

RIVERSIDE LAWYER

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MAGAZINE

Alternative Dispute Resolutions



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– Still Going Strong!**

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So You Want to Be a Mediator?

**Some Reflections Concerning Our Fourth District,
Division Two, Court of Appeal's
Settlement Conference Program**

A Judge's Perspective on Mediation



The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

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

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

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

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

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

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

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

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

CALENDAR

MARCH

14 General Membership Meeting

Topic: "Trends in ADR"
Speaker: David Dowling
RCBA Gabbert Gallery – Noon
MCLE

18 Family Law Section Meeting

Topic: "DCSS Calculator Training and Everything You Want to Ask"
Speaker: Richard Lorenzi
RCBA Gabbert Gallery - Noon
MCLE

19 Estate Planning, Probate & Elder Law Section

Topic: "Public Guardian, LPS and Probate Conservatorship Process"
Speaker: Riverside County Public Guardian
Lunch provided courtesy of Mitchellweiler Law Corporation
RCBA Gabbert Gallery – Noon
MCLE

20 Solo/Small Firm Section Meeting

Topic: "To Post or Not: The Social Media Ethical Dilemma"
Speaker: Shirish Gupta
RCBA Gabbert Gallery – Noon
MCLE

26 Appellate Law Section Meeting

RCBA Gabbert Gallery – Noon
Topic: "Meet the Court"
Speakers from the Court of Appeal, Fourth District, Division Two: Presiding Justice Manuel Ramirez, Managing Attorney Don Davio and Writs Attorney Carolyn Gill

28 Immigration Law Section

Speaker: Kelly O'Reilly
Topic: "The State of Immigration: Recent Changes and Expected New Reform"
RCBA Gabbert Gallery – Noon
MCLE





by Jacqueline Carey-Wilson

I have both mediated many disputes over the years, as the youngest of eight children and mother of three daughters. A parent can nudge children to settle disputes using his or her authoritarian power, with a time-out or loss of a privilege (such as cell phone use) as punishment for refusing to compromise. Judges can use their power in a similar way to mediate a dispute between the parties on the eve of trial. For example, if the parties do not want to settle, the judge can call in the jury to start the trial.

As the eighth child, I often mediated disputes between my seven siblings (six sisters and one brother). Unlike a parent or trial judge, however, I did not have any real power. What I could do was to encourage the two that were angry at the time to see the other sibling's point of view. Sometimes this worked and other times it did not. When the dispute was just about clothes or chores, mediation could work. However, when one sibling hurt the other in some way, this was more difficult to mediate. This is analogous to mediating between two parties in a civil suit. A case involving property damage is much easier to mediate than one in which when an individual has been hurt in some way. Family law disputes in particular are very difficult to mediate. However, these types of disputes can be, and are, mediated every day.

At the Riverside County Bar Association we have a Dispute Resolution Service (DRS) in which dedicated and experienced attorneys, who have been in practice ten years or more, have agreed to mediate civil cases. Depending on the type of dispute

or facts at issue, you may want a different type of assistance to resolve or refine the case.

DRS offers the following services to parties in resolving disputes:

Arbitration: The court or the parties enter into an agreement with DRS to provide a neutral third party to review the case and evidence and render a decision. The arbitration offered by DRS can be binding or nonbinding.

Mediation: When the parties agree to mediate a case, DRS provides a neutral third party to negotiate with both sides to settle their dispute. In this type of service, the parties decide the terms of the settlement.

Settlement Conference: DRS can arrange for a neutral third party to meet informally with the parties to discuss and explore options for resolving the dispute.

Mini-Trials: This service allows the parties to present their case to a neutral third party, who renders a nonbinding decision. A jury can be also used.

Neutral Case Evaluation: One side in a dispute can present their case to a neutral third party, who will assess the strengths and weaknesses of their argument and provide a valuation of the case.

Fact-Finding: In some cases, like accounting disputes, where there is extensive evidence, DRS can provide a neutral third party to comb through the evidence and decide factual disputes.

Adjudication by Referee-Pro Tem Judge: Through DRS, the parties can select a neutral third party to act as a regular sitting judge to hear a court trial. A court reporter is present and the parties have the right to appeal the judge's decision as if the matter was heard before a superior court judge. The advantages of this service are that the parties can choose a certain date and conclude the case without interruption.

DRS rates are low. The fee is \$300 an hour for up to four parties, with \$50 for each additional party. Services can be scheduled within days or weeks of request. All matters are kept confidential by DRS.

With legal disputes, as with family disputes, sometimes a neutral third party is enough to resolve a matter, whereas sometimes a strong hand is needed to decide a dispute. Fortunately, DRS provides both of these services and many more to help resolve cases.

The federal and state courts in Riverside County provide other mediation options, even on appeal. In this issue of the *Riverside*

Lawyer, you will find articles on the Superior Court's family law voluntary settlement conferences, mediation in residential real estate transactions, the mediation program in the Central District, and the Court of Appeal's mediation program. In addition, the Honorable Gary B. Tranbarger (Ret.) offers a judge's perspective on mediation and attorney Ed Fernandez describes his journey to becoming a mediator.

Mediation is a critical tool for resolving cases as Riverside County struggles with the loss of judicial resources. The population in Riverside County has more than doubled since 1989, from 1,057,200 then to 2,227,577 in 2012. According to the Judicial Council of California 2013 Statistics Report, Riverside County Superior Court had 5,718 filings per judicial position, the fourth highest number amongst the state's 58 counties. Riverside County has a verified need for 138 judges and currently has only 76. San Bernardino has 86 judges and commissioners combined, and needs 150. The two courts have the highest number of caseloads per judge in the state for large-population counties.

In the Inland Empire, we also have a hard working and underfunded appellate court. The Court of Appeal, Fourth District, Division Two, which serves Riverside, San Bernardino, and Inyo counties, is estimated to have 615,708 residents per appellate justice, the highest number in the state. The next closest appellate court is the Second District, Division Six, with 382,930 residents per justice.

Senate Bill 1190 has been introduced in the California Senate to fund nine new judicial positions in the Riverside and San Bernardino Superior Courts and two appellate justices in the Court of Appeal, Fourth District, Division Two. This bill would include funding for the accompanying staff for each judicial position. The RCBA is actively lobbying the Legislature to pass SB 1190. I encourage you to urge your representatives in Sacramento to support this vital legislation.

Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County, editor of the Riverside Lawyer, and past president of the Federal Bar Association, Inland Empire Chapter.



KRIEGER AWARD NOMINATIONS SOUGHT

by Honorable John Vineyard

In 1974, the Riverside County Bar Association (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, Jim Heiting, and Jack Clarke.

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

Current members of the RCBA Board of Directors are not eligible. Nor are the current members of the award committee.

If you would like to nominate a candidate for this most prestigious of RCBA awards, please submit a nomination to the RCBA office no later than April 25, 2014. 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 and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

Honorable John Vineyard is the chair of the Krieger Meritorious Service Award Committee and a past president of the RCBA.



BARRISTERS PRESIDENT'S MESSAGE

by Kelly A. Moran



Last month I had the pleasure of being a scoring attorney at several of the Riverside County Mock Trial rounds being held at the Riverside Superior Court. If you have never had the opportunity to be a part of this event, I highly suggest that you take the time to get involved next year.

The Riverside County Mock Trial competition showcases the talents of some of the best and brightest high school students in the county. Not only have the students very obviously spent a significant amount

of time studying the case law and roles presented to them, but they also are skilled at answering the hard-hitting questions posed to them by the courtroom judges. The students speak with such ease and confidence that you cannot help but be impressed and inspired by their performances.

One amazing benefit of the Mock Trial program is that it introduces students to a variety of careers in the legal field. Not only do students get the opportunity to “argue” as attorneys, but they also step into the shoes of the courtroom sheriff, the court clerk, and key expert witnesses, such as medical examiners. Additionally, students get extensive firsthand experience with their attorney coaches, who train them to be, for all intents and purposes, trial attorneys.

