-Garcia, who organized volunteers and charted and coordinated all necessary information, and Anna Gherity (both from my office) for making check in and out a breeze. This event could not succeed without their energy and assistance.

Finally, "Thank you" to all the Elves who participated; "thank you!" for making this happen! Your wonderful spirit and camaraderie, which are represented in the photos accompanying this article, make this entire endeavor so rewarding to yours truly. Lots of holiday spirit.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for next year.

*Brian C. Percy was president of the RCBA in 2002 and is the chairperson (i.e. "Head Elf") of the Elves Program.*



# Judicial Profile: Judge Sharunne Foster

by Jeremiah Raxter

## From Alabama to the Superior Court: The Remarkable Journey of Judge Sharunne Foster

On June 18, 2024, Governor Gavin Newsom announced that Sharunne Foster would join the Superior Court of California, County of Riverside. Prior to her appointment, Judge Foster distinguished herself as a commissioner at the Riverside County Superior Court since 2023 and spent nearly two decades as a deputy district attorney for Riverside County beginning in 2005. She is a proud graduate of Pepperdine University School of Law.

Yet, Judge Foster's story is much richer than a simple list of accolades. It is a narrative steeped in heritage, resilience, and a profound commitment to justice. Born into a sprawling, diverse family whose members range from teachers and pastors to civil rights activists, military personnel, and even fellow judges (including her cousin, fellow Riverside County Judge Joshlyn Pulliam)—she carries forward a legacy of service and determination.

Her journey took on an even deeper meaning on February 21, 2025, when she was formally enrobed in Department 1 of the historic courthouse. The atrium displayed an exhibit created by Judge Foster entitled "Legacy: From Segregation to the Superior Courts." This exhibit recounted the historic events of March 7, 1965, when approximately 600 brave individuals, among them Judge Foster's great-grandfather, Pastor John Henry Patterson, and her uncles, Clarence and Reginald Patterson, took a stand in Selma, Alabama. Their courageous attempt to cross a segregated bridge on that fateful day—an event now remembered as Bloody Sunday—remains a powerful testament to the struggle for civil rights.

That defining moment was only the beginning. On March 21, 1965, a determined group of activists embarked on a 54-mile march from Selma to the Alabama state capitol, demanding voting rights and equality. During this perilous journey, Judge Foster's cousin, David Hall, risked his life to shelter and protect the marchers—figures such as Dr. Martin Luther King Jr., John Lewis, and Ralph Abernathy—thereby reinforcing the family's longstanding commitment to justice and human dignity.

In my first encounter with Judge Foster, I was immediately struck by her warmth and genuine curiosity. Though



Judge Sharunne Foster and family

our meeting was meant to be a fact-finding session, she took the time to ask about my own career and generously offered advice. Judge Foster is known by colleagues and community members alike as a trusted advisor, friend, and a formidable legal authority. Her kindness shines through not only in her professional record but also in her charitable work and passion for lifelong learning.

Her enrobed ceremony was a fitting celebration of her achievements—a standing-room-only event filled with distinguished guests, moments of reflection, laughter, and tears. Among those in attendance were her spouse, a skilled attorney in his own right, her three sons, and extended family members, some of whom traveled from out of state to share in this historic occasion. This intimate gathering, alongside colleagues and community dignitaries, highlighted not only Judge Foster's professional milestones but also the deep personal support that has fueled her remarkable journey.

Colleagues from the District Attorney's office recounted her steadfast commitment and fairness. Judge Foster maintains an impressive record of handling over 70 jury trials. Despite handling some of the most heinous crimes, Judge Foster never lost her humanity or kindness. Her brother, Harold Trotter, kept the audience laughing with his engaging speech, while Honorable Richard T. Fields, Associate Justice of the Court of Appeals, underscored her dedication and Judge Foster's tremendous integrity. One speaker summed up her approachable character by remarking that Judge Foster is quick to admit her mistakes yet never boasts when she is right—a sentiment echoed by all present.

As Riverside County Superior Court's presiding Judge Jacqueline C. Jackson observed, the bench and the community are unquestionably enriched by Judge Foster's presence.

Her journey from the tumultuous days of the Civil Rights Movement to her current role on the Superior Court bench is not merely a chronicle of professional milestones—it is a living legacy of resilience, service, and an unwavering commitment to justice.

