

# RIVERSIDE LAWYER

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MAGAZINE

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Why an Employee Bonus Can Be a Hassle  
for the Employer

The Consequences of Special Appearances

Rule 1-650: Some Good Deeds Go  
Unpunished

The Curse of the Prophets: No Good Deed  
Goes Unpunished

No Free Meals

Many Well-Intentioned Deeds Go  
Unpunished



The official publication of the Riverside County Bar Association



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**Design and Production** ..... PIP Printing Riverside  
**Cover Design** ..... PIP Printing Riverside

## Officers of the Bar Association

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 (951) 686-8848  
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 (951) 296-2442  
 richackerman@msn.com  
 Timothy J. Hollenhorst  
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 thollenhorst@rivcoda.org

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 (760) 568-2611  
 kira.klatchko@bbklaw.com  
 James J. Manning, Jr.  
 (951) 682-1771  
 jmanning@rhlaw.com

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Riverside County Bar Association  
 4129 Main Street, Suite 100  
 Riverside, California 92501

Telephone 951-682-1015 Facsimile 951-682-0106  
 Internet www.riversidecountybar.com E-mail rcba@riversidecountybar.com

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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 its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, 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 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 \$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

## JANUARY

- 12 Barristers Association Meeting**  
Riverside County DA's Office  
Speaker: District Attorney Paul Zellerbach
- 12 Special Presentation- 5: 30 p.m.**  
Power & Influence: How to Use it to Develop Business & Advance Your Career  
Speaker: Susan Letterman White  
Gresham Savage Nolan & Tilden  
550 East Hospitality Lane, Suite 300  
San Bernardino (MCLE: 1 hr)  
Free to RCBA members
- 13 FBA Judge's Appreciation Night & Installation of Officers**  
Mission Inn – Music Room  
5:00 Reception, 6:00 Dinner  
(MCLE)
- 14 RCBA General Membership Meeting**  
RCBA Gabbert Gallery – Noon  
Speaker: Presiding Judge Sherrill Ellsworth  
(MCLE)
- 17 Martin Luther King, Jr. Holiday**
- 19 Estate Planning, Probate & Elder Law Section Meeting**  
RCBA Gabbert Gallery – Noon  
MCLE
- 21 Bridging the Gap**  
RCBA Gabbert Gallery – 8:00 a.m. – 5:00 p.m.  
Free program for new admittees  
(MCLE: 5.5 hrs, including 0.5 hr Ethics)
- 25 Mock Trial Scoring Attorney Orientation**  
RCBA Gabbert Gallery - Noon  
(MCLE: 1 hr))
- 27 RCBA Blood Drive**  
Contact RCBA for information
- 27 Solo & Small Firm Section Meeting**  
RCBA Gabbert Gallery - Noon
- 28 Ethics Marathon**  
RCBA, John Gabbert Gallery –11:45 a.m to 2:00 p.m.  
Speakers: Charles Doskow, Chris Harmon, Erik Bradford  
(MCLE: 2 hrs Ethics )

## FEBRUARY

- 4 Appellate Law Section Meeting**  
RCBA Gabbert Gallery – Noon  
(MCLE )





*by Harlan Kistler*

As I begin to write this article, I realize that I have the holidays and the New Year ahead of me, yet RCBA members will be reading this article in January. Nevertheless, I can look back upon the last few months and reflect upon all of the bar association's activities with pride and appreciation, as I realize how wonderful our members have been in supporting these events this past year, and I can be confident that next year will be a better year because of the support from our members. Many of our members passed the hat at their offices to raise money (over \$10,000) for the Elves Program and participated in our "Tribute to Life" for Judge Victor Miceli, to name a few of the worthy causes that were a success because of the effort and support from our judiciary, members, RCBA staff and members of our board. The individual effort this past year from our members has been nothing less than inspiring.

If you attended the 90th birthday celebration for Judge Rich, you witnessed a living legend. The speakers were great, and those in attendance felt great respect and admiration for this pillar of our legal community. He not only established a successful law school in Riverside, but he is one of the most talented settlement judges in California. He has been a member of the RCBA since 1948 and he has worked at the Riverside Superior Court as a judge or settlement judge for about 62 years. Judge David Bristow said it best: "I would love to live to be 90, let alone working." Judge Rich doesn't have to work, but he loves it.