Whether mock trial students pursue a career in the legal profession after graduation or not, the skills that they acquire during their time in mock trial will help them succeed in their education and employment for years to come. You simply cannot look at these students without being impressed and amazed by their hard work, dedication, and ability to think on their feet. As I tend to say in my comments after every round that I judge, the mock trial students inspire me to be better at my own court appearances and to have a passion for my work the way that they do for theirs.

In the hopes of introducing the legal profession to even more high school students, I am pleased to announce that the Riverside County Bar Association, through the Barristers, will be partnering with a local high school in an “Adopt a High School” program. Inspired by the good work of Justice Doug Miller and the Desert Bar Association, it is our hope that this program will allow local judges, attorneys, court reporters, sheriffs, and other legal professionals to partner with 12th grade Government classes in an effort to showcase the careers available in the legal field. Though the program is still in its early phase of development, it is designed to have three main facets: (1) a “teach the class” day where attorneys will actually teach the topics being studied in the Government classes; (2) a “mock law and motion” event where attorneys will argue a real civil motion or criminal law issue before an actual judge, to be followed by class discussion; and (3) a “legal career day” where the seniors

are introduced to individuals who hold various positions in the legal field. If you are interested in being a part of this wonderful and exciting program, please do not hesitate to contact me directly. We look forward to launching this new venture in the Fall and are hopeful that it will grow to several local high schools in the future.

With my presidential term coming to an end shortly, I would like to take this opportunity to remind everyone that we are in need of active Barristers for next year’s Board. I welcome you all to our remaining events and hope that you will be inspired to run for a leadership position in the future. If this is something that interests you, please do not hesitate to contact me or to seek me out at one of our upcoming events, such as our March event taking place on March 13, 2014. I encourage you to kick off your St. Patrick’s Day weekend with the Barristers where you will get the opportunity to learn about trial preparation from successful trial attorney and Riverside County District Attorney Candidate, Mike Hestrin. I have no doubt that this will be an exciting, informative and educational evening for all. For additional information concerning this event, and all future meetings, please visit our website (www.riversidebarristers.org) or add us on Facebook (“Riverside County Barristers Association”).

I am extremely excited about the future of Barristers and our involvement in the Adopt a High School program. If you have not had the chance already, this is a wonderful time to get involved with the Barristers organization. I look forward to meeting you at one of our upcoming events.

Kelly Moran, the 2013-2014 President of Barristers, is an associate at Thompson & Colegate, where she practices in the areas of public agency representation, personal injury defense and probate litigation.



FAMILY LAW VOLUNTARY SETTLEMENT CONFERENCE PROGRAM – STILL GOING STRONG!

by Susan Ryan

“Jose” and “Maria” were in the middle of a particularly bitter divorce. They were unable to talk to each other, much less work together on a settlement agreement, so their case languished with no end in sight. Because Jose and Maria were self-represented litigants their case was scheduled into the Family Law Voluntary Settlement Conference (VSC) Program. The mediator assigned to work with them soon discovered that the death of the couple’s son had taken such a toll that Jose and Maria could no longer communicate with each other. Once they acknowledged the emotional strain, with the help of the mediator, Jose and Maria were able to talk with each other, and eventually reached a settlement in their divorce case. More importantly, they were able to move on with their lives.

“Tom” and “Sharon” also had difficulty reaching a settlement in their divorce case, in part because of their pending bankruptcy. Although they were able to communicate with each other and wanted to settle their case, they were overwhelmed by the court process. During the pendency of the bankruptcy Tom and Sharon participated in the VSC program where they began working with a VSC mediator. It took more than a year but once the bankruptcy was completed, Tom and Sharon, with the help of the mediator, were able to amicably settle their divorce.

These stories are typical of the more than 400 divorce cases that have been successfully mediated in the VSC program over the past three years. The VSC program was designed by the court’s ADR and Self-Help Departments, in partnership with RCBA Dispute Resolution Service (DRS). It offers self-represented litigants (SRLs) an opportunity to work with an experienced family law mediator to fully settle their case at their Mandatory Settlement Conference (MSC).

At the first VSC session in November of 2010, three out of four cases settled. Three years, and hundreds of cases later, the success rate remains high with nearly eight out of every 10 cases reaching settlement. Because of this remarkable success, the court, in partnership with the Desert Bar Association, expanded the VSC program to Indio in 2012.

While court-based family law mediation programs are not new, the VSC program is distinctive because it combines the skills of family law mediators, with strong support of judicial officers, and extensive assistance from court staff.

As a multipronged program VSC is designed to ensure that SRLs are prepared to meaningfully participate in mediation. Preparation includes SRL participation at the court’s MSC Workshop, which is conducted by self-help staff. At the workshop the parties learn the benefits of settling their divorce case without the stress of going to trial. Self-Help staff also works with SRLs to ensure they have completed and filed all necessary documents.

Prior to the VSC session self-help staff reviews the SRLs case files to confirm that statutory requirements have been met, e.g., financial declarations have been served. Staff also prepares judgment documents so that the mediators can focus their efforts on mediation, and not have to worry about judgment paperwork. Once mediation has concluded and a settlement has been reached, self-help staff ensures that judgment documents are complete. After the settlement is taken on the record, court staff expedites processing of the judgment. In most cases the SRLs will leave the court with a judgment in hand that same day.

At the MSC, judicial officers Judge Jackson Lucky (Riverside) and Judge Otis Sterling (Indio) talk with the SRLs about the VSC program and encourage them to participate. Parties who may have been uncertain or skeptical are often persuaded by the judge’s remarks concerning the benefits of settlement versus the uncertainty of trial. In fact, following the presentation, nearly all eligible SRLs choose to participate in VSC; and the participants are nearly unanimous in their praise of the program and the mediators.

Typically, SRLs rate the skill of their mediator as “excellent” and “outstanding,” even if their case did not settle. One participant remarked: “It was tough but I felt supported and informed. [The mediator] helped me [] see that this was the best for all of us.” Another said: “This is a great program and [I am] very thankful we had the opportunity to participate.”

Many thanks should go to the superb family law attorneys from DRS and the Desert Bar Association whose generosity and skills have made VSC a successful program. The VSC program is offered at no cost to the parties and is available only in SRL cases.

Susan Ryan is the managing self-help attorney with the Riverside Superior Court.



MEDIATION IN RESIDENTIAL REAL ESTATE TRANSACTIONS

by DW Duke

With the increasing use of ADR to resolve disputes in a variety of contexts, no industry has captured the effective utilization of ADR, and in particular, mediation, more than the residential real estate industry in the State of California. The utilization of mediation in real estate disputes has significantly reduced the number of real estate cases that reach the courts.

Pursuant to the language in the California Association of REALTORS® Residential Purchase Agreement and Joint Escrow Instructions (RPA), when a party files suit, or institutes arbitration without first offering mediation, that party waives the right to recover attorney fees. There are a number of exceptions, such as filing suit to record a lis pendens, or in foreclosing on real property. However, notwithstanding these limited exceptions, this mediation requirement has proven effective in residential real estate disputes by inducing the parties to mediate, the result of which the majority of such cases are settled before ever reaching the courts.

The operative language of the mediation requirement in the Residential Purchase Agreement is found at paragraph 26.A.:

“Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Buyer and Seller also agree to mediate any disputes or claims with Broker(s) who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim, to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **THIS MEDIATION PROVISION APPLIES REGARDLESS OF WHETHER THE ARBITRATION PROVISION IS INITIALED.** Exclusions from this mediation agreement are set forth in paragraph 26(c).”