*Jeremiah Raxter is the principal attorney at Raxter Law, P.A., a member of the Bar Publications Committee and is the Chair of the RCBA Estate Planning, Probate & Elder Law Section.*



Judge Foster being sworn in by her cousin,  
Judge Joshlyn Pulliam





# Krieger Award Nominations Sought

In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service. The award, later named for James H. Krieger, has since been presented to James Wortz, Eugene Best, Arthur Swarner, Arthur Littleworth, Justice James Ward, Fred Ryneal, John Babbage, Patrick Maloy, Ray Sullivan, Justice John Gabbert, Jane Carney, Judge Victor Miceli, Justice Manuel Ramirez, Kathleen Gonzales, Terry Bridges, James Heiting, Jack Clarke, Jr., Virginia Blumenthal, Judge Virginia Phillips, Senator Richard Roth, and John Brown.

Obviously, with just 21 honorees in 50 years, the award is not presented every year. Instead, it is given only when the extraordinary accomplishments of particularly deserving individuals come to the attention of the award committee.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who either are currently

practicing or sitting in Riverside County, or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA board of directors are not eligible. Nor are the current members of the award committee: Judge Irma Asberry, Judge William Bailey (ret.), Virginia Blumenthal, Judge David Bristow (Chair), Judge Sophia Choi, Paul Grech, Jim Heiting and Robyn Lewis.

If you would like to have anyone considered for this most prestigious of RCBA awards, please submit a nomination to the RCBA office not later than July 1. The nomination should be in writing and should contain, at a minimum, the name of the nominee and a description of his or her record of community service or accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.



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# Opposing Counsel: Julianna Tillquist

by Melissa Cushman

Julianna Tillquist, general counsel to the San Bernardino County Transportation Authority since 2019 (and assistant general counsel from 2016-2019), had parents who knew she would be a lawyer from the time she was four years old, when she would successfully argue with them and manage to impeach them with their own past statements. Although her family originated from the Los Angeles area, she and her younger sisters grew up in the town of Lakeview in rural south-central Oregon. Julianna recalls that Lakeview was a great place to be a kid, with plenty of space to run around and ride bikes. Her mother stayed home with her and her sisters until they got older, and her father taught high school social studies and government; every year, his government classes conducted a mock trial. About the time Julianna graduated from high school, the whole family moved back to California, this time to Beaumont, where her father worked as a high school principal, and her mother, having discovered a talent for negotiations, worked on behalf of the National Federation of Federal Employees union.

A huge perk came from Julianna's having gone to school in Lakeview—that town had two public trust programs that helped pay for about a third of the kids' college educations, which Julianna used to attend college at California State University, San Bernardino. Thinking about attending law school, Julianna started out as a political science major, but did not enjoy the major area classes. She decided to be a public planner instead, and switched to environmental studies, with a minor in economics. However, when she graduated from college in 1992, significant numbers of agency planning staff were getting laid off rather than new graduates being hired, so she reverted to her previous goal and enrolled in law school, attending Willamette University College of Law in Salem, Oregon. In addition to her legal classes, she excelled as the school ABA Mock Trial champion and sat on the moot court board.

After law school, she returned to California to study for and take the bar, but for months after passing the bar, Julianna struggled to find a job for several months. While she looked across the state for her first legal job, she ultimately found one nearby, in San Bernardino, working at what was then Furness, Middlebrook, Kaiser & Higgins, an insurance defense firm. The firm gave her an opportunity to do a wide variety of legal work, including depositions, arbitrations, discovery, summary judgment motions, and even second chairing trials from her first year. Two and a half years later, Julianna went to work at Redwine and Sherrill, a local law firm specializing in water law, public law, eminent domain, and other areas. At that firm, she got an opportunity to work on eminent domain cases, litigation against water districts, tort cases, Proposition 218 cases, inverse condemnation,



Julianna Tillquist

and other areas of litigation, plus contracts and helping back up firm partners who were general counsel to various water districts. She also served as General Counsel to the Six Basins Watermaster for several years.

After she had spent 18 years at Redwine and Sherrill, the partnership dissolved, and Julianna looked for a government job. (Some of her partners re-formed Redwine and Sherrill as an LLP, which continues today.) She was hired as assistant general counsel to the San Bernardino Associated Governments ("SANBAG"), which, then, pursuant to legislation, became the San Bernardino County Transportation Authority; the joint powers

authority SANBAG, however, continues to operate as the San Bernardino Council of Governments. After another couple of years, Julianna became General Counsel, her current job, where she sits with and advises the 29-member board of directors on Brown Act and ethics compliance, reviews procurements and contracts, negotiates on behalf of the Authority, and oversees outside counsel for litigation matters, among other tasks.