I had the pleasure of greeting 34 new attorneys during our annual State Bar of California Admission Ceremony, held in Department 1 of the Historic Courthouse. Presiding Justice

Manuel A. Ramirez of our State of California Court of Appeal, Fourth District, Division Two, presided over the program and welcomed the new attorneys to the profession. Associate Justice Jeffrey King gave the keynote speech and talked to the new attorneys about their significant role in the legal profession and how to be successful attorneys. I was joined by John Lowenthal, President of the San Bernardino County Bar Association, and Dennis Wagner, President of the Federal Bar Association, as we shared our thoughts about the legal profession with them and addressed the issues of professionalism and the benefits and opportunities of joining a bar association.

At the joint meeting of the Riverside and San Bernardino Bar Associations, we had the opportunity to hear from William Hebert, our State Bar President. He addressed issues concerning the Public Interest Task Force and the decreasing funds from Interest on Lawyer's Trust Accounts (IOLTA). With respect to Assembly Bill No. 2764, he indicated that it authorizes the State Bar of California to create a new task force for the purpose of making recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys. The task force will determine if the State Bar's current governance model can be improved for the purpose of enhancing public protection and will report its recommendations to the Supreme Court, the Governor, and the Senate and Assembly Judiciary Committees.

Mr. Hebert informed everyone that funding for legal services has been drastically reduced. The State Bar has relied upon IOLTA to fund legal aid programs. Assembly Bill No. 2764 contains a provision to create the Temporary Emergency Legal Services Voluntary Assistance Option, which gives each member of the State Bar the option of directing \$10 of his or her membership dues to be used for legal services. The annual membership dues statement will reflect this new option, unless the member elects not to support those activities. There is an increasing demand for legal services due to foreclosure relief scams, elder abuse, and domestic violence attributed to the economic downturn. He encouraged attorneys to increase their contributions to the Justice Gap Fund, which provides legal services for those who are unable to afford legal representation.

The upcoming blood drive sponsored by the RCBA is scheduled for January 27, 2011; the mobile blood unit will be located between

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the Historic Courthouse and the old mortuary building. The RCBA has had a blood bank account for several years. Blood donated by RCBA members is stored for one year in the RCBA blood bank account and is available to our members for life-saving treatments for cancer, surgery and trauma. The whole donation process takes only 45 minutes and you can earmark your blood to be available to you personally and to other members of our association. We need 40 donors to sign up in advance by calling the RCBA at (951) 682-1015.

My role as the head wrestling coach at Martin Luther King High School has provided both rewards and challenges this year, which is in line with this month's theme for the Riverside Lawyer, "No good deed goes unpunished." The King wrestlers' season began two months ago. The start of the wrestling season means a huge time commitment for the voluntary coaches and team members. We have team competitions every Wednesday night and two-day tournaments every weekend for the next two months, not to mention evening practices and practices for the youth group wrestlers (ages 5-15) who started on December 13. However, it is one of the most rewarding things that I do, despite the grief I occasionally receive from the parents.

It is challenging to keep 55 young men motivated throughout the long wrestling season. These student-

athletes may become discouraged when they lose a match or become stale after training hard for extended periods of time. I try to motivate them by reviewing their long-term goals with them and by having them visualize and relish what achieving their goals will feel like in the future. Towards the end of the season, when the wrestlers are bruised and battered, we remind them that: "Pain is temporary and pride is forever." Some attorneys are going through tough times and perhaps, like our King wrestlers, need to refocus on what success means in their present situation. We all have blessings, accomplishments and future goals to reflect upon to see a brighter tomorrow.

Judge Sherrill A. Ellsworth will be our speaker in January at the RCBA monthly general membership meeting. She is the new Presiding Judge, and she will have some interesting new topics and issues to address at that time. Please take the time to attend and meet your friends and colleagues. I wish everyone a happy and prosperous New Year!

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*Harlan B. Kistler, President of the Riverside County Bar Association, is a personal injury attorney for the Law Offices of Harlan B. Kistler.*



# BARRISTERS PRESIDENT'S MESSAGE

by Jean-Simon Serrano



In keeping with this month's theme of "No Good Deed Goes Unpunished," I thought I'd take time to discuss the evolution of California's Good Samaritan Law and the case of *Van Horn v. Watson* (2008) 45 Cal.4th 322.