[Form RPA-CA, page 7, paragraph 26.A., ©1991-2010 California Association of REALTORS®]

Paragraph 26.C.(1) provides:

“**EXCLUSIONS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land sale contract, as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanics lien; (iii) and any matter that is within the jurisdiction of the probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions.” [Form RPA-CA, page 7, paragraph 26.C.(1) ©1991-2010 California Association of REALTORS®]

The effectiveness of these mediation provisions is well known to attorneys whose practice involves real estate litigation. An important component of the mediation requirement is the contractual attorney fee award at paragraph 21 of the RPA which provides:

“**21. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 26(a).” [Form RPA-CA, page 6, paragraph 21, ©1991-2010 California Association of REALTORS®]

Without the attorney fee provision of the RPA, awarding attorney fees to the prevailing party, the mediation requirement would have no enforcement mechanism. It is the potential loss of recovering attorney fees that gives the mediation provisions enforcement power.

Unfortunately, the concept of mediating, before filing suit or instituting arbitration, remains foreign in many areas of law other than real estate. Attorneys and claims examiners often seem entrenched in the concept that settlement negotiations cannot occur until formal discovery has been completed. Some formal discovery

may certainly be necessary where unknown facts, essential to a determination of liability or damages, cannot be obtained in the absence of some formal discovery. Such situations become much less common if both parties are willing to share information to make the mediation meaningful. In a situation where there remains unknown evidence critical to a settlement, the parties can easily stipulate to conduct limited discovery for the purpose of obtaining the necessary information. A practice of mediating before litigation could substantially reduce the

number of cases that actually reach the courts. Further, it would save parties and insurers millions of dollars per year in unnecessary litigation expenses. Perhaps in time, we will see this practice expanded to other fields of law thereby reducing court congestion and expense to the parties.

DW Duke is the managing attorney of the Inland Empire office of Spile, Siegal, Leff & Goor, LLP and the president of the Institute for Children's Aid.



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CENTRAL DISTRICT'S MEDIATION PANEL EXPANDS

by Gail Killefer

The U.S. District Court's Mediation Panel in the Eastern Division and Riverside County continues to expand. Riverside's new federal district judge, the Honorable Jesus G. Bernal, joined the Honorable Virginia A. Phillips and 22 of the 28 active district judges in the Central District who participate in the Court-Directed ADR Program.

This means that in all cases assigned to Judge Bernal and Judge Phillips, there is a presumption that the case will be referred to mediation – either private mediation or mediation conducted by a member of the Central District's Mediation Panel. The choice of process is left up to the litigating parties.

As soon as a complaint is filed and assigned to a district judge participating in the Court-Directed ADR Program, the Court automatically issues a Notice to Parties of Court-Directed ADR Program (form ADR-08). This two-page Notice describes the ADR options generally and the Court's ADR Program in particular. Attorneys are required to furnish and discuss the Notice with their clients.

The number of cases in Riverside referred to the Mediation Panel continues to grow. In 2013, Judge Phillips referred 37 cases to the Panel and eight cases to private mediation; Judge Bernal referred 20 cases to the Panel and eight cases to private mediation. Panel members mediated 31 cases and settled, or partially settled, 16 cases -- a 52% settlement rate!

Judge Phillips hosted an Appreciation Reception for Panel Mediators in the Court's Eastern Division on October 21, 2013. Before the reception, Panel Mediator Rebecca Callahan, along with the ADR Program Director Gail Killefer, gave a presentation on "Recent Developments in Mediation Law."

New Panel Mediators Available to Mediate in Riverside County

The number of Panel Mediators available to mediate in Riverside County is also rising. In February 2014, the Mediation Panel consisted of 210 attorney-mediators available to mediate cases in the Central District, including 53 who volunteer to mediate in Riverside County. Of these 53 mediators, the Court appointed 11 to the Mediation Panel in 2013.

The new Panel Mediators available to mediate in Riverside County are: Richard T. Copeland of Conflict Solution Services in Pasadena; Douglas B. Davidson of Balmages & Davidson/OC Mediation in Tustin; Jad Davis of Kutak Rock LLP in Irvine; Charles A. Ferguson of Energy Dispute Solutions, LLC, in San Francisco; Laura Fleming of Payne & Fears LLP in Irvine; Miles Kavaller, a solo practitioner in Woodland Hills; Patrick Quinlivan of Quinlivan Mediation Services, LLC, in Irvine; Michael Shimokaji of Spectrum Dispute Resolution Services in Irvine; and Rande Sotomayor of Sotomayor Law in La Canada.

The new panel members offer diverse areas of subject matter expertise. For example, as a transportation lawyer, Miles Kavaller has represented and continues to represent transportation companies in Riverside and San Bernardino counties. He is happy to share his expertise in transportation law with the local transportation community in order to help resolve disputes.

Michael Shimokaji, who has over 30 years of practice in patent, trademark, copyright, and trade secret matters, sees an increasing need for IP mediators in the Inland Empire. He looks forward to mediating cases in the Inland Empire and hopes to build a following there.

Rick Copeland has enjoyed his experience litigating matters in Riverside County for the past 13 years. He now looks forward to serving as a neutral to assist attorneys and their clients in resolving civil rights, personal injury, products liability and ERISA matters throughout the Inland Empire.

Rande Sotomayor is available to mediate cases involving business/commercial, ERISA benefits, insurance bad faith, employment, real estate/construction, personal injury, professional negligence, and civil rights issues, among others. She explains that offering to mediate in the Inland Empire "provides [her] with a wider variety of cases while concurrently allowing [her] to provide an important service to the Court and litigants."

Doug Davidson says that he has been lucky to practice law for 40 years in a number of firm and corporate environments and feels "an obligation to give something back to the system of justice that means so much to our society and that has provided [him] with a very comfortable life." He mediates cases in all business and commercial matters

with a particular expertise in the hotel and restaurant industries, as he has been a businessman in both.

The profiles of all Panel Mediators are available on the Court website and can be sorted by county and subject matter expertise.

Appointment to the Mediation Panel

The Central District's Panel Mediators meet strict qualification standards: they must have at least 10 years of legal practice experience, substantial experience with or knowledge of civil litigation in federal court, and significant expertise in one or more designated areas of law. A panel member must also complete a court-conducted or court-approved training course in mediation.

Panel Mediators generously volunteer their preparation time and the first three hours of a mediation session. If the parties choose to continue mediating beyond three hours, Panel Mediators may request their market rate.

For those interested in applying for appointment to the Court Mediation Panel, all applications must be received by the ADR Program Office by April 30, 2014. The Court appointments are for a two-year term, beginning July 1, and may be renewed.

For more information about the Court's ADR Program and for an Application for the Mediation Panel, visit the "ADR" page of the Court website, www.cacd.uscourts.gov.

Gail Killefer is the ADR Program Director for the U.S. District Court, Central District of California.



SO YOU WANT TO BE A MEDIATOR?

by Edward A. Fernandez

It seems like everyone wants to be a mediator these days. You've been to places like Judicate West, JAMS, ADR Services and IVAMS and it looks simple; just grab a cup of coffee and walk back and forth between a couple of rooms trading numbers, right? Not so fast. Mediation can be a very rewarding practice and for a fortunate few, a financially lucrative practice. For what it's worth, here's my story.

Like many of you, I was a litigator who tried my fair share of cases. With the clients our law firm had, I was able to handle cases in various counties and was also able to mediate many cases with some of the great mediators out there. Like you I thought to myself, "I can do this".

The mediation practice is an interesting one. You don't have to become licensed as a mediator and technically, no training is required. Although it seems like it was just yesterday, I took the Straus Institute for Dispute Resolution Mediation Program in November of 2008. For those of you that have taken it, you know that it is one of the best mediation programs around. I think that mediation training is the critical first step to becoming a mediator. There are a number of good training providers (including the American Institute of Mediation) and it is important for a mediator to continue to receive on-going education.