In addition to her busy life as a lawyer, Julianna has raised three boys: Roy, who is almost 24 and just started a new job in the Bay Area; Gus, who is 21 and works for Bureau Veritas; and Max, who is a senior at local Riverside Polytechnic High and is currently applying for music composition programs at a variety of colleges, as well as being in the Los Angeles Philharmonic's Composer Fellowship program.

Outside of work, Julianna has served on the RCBA's Lawyer Referral Service Committee since 2007 and has been the Committee's Chairperson since 2019.

She enjoys taking walks, studying Spanish and French (something she started during the 2020 lockdowns and has kept at), keeping up with her sisters, who now live in Dallas, Texas, and Tucson, Arizona, and reading, especially nonfiction and non-genre fiction. Almost an empty nester, Julianna looks forward to travelling more with her husband, John, without having to be tied down by the school calendar. When asked for advice to lawyers just starting out, Julianna recognizes that law has changed so much since she started decades ago, that what worked when she was starting out may not be applicable anymore.

*Melissa Cushman is a deputy county counsel with the Office of County Counsel, County of Riverside, specializing in land use and the California Environmental Quality Act. She and Julianna first became acquainted over 15 years ago as co-counsel on the particularly long-running Quantification Settlement Agreement cases.*



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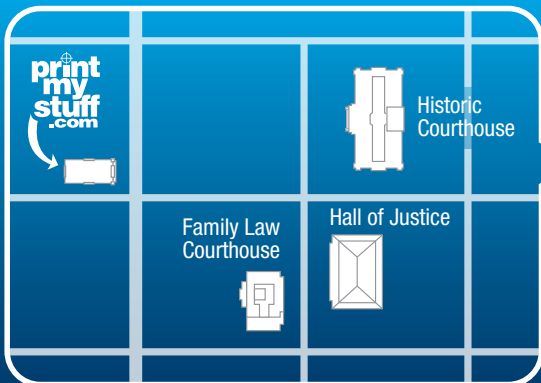
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## Part-Time Bookkeeper Position

RCBA is looking for a part-time bookkeeper. Contact Charlene at 951-682-1015 or [charlene@riversidecountybar.com](mailto:charlene@riversidecountybar.com).

## Office Space – RCBA Building

4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Charlene Nelson at the RCBA, (951) 682-1015 or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com).

## Conference Rooms Available – RCBA Building

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](mailto:rcba@riversidecountybar.com).



The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2025.

**Jiovanna J. Aguirre** – Singleton Smith Law Offices, Murrieta

**Ashley Nichole Bell** - Sideman & Bancroft, Menifee

**Ana I. Garcia (A)** – Destinys Reach Supervised Visitation, Riverside

**Maya K. Maleszewski** – Preston Law Group, Irvine

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# CALENDAR

## MARCH

- 3** Roundtable with Judge Hopp  
12:15, Zoom  
MCLE
- 5** Federal Bar Association of the Inland Empire  
Judges' Night  
Mission Inn  
Social hour - 5:30 PM  
Dinner - 6:00 PM
- 11** Civil Litigation Section Meeting  
12:00, Zoom  
Topic: "Understanding Sovereign Citizen Litigation"  
Speaker: Damian Northcutt  
MCLE
- 14** General Membership Meeting  
Noon, RCBA Gabbert Gallery  
Topic: Riverside Superior Court's Remote ADR Program  
Speakers: Judge Carol Greene, Judge Chad Firetag, Robyn Lewis Charles Schoemaker, Kent Sommer  
MCLE

Also - Partnering with UCR's R'Professional Career Closet -Clothing donations accepted at the meeting

**Barristers Happy Hour Mixer**  
5:00 PM  
Hangar 24  
5225 Canyon Crest Drive, Unit 58  
Riverside

**14-16** State Mock Trial Competition  
Los Angeles

**18** Family Law Section Meeting  
Noon, RCBA Gabbert Gallery

**19** Estate Planning, Probate & Elder Law Section Meeting  
Noon, RCBA Gabbert Gallery

### Events Subject To Change

For the latest calendar information please visit the RCBA's website at [riversidecountybar.com](http://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 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$30.00 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.

## 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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At Altura, we're deeply rooted in Riverside, with 23 branches serving communities from the city's iconic orange groves to Murrieta's soothing hot springs. More than just a financial institution, we're your neighbors—championing your success and investing in our shared future. Since 2015, we've contributed over \$7 million and dedicated more than 20,000 volunteer hours to strengthening our communities. Member or not, our mission remains the same: to help Riverside thrive. Experience the Altura difference—because when we rise together, we all succeed.



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