California has enacted, in Health and Safety Code section 1799.102, what is sometimes referred to as a "Good Samaritan" Law. Up until 2008, this section stated:

"No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission."

The intent of this law was to encourage bystanders, or "good Samaritans," to help others in need of emergency care. But what constituted "emergency care"? The California Supreme Court took up this issue in *Van Horn*.

In *Van Horn*, the defendant, Ms. Torti, removed the plaintiff, Ms. Van Horn, from a vehicle involved in an accident and, by so doing, allegedly caused her to become paralyzed. Van Horn sued Torti for negligence. Torti argued that she had provided "emergency care at the scene of an emergency" and so was immune from liability under section 1799.102. The Supreme Court affirmed the court of appeal's holding that section 1799.102 was intended to immunize from liability for civil damages any person who renders emergency *medical care*. Because Torti testified that she removed Van Horn from her vehicle for fear that Van Horn's car was about to explode, the removal did not constitute *medical care*, and thus she could not claim the immunity in section 1799.102.

The court's interpretation of this section was disappointing. It seemed that this section was specifically created so that good Samaritans would help those in need and not fear repercussions from coming to the aid of others. After the *Van Horn* ruling, a would-be good Samaritan was left to wonder, before rendering any aid to someone at the scene of an emergency, "Am I rendering *medical aid*?" If the answer was "no," the good Samaritan might fear legal liability for assisting others and might choose not to intervene.

As a reaction to the ruling in *Van Horn*, Health and Safety Code section 1799.102 was amended in 2009 such that it now provides immunity for those providing "emergency medical or *nonmedical care* at the scene of an emergency." The section was further amended to state, "It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly."

It seems to me that this was always the intended purpose of the section. Unfortunately for Torti, the language that previously existed in the Good Samaritan Law ensured that her good deed of removing Van Horn from a wrecked car did not go unpunished.

*Jean-Simon Serrano, president of Barristers, is an associate attorney with the law firm of Heiting and Irwin. He is also a member of the Bar Publications Committee.*



# CODE ENFORCEMENT: THE GOOD, THE BAD, AND THE UGLY

by Glenn Baude

Why does code enforcement exist? Don't we have the right to do what we want on our own properties? Is this not the United States of America – the land of the free? Shouldn't we have the right to just let our sewage flow where it goes? That is gravity. That is nature. Shouldn't I, as a property owner, be able to rent out my laundry room to someone, if they agree to my terms? Shouldn't we be allowed to throw our trash wherever we please? So what if I have two stripped cars in my front yard? It just shows that I can afford two junk cars. Why can't I keep 90 dogs inside my double-wide mobile home? I am rescuing them. I do not mind the paws sticking up from the ground under the barbecue in the yard or the 11 dead dogs in my freezer. Why should anyone else mind? So what if my grass is four feet high and dry? It is my grass, and I like it that way.

Code enforcement is often misunderstood; it is not about denying people property rights, but protecting their property rights and ensuring standards that protect health and safety as well as neighborhood quality of life. Enforcing local codes is important because:

- It helps maintain safe communities and contributes to community pride and enjoyment
- It helps build and maintain property values
- It can act as a force multiplier for law enforcement, environmental health, fire, animal control, etc.
- It serves to educate the public about ordinances and laws affecting their properties
- It helps to maintain and continue development of a jurisdiction
- It protects property owners' rights to enjoy their property without illegal infringement from surrounding properties

Enforcement is conducted based on the violation, not the violator. The focus of enforcement is on nuisance activities or structures, without regard to the source of the complaint or the nature or character of the violator. These are seen as violations against the jurisdiction and not against neighbors or other individuals, although some complaints stem from neighbor disputes.

Code enforcement provides violators a chance to comply voluntarily and is usually done with a flexible, creative, and helpful approach, especially when dealing with people who have difficulty complying due to age, infirmity, or temporary financial hardship. Seeking voluntary compliance first and foremost, enforcement efforts are directed at pro-

viding opportunities for solving problems and eliminating violations, not punishing people.

**The Good:** Many of the people code enforcement officers deal with are just uninformed about the law, and an educational approach often works. These are good people – just unaware.

**The Bad:** Sometimes the Code Enforcement Department must deal with people who are involved in criminal activities and show no regard for the law.