Although I had started to do mediations before the Strauss Institute, I decided to "jump in" and do as many as I could handle through the Riverside Superior Court ADR Program. Over the past few years, I have done over a hundred of them for the Court but I tried to do them differently from some of the court mediators; I treated them like I was being paid (not just the \$150.00 stipend). I would take as long as it took to try and get a case settled, many of them lasting more than 4 hours. By their very nature, the court-ordered mediations are more difficult to settle than the private ones. I also followed up on the ones that did not settle. After I got home, I would send out e-mails to the parties to check on the status and to see what I could do to get the case resolved. I had a couple that took six to nine months to get done.

I also took the opportunity to work with some of the well-known mediators like Tim Corcoran of RAMS.

Through Tim, I met Kym Adams who at the time ran Inland Valley Justice Center who had the contract to do the court-mediations for San Bernardino County. I spent many Fridays in San Bernardino and Mondays in Rancho Cucamonga doing all kinds of mediations, sometimes doing two to three at one time.

Slowly but surely, people started calling me to see if I would do private mediations. I joined as many mediation organizations as I could including the Southern California Mediation Association which has a great fall seminar with fantastic instructors. In addition to going to some of the local bar association functions, I attended some of the functions put on by the various trial lawyer associations where I could meet attorneys while "wearing my new mediation hat".

I also networked with some of the people I thought were the great mediators (Bob Tessier, Tom Dillard, etc.) and actually had Var Fox, one of the owners of Judicate West, shadow me on a mediation (that will make you nervous). I created a mediation website called "TopPickMediator.com". If you are going to be a mediator you need a mediation website. If you have ever used me as a mediator, you know that my business cards are guitar picks and I have guitars hanging in my mediation rooms; I wanted to do something else to distinguish myself from the pack of mediators out there. Although I play more saxophone than guitar these days, I was reading a guitar magazine one night and it had an article called "Top Pick Guitars". The light bulb went off and people seem to like the picks and guitars (although I have had some requests for amplifiers since the guitars are all electric).

Well, it got to the point where I found myself doing mediations almost every day. I hired a Case Manager, Tracie Grossi, who previously worked for a successful mediator in the Inland Empire. In addition, I was fortunate to be recognized by the Riverside Superior Court as being one of the top mediators for the last few years.

What about my litigation practice? I have been fortunate to have a number of good lawyers in my firm that have been able to handle the day-to-day activities on my cases but as most of you know, the client wants the

partner to try the case. With my mediation skills, I was able to settle virtually all of the cases that were scheduled for trial. I did have one, however, that was set to go a few months ago and I notified the client that I would not be able to handle it because I was switching over to a full-time mediation practice. The client ended up transferring the case to another law firm but that comes with the territory.

Currently, I am usually doing three to four private mediations a week and a couple of the court-ordered mediations. Instead of waking up in the middle of the night worrying about how a trial is going or thinking about an upcoming deposition, I now wake up thinking about the cases that did not get settled at mediation and what I can do to get them done. Almost every single day I walk out of a mediation room wondering to myself, “where in the world is this case going?” The mediation business is hard work. After an all-day mediation, I go home exhausted, only to jump on the computer to read briefs for the mediations the next day and to send out follow-up e-mails on the ones I am still working on. On the other hand, there is nothing more satisfying to me than to present the parties with a copy of the settlement agreement where everyone walks out satisfied.

In closing, I would note that every mediation is different as is every mediator. Learn from the good mediators but have your own style. Be willing to modify your approach; the same “cookie cutter” approach just does not work anymore. Perhaps most importantly, listen to the parties, be patient and build trust and confidence.

Please see the bio of Mr. Fernandez on page 26.



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SOME REFLECTIONS CONCERNING OUR FOURTH DISTRICT, DIVISION TWO, COURT OF APPEAL'S SETTLEMENT CONFERENCE PROGRAM

by William DeWolfe

Nearly 23 years ago, in the fall of 1991, Division Two of the Fourth Appellate District (then headquartered in San Bernardino before its move to Riverside in 1999) established a Settlement Conference Program which, with modifications from time to time ever since, continues to be the most comprehensive and successful such program ever in California. As a matter of fact, very few of the many Divisions in the six Districts of the Courts of Appeal in this state have ever attempted or undertaken settlement procedures of their own.

The Riverside program is included and described in Rule 4 of the Local Rules of the Court of Appeal, Fourth Appellate District — a rule which applies in Division Two only. The rule and its subsections are lengthy and detailed. I will not attempt to summarize them here, but they are a must-read for any attorney involved in an appeal pending in the Riverside court.

Just one of the features leading to the success and longevity of the Riverside Court's program is the fact that, while one or more of the Justices in the Court occasionally serves as mediator on particular cases, the overwhelming majority of the cases assigned to the program are served by private attorney mediators. The attorneys not only volunteer to serve, but do so by donating 100% of their time. A substantial amount of time is spent by these volunteer attorney mediators in thoroughly preparing for the mediation session as well as attending the session (or sessions). They are instrumental in assisting the litigating parties and their attorneys throughout the settlement process.

Since the inception of the program in 1991, over 100 volunteer attorney mediators have served the Court of Appeal, with today's active list of mediators numbering approximately 40.

Another important element in the success of the Riverside program is the fact that Division Two of the Fourth District hires, on a full-time basis, a Settlement Conference Coordinator who not only keeps herself up to date with information about both the civil practice area(s) of each mediator currently on the panel, but also their mediation style and success rate. In early years, the Coordinator was Susan Waters, who served from 1991 to 1993. Next was Beatrice Farabee who coordinated the

program from 1993 to 2005, when she retired. Currently and since 2005, the Coordinator position has been held by Jacqueline J. Hoar. Each of these Coordinators, with their charming personalities and attention to detail, has been a key part of making the program so successful.

The Coordinator's activities begin shortly after the Court receives a Notice of Appeal in a civil case. She starts the process by reviewing the Civil Case Information Statements and determining those cases which are immediately rejected for the settlement conference program (e.g., pro per and CEQA cases). With all other civil cases, she sends confidential Settlement Conference Information Forms ("SCIF's") to all counsel of record for their completion and return to the court. Once received, these SCIF's are sent to the Presiding Justice for his review and consideration for the Court's settlement program. The Presiding Justice then advises the Coordinator which cases are accepted and it is her responsibility to match the case with the appropriate volunteer attorney mediator.

The Coordinator then contacts the volunteer attorney mediator to determine a convenient date and time for scheduling the mediation. Once decided, the Coordinator prepares and files an order notifying the parties of the scheduled conference and directing them to serve and file a Settlement Conference Statement within 15 days of the date of the Order. This Order also specifies that counsel and their client(s) must personally attend the conference, and notifies the parties that all proceedings in the appeal, except the filing of the record, but including the filing of any briefs, are stayed.

Also frequently involved in the process of administering mediations at the Court in Riverside is Donald Davio, Managing Attorney for that Division since 1990. He is always available to provide advice on procedural issues; for example, whether the appeal will be handled by dismissal or stipulated disposition.

Before Division Two moved to its current facilities in Riverside in 1999, the mediations were held in a building which did not have adequate space to accommodate them—especially the portions of the process necessarily requiring confidential discussions. That issue was just one of the many factors which Presiding Justice Manuel

Ramirez had to consider when he met with the architects who were designing the building. The end result was inclusion of a separate suite expressly designed for the mediation program — including four private conference rooms of different sizes, and a large central space for the Coordinator, all parties and their attorneys, and the always-ready coffee machine. Most importantly, having this suite available to the parties has created a warm and welcoming atmosphere which lends itself well to putting both attorneys and clients at ease and comfortable with the mediation process.

Most of us who have been among the attorney mediators since the Division Two program began have also had the experience of being the counsel of record for one or more of the parties to the appeal. On those occasions, different Justices from Division Two have served as mediator.

Largely because all of the mediations at Riverside are conducted by volunteer attorney mediators, the overall savings inherent to the program have been substantial. Moreover, in a number of those mediations which failed to result in immediate settlement, the process laid the foundation for a separately reached settlement by the parties at a later date. The resulting dismissal of the appeal enables the Court to handle more non-settled matters. That process involves assignment to panels of three Justices, the drafting of Tentative Opinions (a wonderful feature initiated by the Court's long-serving Justice Thomas Hollenhorst), the scheduling and conducting of oral argument, and the ultimate issuance of an Opinion.

Those of us who practice primarily in Division Two of the Fourth District — and our clients — are truly fortunate that the Justices and support staff in the Riverside Court have been and continue to be so farsighted and goal oriented in making the appeal process easier to live through than in most of the other Courts of Appeal in California.

William R. DeWolfe is a Partner at Best Best & Krieger LLP, Riverside.



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ATTENTION RCBA MEMBERS

If you are not getting email updates/notices from the RCBA and would like to be on our mailing list, visit our website at www.riversidecountybar.com to submit your email address or send an email to lisa@riversidecountybar.com



The website includes bar events calendar, legal research, office tools, and law links. You can register for events, make payments and donations, and much more.

A JUDGE'S PERSPECTIVE ON MEDIATION

by Honorable Gary B. Tranbarger (Ret.)

When I was asked to write about mediation from the court's perspective, my first reaction was to ask "What is meant by *court*?" If "court" refers to the court as an institution with budgets, shrinking resources and growing caseloads, then the answer is short and requires no explanation.

That answer is: Hallelujah!

A jury trial may be an invaluable cornerstone of our democracy, but it is also very time consuming. Each year many thousands of civil lawsuits are filed, and the court has the resources to try a couple hundred. Whether ADR takes the form of arbitration, mediation, or coin flip, the court is thankful for any process that lessens the need for jury trials.

If "court" is meant to refer to individual bench officers, then the answer is more complicated. While we judges share in the institutional court's gratitude for a reduction in the number of jury trials, a judge has interests beyond balanced budgets and shrinking backlogs. A judge wants what is best for the individual litigants, not what is best for the court. The question then becomes: which process is best for the litigants, a mediated settlement, or a contested jury trial?

If your instinctive first answer is that it depends on the facts of the case and on what the settlement terms were, I would disagree.

If the parties could agree on what the facts were, there would be no lawsuit in the first place. While philosophers confidently proclaim that there can only be a single "*truth*," civil trial lawyers know that philosophers are naïve. These naïve philosophers, and many litigants, think that in a civil jury trial there is one side advocating the *truth* and another side trying to persuade the jury of a *non-truth*. Lawsuits are expensive, stressful, and wasteful. Everyone is well advised to avoid them whenever possible. To presuppose that anyone would choose to participate in a lawsuit and not honestly think that *truth* is on their side is, indeed, naïve.

Here is another naïve statement: civil juries (or judges) determine the *truth*. They do the best they can, and they pursue that goal with intelligence and integrity. But, civil juries (and judges) do not possess magical gifts. The two sides to the lawsuit, the people that know the facts and circumstances of the lawsuit better than anyone else cannot agree on what the *truth* is. Highly educated experts have brought their training and expertise to the problem and have come to opposite conclusions. The predominant qualification to be a juror is that one have no prior knowledge of any of the facts, or of any of the people involved, and no

prior expertise in any of the subjects that will be litigated. I repeat, civil juries perform their duties with intelligence and integrity. They take their duties seriously and genuinely do their best. I have personally presided over many scores of civil jury trials. I almost always personally agree with the findings of the jury. But, does the jury always correctly discern the *truth*? Maybe. Remember, the burden of proof is "*more likely than not*". When a civil jury proclaims the *truth* with a confidence level of 51%, is that really the *truth* or is that just a jury's best guess?

Churchill is credited with pointing out that while Democracy is a terrible way to govern a country, it's saving grace is that it is better than all the alternatives. Democracy is not the best way to determine the best policies. Democracy is the best way to get those that disagree with the policies to accept their defeat without violence and without backing out of the social contract.

Similarly, a civil jury trial is a terrible way to determine the *truth*. We are all still waiting, however, for a better system to come along. The genius of the civil jury trial is that it is the best way to get losers of a dispute to accept their defeat. The intelligence, integrity, and impartiality of the jury (and judge) is manifest to the loser. He or she knows they got their day in court, and that it is now time to move on.

A mediated settlement does not determine the *truth*. It does, however, produce a way for both sides to move on. By definition, it produces a result each side is willing to live with. It resolves the dispute, and the true goal of every civil trial is not truth determination, it is dispute resolution.

If each side turns down a good faith settlement offer in order to go to trial, the trial may not determine the *truth*, but it will most certainly determine which side made a big mistake in choosing a trial over a settlement. Sometimes the answer is that both sides made the mistake. The answer is never that neither side made the mistake. The case that "just-has-to-be-tried" is a mythical creature that has never been seen once the smoke of a jury trial has cleared.

Therefore, judges don't need to know the facts of the case and the details of the settlement terms. All we need to know is that the dispute is resolved to the parties' satisfaction. From a judge's perspective, that is all that matters.

The Honorable Gary B. Tranbarger retired from the Riverside Superior Court in early 2014. He is currently associated with IVAMS.



THE RCBA ELVES PROGRAM 2013

by Brian Pearcy

On December 24, 2013, the RCBA's Elves Program concluded its annual program of helping needy families in Riverside County. This year we made a quantum leap in outreach, jumping from 31 to 45 families served, an Elves Program record. Your Elves provided Christmas gifts and a holiday dinner to 123 children and 67 adults.

Once again we worked with the Casa Blanca Home of Neighborly Services, and the Victim Services Division of the Riverside County District Attorney's office. To obtain additional families, we also worked with Operation Safe House and the Riverside County's Department of Social Services.

For the twelfth year now, the success of the RCBA Elves Program is due to the great support and generosity of our membership. Helping others is infectious, and Elf participation continues to grow beyond the immediate membership, their office staff, their families, their clients, their friends, to include even one of our local High Schools (John W. North H.S. had over 10 students pitch in!). And now for some recognition:

The Money Elves

Even with a one less week of fundraising and a stagnant local economy, the Money Elves generated yet the largest donations ever! Our funds came from direct donations and monies raised during several bar association events held throughout this past year.

The money provided gifts for each family member, along with a Stater Brothers gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the family's holiday travel.

Bratton & Bratton Law Office



I'd like to thank the following Money Elves for their support: Honorable Becky Dugan, Commissioner Pamela Thatcher-Lind, Honorable John Vineyard, Honorable Roger Luebs, Honorable Tom Cahraman, Honorable Irma Asberry, Honorable John Monterosso, Honorable Michele Levine, Honorable Jacqueline Jackson, Honorable Craig Riemer, Honorable Dallas Holmes, Mary Jean Pedneau, Chris Harmon, Sandra Leer, Barrie Roberts, Laura Rosauer, Judith Murakami & Attorneys to Go, Robert Chandler & Family, Diane Singleton-Smith, Susan Exon, Stacy Albelais, Carolyn Confer, Lobb & Cliff, Dan Hantman, Harry Histen, Gerald Fineman, Kira Klatchko, Jim Heiting, Jackie Carey-Wilson, Neil Okazaki, John Michels, Gresham Savage Nolan & Tilden, APALIE, Page Lobo Costales & Preston, Fernandez & Lauby, Niti Gupta, Arturo Cisneros, Diane Huntley, Kirsten Shea, Julianna Strong, Diane Roth, Vicki Broach, Greg Rizio, Chris Johnson, Bratton & Bratton, Justice Bailey, Mrunal Shah, Patsy Hinojosa, Stephanie Ramos, Melissa Cushman, Steven Anderson, Lynda Byrd, Margaret Barnes, Lisa Ruiz Cambio, Scott Ditfurth, Timothy Haynes, Margaret Hosking, Zakia Kator, Ron Kauffman, Diane LaRoche, Jennifer Kunz, Andrea McAreavy, LouAnn Moore, Jean Nakatani, Michelle Ouellette, Cassandra Owen, Susan Plummer, Glen Price, George Reyes, Lucas Quass, Isabel Safie, Danielle Sakai, Charity Schiller, Luis Tapia, Miranda Villareal, Mark Easter, Howard Golds, Carin Frescas, Alison Gomer, Deborah Vivian, John Wahlin, Amy & Lowell Zeta, Kimberly Byrens, John Marshall, Honorable Richard Van Frank (Ret.), Paul Grech.