**The Ugly:** Jurisdictions often set standards to eliminate the unsightly appearance of properties which decrease the value of surrounding real estate, increase crime, and detract from the overall reputation and pride within the community.

Philosophies in code enforcement can be different in various jurisdictions and can range from strict enforcement of codes to merely educational programs. Code enforcement can be found in planning departments, police departments, building departments, economic development agencies, or as an independent department. The culture of a department is often affected in many ways by which umbrella department it is under.

Code enforcement officers must be able to perform many roles, including mediator, educator, facilitator, and, usually as a last resource, enforcement agent. Code enforcement officers have a difficult and often thankless job. Although they always try for a win-win solution, many times violators and complainants do not see it that way; one or both feel like they are not being served. Additionally, code enforcement officers deal with many of the same people law enforcement agencies deal with. They do this without backup and without many of the safety and enforcement tools that law enforcement officers have at their disposal. Someone who is conducting criminal activity is usually not concerned with the condition of their property.

Overall, code enforcement is a vital tool in establishing the identity and value of a community. Most people wish to live in a nice and safe neighborhood, and enforcement of local ordinances sets standards for a community and aids in establishing and maintaining the quality of life desired by residents.

*Glenn Baude is the Director of Code Enforcement for the County of Riverside. His department ensures compliance with Riverside County ordinances in the unincorporated areas of the County of Riverside. Additional information about Code Enforcement may be obtained from its website: [www.rctlma.org/ce](http://www.rctlma.org/ce).*





# WHY AN EMPLOYEE BONUS CAN BE A HASSLE FOR THE EMPLOYER

by Jamie Wrage

Why isn't my boss more generous? Why can't the company be more flexible? Where the heck is my bonus?

The answer to these questions and others posed by employees may be that employment laws pose too much of a risk to employers to allow them to do little kindnesses for employees. For fear of unforeseen consequences, employers hold back bonuses, strictly follow employee leave rules and refuse to provide assurances of continued employment to employees.

Bonuses are particularly tricky for employers because they can be wages for the purpose of computing overtime. Many overtime miscalculations have come back to haunt employers.

While there are exceptions for certain specialized categories of workers, nonexempt employees in California generally are entitled to overtime for all hours worked in excess of eight hours in a single day, 40 hours in a single workweek, and for the first 8 hours on a seventh day of work in a single workweek. There are also double-time requirements. Overtime is calculated using an employee's "regular rate of pay."

This "regular rate of pay" dollar figure causes all sorts of confusion for employers, who often assume the "regular rate of pay" is the gross hourly dollar figure paid to an employee. What they forget is that to properly compute the "regular rate of pay," the number must include all remuneration to the employee, including hourly earnings, bonuses, commissions, piecework earnings, and the value of meals and lodgings. See 29 U.S.C. § 207(e) (2001); 2002 D.L.S.E. Man. § 49.1.1. A similar computation applies to nonexempt employees who are paid by salary, except that under California law, no matter how many hours the employee actually works in a workweek, the "regular rate of pay" is determined by dividing the salary (and other remuneration) by 40 hours. 2002 D.L.S.E. Man. § 49.1.5.

Some bonuses are included in the "regular rate of pay" calculation and others are not. A purely discretionary bonus given at the sole discretion of the employer, not pursuant to any agreement and not in a situation where the employee could regularly expect such bonuses, is excluded from the computation of the "regular rate of pay." However, any bonus based on attendance, work quality or production must be included in the compu-

tation. Likewise, bonuses made contingent upon an employee's continued employment are included. 29 C.F.R. § 778.211(a)-(c) (2001).

So far things aren't too complicated, but consider when the bonus is remuneration for a period longer than one weekly pay period – perhaps an annual bonus. How and when is the bonus included in the employee's "regular rate of pay" for the computation of overtime? The employer can disregard the bonus for the computation of overtime until such a time as the employer is able to ascertain the amount of the bonus. Once the amount is ascertained, however, the employer has to compute the new "regular rate of pay," considering the bonus, and to go back over the workweeks to which the bonus applied (the year, in our example) and give the employee additional pay for any overtime hours paid during that period. 29 C.F.R. § 778.209(b).