Deborah Lucky & son Davis



Also I would like to give a big “Thank You” to the Riverside County District Attorney Association for their participation with a generous donation to the program.

Once again I would also like to provide a very special “Thank You” to Mark Easter and all of his colleagues at Best, Best & Krieger. Their outstanding firm donation really makes for a formidable “KickStart” to the fundraising process.

The Shopping Elves

This year, we had the largest group of shopping elves and yet, it was still one of the smoothest sessions ever! Thanks to the help of the numerous Shopping Elves, my assistant Veronica, Charlene and a very helpful Kmart staff. We were able to shop, bag, tag, and deliver hundreds and hundreds of presents to the bar association in just over three hours, a new record. It was a joy to experience the festive mood of various individuals, firms, and families as they put on their Elf hats (a big shout out to the Bratton firm!) and their best bargain-hunting caps to find deals for our families.

This year’s Shopping Elves were: Janet and Conner Calderon, Claudia and Sophia Spillman, Michelle and Kristen Cortez, Judy and Darby Graham, Susan Lowrance, Jo Larick, the Cast and Crew of The Offices of Bratton & Bratton, Judy Murakami and Andy Graumann, Joy Ashwood, Barbara Trent, Tera Harden, Deepak Budwani, Adrienne Bennett, Vanessa Douty and family, Lee Douty and family, Jesse Male, Meg Hogenson, Christina Sovine, Marie Myers, Krystal Reynoso, Sophia Contreras, Diana Renteria and family, Harry Histen and family, Jeannette Guerra, Lachelle Crivello, Gabrielle Beaudoin, Julie Gonzalez, Joyce Schechter, Paula Leveratto, LaShon Halley, Warren Chu, Sophia Choi, and Cynthia Loo of APALIE, Sonya Rodriguez, Deborah Lucky and family, Andrea Valadez, Maria Hale, and students from John W. North High School.

Warren Chu & Sophia Choi



Kmart stepped up to the plate again this year providing us with an additional discount on every item purchased. Store manager Tom Rynders was not only supportive with dedicated staffers to help ring up, bag and tag the Shopping Elves’ purchases, he pitched in and helped too. He really saw the benefit we were providing first hand and was very complimentary of the RCBA for undertaking this task.

The Wrapping Elves

After the shopping was finished, the presents were delivered to the Bar and filled the RCBA Board Room and several other work rooms. Over the course of two evenings, the Wrapping Elves wrapped the largest number of items (toys, clothes, and household goods) ever.

This year’s Wrapping Elves were: Gina Maple, Robert Chandler, Nolan Chandler, Diana Chandler, Aaron Chandler, Ana Zagari, Tiawana Jones, Sophia Choi, Ashley Rader, Honorable Dallas and Mrs. Pat Holmes, Honorable Jackson Lucky, Charity Schiller, Rosemary Koo, Dan Hantman, Suzette Peregrino, Matthew Halley, Maria Hernandez, Beatrice Cisneros, Marcus Quiddam, Robin Shea, Alyssa Larasella, Stanley J. Dale, The Graham Family, Kusum Joseph, Tanushri Joseph, Andrea Mihalik, Chad Firetag, Sheba Yagoot, Michelle Fernandez, Kryron Frazier, Jennifer Espinoza, Leti Fierro-Garcia, Oscar Galindo, Jr., Kira Klatchko, Dorothy McLaughlin, LaShon Halley, Marlyss Nicholson, Jennifer Finch, Daisy Deanda, Laura Moreno, Elena Rosales, Diana Renteria, Marina Kaye, Sebastian Kaye, Johnathan Magdaleno, Maria Hale, Jessica Chavez, Dominic Chavez, Krystal Reynoso, Nichole Barron, and Dustin Lee.

Delivery Elves

Our Delivery Elves spread out throughout Riverside County, including Corona, Lake Elsinore, Romoland, Perris, Hemet, Riverside, Cabazon, and the Coachella Valley. We even helped out a couple of families that

Christina Sovine & Veronica Reynoso





Brian Percy & Tera Harden



Roger & Sophia Spillman



Lachelle Crivello

moved to Apple Valley, and Rialto. The Delivery Elves who donated their time and gas were: the Honorable Charles Koosed and family, Honorable Pamela Thatcher-Lind, Honorable Mark Cope, Joy Ashwood, Michelle McCoy, Cindy Moran, Heber Moran, Catherine Wise, Lachelle Crivello, Susan Lowrance, Marie Myers, Arlene Cordoba, Sophia Contreras, Diana Renteria, Margeaux F. Merrick, Arturo Cisneros, Jeannette and Reina Guerra, LaShon Halley, Leti Fierro-Garcia, Lloyd Costales, Daisy Deanda, Andrea Valadez, Sherri Monett, Lorraine DeMarco, Brian Percy, Teresa Billings, Maune Vaca, Carla Alder, Cammie Dudek, Robert Chandler and family, Virginia Corona, Christina Garcia, and the Honorable District Attorney Paul Zellerbach.

Special Thanks

Once again, big kudos to my assistant Veronica, whose dedication and organizational skills made this a very efficient and fun experience for all involved; to the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang, for all their energy and assistance; to

the management and social workers of the Casa Blanca Home of Neighborly Service and Lachelle Crivello of the Victim Services Division of the Riverside County District Attorney's Office for making sure we help the most needy families in the county. Once again, "Thank You" to Tom Rynders and his staff at the Big Kmart at Mission Grove in Riverside.

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

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

Brian C. Percy, was President of the RCBA in 2002 and is the chairperson (ie "Head Elf") of the Elves Program.

photos courtesy of Bratton & Bratton and Brian Percy 

Jesse Male, Meg Hogenson & family



Darby & Judy Graham



AN ELVES HOLIDAY POSTSCRIPT

by Brian Percy

This year we adopted a special case from the DA's Victim Services Division that had such a compelling story that we had to help, even though no children were involved. Robert Coon was a truck driver "in training" from Las Vegas, Nevada. On Halloween night of 2012, while passing through Perris, his trainer left Mr. Coon behind with the truck while he visited a tattoo parlor. While waiting at the truck, Mr. Coon was approached from behind and stabbed 18 times in the back and chest by an unknown assailant. Left for dead, Mr. Coon was paralyzed from the neck down due to his injuries. Because he was a probationary employee, he did not have insurance at the time of the incident. Since he was not a California resident, he was not eligible to receive any state benefits.

After the attack Mr. Coon was terminated from his job and his fiancée left him. His home became the Riverside County Regional Hospital in Moreno Valley. For nearly 15 months, with no family or visitors other than hospital staff to see him on their days off, he was a virtual prisoner in his body "living" in an 8x10 hospital room. The Elves Program provided Christmas to Mr. Coon with gift cards so caregivers could get him food outside the hospital.

When the Delivery Elves visited him they learned that through his own determination and efforts he was training himself to regain some use in his left hand. At that time we also learned from hospital staff that he could possibly be trained to use a powered wheelchair with a joystick to regain some mobility and get outside. He just needed a wheelchair. We were also advised that if he had such a wheelchair he could possibly return home to Las Vegas.

Because of this compelling story of tragedy, sheer grit and need, the Elves Program moved beyond that usual December gift-giving element and worked into January. We contacted the local media to shine a spotlight on Mr. Coon and publicized his

need of a wheelchair. A story in the Press-Enterprise led to additional coverage about Mr. Coon and his plight on ABC and NBC news. Those stories led to money being donated to Mr. Coon via the DA's Victim Services Division. With the assistance of RCBA Vice President Kira Klatchko, the Elves Program was directed to a Palm Springs area non-profit named Angel View, which helps people in need obtain wheelchairs. Angel View through one of its vendors arranged for Mr. Coon to be fitted and provided with a wheelchair that he could operate. Within a week of Mr. Coon's story coming out in the press, arrangements were made and he was transferred to a facility closer to his home in Las Vegas. As members of the RCBA, you should be proud of your Elves Program and its success in helping Mr. Coon move forward with his life.

If you missed the article in the Press Enterprise, you can read it here:
<http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20140101-riverside-lawyers-helping-to-get-wheelchair-for-paralyzed-man.ece>

If you missed the coverage on TV, you can check them out here:
http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=9381317

<http://www.nbclosangeles.com/news/local/Stabbing-Victim-Raises-Money-Special-Wheelchair-238662901.html>

Brian C. Percy, was President of the RCBA in 2002 and is the chairperson (ie "Head Elf") of the Elves Program.



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JUDICIAL PROFILE: THE HONORABLE MARK HOULE

by Stefanie G. Field

Prior to even meeting Judge Mark Houle, I was struck by his humor, which threaded our email conversations. That sense of humor was abundantly evident throughout our interview, and is an intrinsic part of his personality and his humility.

Judge Houle, a Massachusetts native, is one of the more recent appointments to the U.S. Bankruptcy Court, Central District of California. His pedigree is impressive. He graduated summa cum laude Salem State College in 1993 before attending Boston College Law School. While in law school, he discovered an affinity for bankruptcy law, an affinity that was aided by a compelling bankruptcy professor and an internship with the U.S. Trustee's Office.

Graduation brought the reality of a depressed market in the legal field, with limited options. As such, Judge Houle decided to make lemonade out of some lemons. He obtained a clerkship in the U.S. Bankruptcy Court for the Central District in California and gained a new residence.

Capitalizing on what he learned clerking, Judge Houle then went into practice with a boutique bankruptcy firm where he gained invaluable experience and training. While there, he very much impressed opposing counsel at Pillsbury Winthrop Shaw Pittman LLP that they offered him a job. He remained there until his appointment to the bench.

Becoming a judge was a natural progression for Judge Houle. He thoroughly enjoyed the substance of his practice and had clients with whom he enjoyed working with, but the demands of business development and his administrative responsibilities began subsuming his time. Consequently, he was steadily becoming less able to focus on what he truly enjoyed – the law.

Judge Houle is not of the belief that he knows everything. To the contrary, he noted that there has



The Honorable Mark Houle

been a steep learning curve since his appointment and he anticipates that his lifetime will be filled with continual learning. The belief that he will continue learning throughout his career is an attitude that he hopes to never lose.

When asked about the underpinnings of his success, he identified three characteristics that we can all heed:

(1) Merit. Always do excellent work.

(2) Resiliency. Know that you are going to fail and get knocked down,

but do not let that stop you from pursuing your goals.

(3) Be nice. Not only is being nice the right thing to do, it is the smart choice.

These characteristics provided much insight into his judicial persona and help explain why he is so grounded.

Judge Houle also shared his judicial philosophy. He does not see his role as either a trainer of, or educator to, the bar, nor does he see his role as one of punisher. He sees himself largely as a facilitator. Given the finite amount of judicial resources available, he prefers to focus on efficiency and substantive issues, rather than rigidly following procedure. Bankruptcy Court is a court of equity. So, Judge Houle focuses on the facts, trying to call it as he sees it, being fair, efficient and pragmatic.

After speaking with him, it was apparent that Judge Houle is a fortunate addition to the U.S. Bankruptcy Court, Central District of California in the Riverside Division. His experience, love of the law, and attitude will benefit all those who appear before him.

Stefanie G. Field, a member of the Bar Publications Committee, is a Senior Counsel with the law firm of Gresham Savage Nolan & Tilden.



PROFILE OF A DRS MEDIATOR: THOMAS D. ALLERT

by Krista Goodman

Editor's Note: We at DRS want the members of the RCBA to know the mediators on our panel who dedicate their time and services to help us run our programs for the benefit of the public of Riverside County. We hope you enjoy the opportunity to read more about this mediator's personal and professional history. We are truly grateful to have Thomas D. Allert and his expertise on our panel.

"The greatest service that you can perform for your clients is to prepare them for the various scenarios that can unfold when you get to court," said attorney Thomas D. Allert after 36 years of practice in family law.

From 1978 through 2008, Allert practiced with Riverside law firm Swarner & Fitzgerald. When the partners of the firm decided to retire or transition out of private practice, he continued as a sole practitioner. He now works out of offices located in Downtown Riverside and his home, focusing his efforts on both litigation and mediation.

He explained two of the main responsibilities he has to his clients. "First, you have to be honest with your client about what they can expect and not expect in court," he said.

"Second, you have to help your clients see themselves in their circumstances and predicaments," he added. "You have to help them develop the ability to be introspective about their situation and do what's best for themselves and their children."

A lifelong resident of Riverside, Allert grew up and attended high school and college locally. After high school he pursued his undergraduate degree at the University of California at Riverside, where he received a scholarship to play baseball.

When he graduated in 1974, he had a couple offers to play minor league baseball. "I had one from the Cleveland Indians and one from the San Diego Padres," he remembered, "but my arm was bothering me so I decided to go to law school instead."

His grandfather, who was county recorder for the County of Riverside for over 44 years, was a major influence in his decision to pursue a law degree. "When I was young he always told me, 'Become an attorney and



Thomas D. Allert

practice probate, you'll never regret it.' That stuck with me. When I decided that I wasn't going to go on with my baseball career, I went ahead and applied for law school."

Allert completed his Juris Doctorate at Western State University in 1978. He passed the California State Bar the same year and went to practice with Swarner & Fitzgerald.

He came into practice during what he described as the golden age of family law, when most litigants that came through the courthouse were able to afford attorney representation.

More recently, the amount of self-represented litigants has escalated. He said that it has caused a shift in the economy for family law attorneys. The need for a smoother and more efficient court system to process cases has also risen with this change.

That's where initiatives like the Family Law Voluntary Settlement Conference (VSC) program come in. On the first and third Fridays of every month, RCBA Dispute Resolution Service, Inc. and the Riverside Family Law Court work together to coordinate the assignment of mediators to family law cases that are selected by the Court to participate in the program. Litigants have the opportunity to resolve their cases through mediation, an alternative dispute resolution (ADR) method that is often more time-efficient, cost-effective and satisfying for the participants. Approximately 20 cases go to mediation each month, many of which are resolved the same day.

"I get tremendous satisfaction out of it because we help people get their divorce completed in a day and they get to go home with their paperwork in hand," Allert said.

Allert has generously invested his time as a mediator since the program started in November 2010.

"Our supervising family law judge, the Honorable Jackson Lucky — I can't believe the amount of energy he has. He is really giving it all he has got to assist with this transition," Allert said.

In September 2013, Allert began managing the family law clinic for the Public Service Law Corporation (PSLC); dba Riverside Legal Aid, on Tuesday and Thursday evenings. He explained that the clinic, in some ways, is an extension of the Family Law Court's Self-Help Center. It was started to help indigent parties who are unable to

afford paralegal services to prepare and file their paperwork.

"I really didn't realize until I started with the clinic just how many people out there need a good service for a short amount of time just to get in and out of the system," he said.

The clinic handles approximately six to eight cases two nights a week.

"This clinic is actually perfect for me because I love meeting new people and I like helping them work through their problems," he said.

"I like getting a smile out of them instead of a frown," he added, "many of them come in really depressed and we send them out an hour or two later with smiles on their faces."

In the coming year, he hopes to see the economy turn around so that the clinic can recruit more attorneys to assist. It could then increase the volume of cases and the number of people that receive help each week.

"I'm really having a great time," he concluded, "I like the people I work with and I like the people I work for."

Allert's wife DeEtte is an assistant principal for the Riverside Unified School District. They have two grown sons; one is a Naval aviator and the other a Riverside County Sheriff's Deputy (USMC). He also has two dogs — a 9-year-old Lab and a 10-year-old rescued greyhound.

In his spare time, Allert enjoys scuba diving, playing racquetball, and riding motorcycles.

For more information about Riverside Legal Aid and its services, visit riverside-legalaid.org or call (951) 682-7968. For more information about RCBA Dispute Resolution Service, Inc. and its services, visit rcbadrs.org or phone (951) 682-2132.

Krista Goodman is the public relations coordinator for RCBA Dispute Resolution Service, Inc. and a current graduate student at the University of Southern California, where she expects to complete her Master's degree in Strategic Public Relations in June 2014.



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OPPOSING COUNSEL: ED FERNANDEZ

by Bruce E. Todd

Transformation to Successful Mediator

“As a mediator, you have to give value.”

So says Riverside attorney Ed Fernandez, who over the last few years, has converted his own well respected law practice into a full time mediation service.

During that time, Fernandez has developed a well-earned reputation for taking the necessary steps to resolve a case. This means that he will spend a considerable amount of time (uncharged) in post-mediation telephone calls and emails to counsel to continue to try to resolve a case. He states that he derives satisfaction in knowing he has achieved a successful settlement of a case, even if it has taken a significant amount of time following the mediation hearing to ultimately resolve the case.

Over the past few years, Fernandez has honed his mediation skills by being actively involved in the Riverside County Superior Court’s mediation program which was supervised by Barrie Roberts.

“I have probably done more mediation hearings for the court than any other local mediator,” says Fernandez. “I have had a lot of these mediations last for six to eight hours.”

Fernandez has also previously served on the mediation panel for the Redlands Arbitration & Mediation Services (RAMS) in Redlands.

Fernandez did not always serve as a mediator. In fact, he almost did not become an attorney. He says that he only went to law school because, after graduating with a degree in psychology from UC San Diego, he wanted to find a way to continue living in San Diego. He was surfing, running marathons (he says that he was overweight in his youth), and enjoying the sunshine of San Diego. He decided to enroll in law school at the University of San Diego, School of Law.

Fernandez graduated from law school in 1982 and passed the California Bar Exam that same year. He eventually started working at Gilbert, Kelly, Crowley & Jennett in Los Angeles as an insurance defense attorney. Much of his work was for the Automobile Club of Southern California. In 1989, he and Mike Donner (now Judge



Ed Fernandez

Mike Donner) opened a branch office for Gilbert, Kelly in Riverside. They were hoping to receive Auto Club files but he said that the Auto Club remained loyal to the law firms which it was already using in the Inland Empire.

“We started making cold calls to insurance companies when we first moved to Riverside,” says Fernandez.

After several years of successful practice in the Inland Empire, Donner and Fernandez decided to split off to form their own firm. Kirk Lauby joined the party and they became the well-respected insurance defense firm of Donner,

Fernandez & Lauby (now Fernandez & Lauby with the previous judicial appointment of Donner).

His new law firm received substantial work from Navigator’s Insurance Co. While handling these files, he found that many of his cases would go through the mediation process.

“For me, it was good since I got to mediate a lot of my cases in front of some excellent mediators,” says Fernandez. “I thought that one day I would like to do this.”

He decided to enroll in the mediation training program offered through Pepperdine University School of Law—Strauss Institute for Dispute Resolution.

“I did the Pepperdine program and I decided that I was going to get serious about it (becoming a full time mediator).”

Fernandez opines that it takes about five years to switch hats from an attorney to a full time mediator before making a successful living at it. Although still a name partner with Fernandez & Lauby, all of his work now is as a mediator. His few remaining cases are now being handled by other attorneys at his law firm.

Although he now claims that he only enrolled in law school so that he could continue running and surfing in San Diego, it seems likely the he might have drifted in that direction anyway since the law was a part of his family. His father was prominent patent attorney who specialized in electrical patents.

Fernandez now resides in Riverside and is married to his high school sweetheart Kathy (Florence) whom he met while attending Loyola High School in Los Angeles.

He was a guitar player in high school and his then-band Highway Star staked its claim to fame when it opened a gig for Van Halen. He has since moved on to the saxophone which he still regularly plays. He also is a pilot who owns his airplane. As a true renaissance man, he is also an amateur craft brewer who has been experimenting with the making of craft beers for the past 15 years.

In deference to his musical past, Fernandez distributes his signature “guitar picks” to those people attending his mediations. He finds that it is a unique way to publicize his availability as a mediator

The Riverside legal community is fortunate to have someone such as Fernandez available as an experienced mediator to assist in resolving the many lawsuits which are filed in this county.

Bruce E. Todd, a member of the Bar Publications Committee, is with the firm of Osman & Associates in Redlands.



RIVERSIDE COUNTY LAW LIBRARY FREE LEGAL CLINIC

Riverside County Law Library invites attorneys to be part of its National Library Week’s Free Legal Clinic

In celebration of National Library Week (April 14-18), the Riverside County Law Library (RCLL) will be hosting its ever popular “Fifteen Minutes of Fame” program which provides members of the public free 15-minute legal consultations in various subject areas including family law, landlord-tenant, probate, trust and estate planning, civil litigation, etc. This program will be held on Wednesday, April 16, 2014, from 10:00 a.m. to 3:00 p.m., in Riverside, Indio and Temecula. RCLL is seeking attorney volunteers in the Riverside County area to be part of this worthwhile program. Interested in giving back to the community? Be an attorney volunteer for this free legal clinic. Please contact victoria.williamson@rclawlibrary.org by March 28.



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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, 2014.

Eugene Ahtirski – Law Offices of Eugene Ahtirski, Van Nuys

Agatha Akers – Wade & Lowe, Rancho Cucamonga

Eric B. Alden – Fernandez & Lauby, Riverside

Manisha K. Bajaj – Bajaj & Polosov, North Hills

Megan Beaman – Megan Beaman Professional Law Corp, Coachella

Kristine M. Borjia – Law Office of Kristine M. Borgia, Riverside

Kristina Bui – Fair Housing Council of Riverside County, Riverside

Mary Madison Campbell – Peaceful Legal, Victorville

David E. Foate – Horspool & Horspool, Redlands

Ben J. Galante – Galante & Daruwalla, Los Angeles

Jennifer Gerard – Sole Practitioner, Riverside

Mariana A. Hevia-Cockrell – Law Office of Michael R. Young, Redlands

Raymond R. Hruby – Sole Practitioner, Quail Valley

Rachel King (S) – Law Student, Murrieta

Jennie Lemm-Spere – Inland Empire Latino Lawyers Association, Riverside

Juanita E. Mantz – Office of the Public Defender, Riverside

Chad D. Morgan – Law Office of Chad D. Morgan, Corona

Ronak N. Patel – Office of the County Counsel, Riverside

Jonathan Poloskov – Bajaj & Poloskov, Rancho Cucamonga

George Reilly – Sole Practitioner, Fallbrook

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