And California law has a few twists. If the bonus is a flat sum, the bonus amount is not divided by the total number of hours the employee actually worked during the pay period. It is divided by the maximum legal hours the employee worked (40 hours per week). If the bonus is not a flat sum, and is computed based upon production or some other method that can be tied back to hours worked, then overtime is also due on the bonus payment! 2000 D.L.S.E. Man. § 49.2.4.2.<sup>1</sup>

In sum, the employee not only gets the "bonus" itself, he or she gets additional overtime pay for the entire period covered by the bonus and possibly overtime on the bonus. This is an accountant's dream and an employer's nightmare.

Rather than have to deal with these complicated calculations and possibly be faced with claims for unpaid wages, many smaller employers will opt out of giving bonuses, or, if they stick with bonuses, the bonuses will be of the entirely discretionary sort that can be excluded from the "regular rate of pay."

*Jamie Wrage, a member of the Bar Publications Committee, is a partner at Gresham Savage Nolan & Tilden.*



<sup>1</sup> The 2002 D.L.S.E. Manual provides several examples of wage computations that are helpful for guidance.

# THE CONSEQUENCES OF SPECIAL APPEARANCES

by Derek Early

Have you ever made a “special appearance” to help a friend or colleague, or even as a courtesy to opposing counsel? If so, you may want to think twice in the future, because your kindness and professionalism may expose you to unwanted problems.

There are two types of special appearances – those made for the limited purpose of contesting a court’s jurisdiction, and those made by someone as a substitute for the attorney of record. The latter type of special appearance is the subject of this article.

In *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, the court concluded that an attorney making a special appearance for a party enters into an attorney-client relationship with that party. And as a result of this relationship, the attorney owes that party a duty of care.

*Streit* involved a malpractice lawsuit in which the client sued not only her attorney of record, but also the attorney who had specially appeared on her behalf at a hearing on a motion for summary judgment. The trial

court granted summary judgment in favor of the special appearance attorney, but the appellate court reversed, finding that an attorney-client relationship existed.

The implications of this ruling are significant. For one thing, it establishes that attorneys making special appearances (even as a professional courtesy) may be liable for malpractice to the parties they represent. This was the main holding in *Streit*. But even the *Streit* court recognized that an attorney who merely makes a special appearance has limited involvement in a lawsuit and may therefore avoid liability based on the limited scope of the representation. Still, in light of *Streit*, attorneys should not agree to make special appearances unless they are confident that they will be able to do so competently.

Perhaps more significantly, because making a special appearance creates an attorney-client relationship, attorneys who make special appearances for opposing counsel have likely breached their ethical duties to their own clients by creating a conflict of interest. The principle that an attorney cannot represent opposing parties in the same lawsuit is fundamental to the practice of law. So although it often makes sense from the standpoint of efficiency and collegiality for one party’s attorney to appear on behalf of all of the parties at a nonsubstantive hearing (a not uncommon occurrence), technically the attorney cannot and should not do so. Instead, when presented with a request from opposing counsel to specially appear on his or her behalf, it is better to suggest that he or she use a third-party special-appearance attorney or make an appearance by court call.

The takeaway from this is that a special appearance should not be taken lightly. Even when these appearances are made with good intentions, there can be significant undesirable consequences.

*Derek Early is a member of the Bar Publications Committee. He is an attorney at Varner & Brandt in Riverside.*





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# RULE 1-650: *SOME GOOD DEEDS GO UNPUNISHED*

by Christopher J. Buechler

Lo, those days three years ago in law school, where I was sitting in my Professional Responsibility class. There was much wailing and gnashing of teeth from my professor when it came to the subject of ABA Model Rules of Professional Conduct, rule 6.5 – “Nonprofit and Court-Annexed Limited Legal Services Programs” – and the fact that California had not yet adopted a counterpart. This meant that it was very cumbersome for lawyers to donate hours to these programs, because they would have to go through conflict checks on clients they saw, and it could endanger their firms’ future business if a conflict with a clinic client was imputed to the firm based on one lawyer’s generosity. And all of this hand-wringing was creating a tension within the profession between our duties to avoid conflicts of interest between clients<sup>1</sup> and our duties to ensure access to justice by providing services to those of limited means.<sup>2</sup>

But as of August 28, 2009, California attorneys have some relief with the adoption and effectiveness of Rules of Professional Conduct, rule 1-650, governing lawyers’ conduct in limited legal services programs. The language of the rule was lifted practically wholesale from ABA Model Rule 6.5, including the comments, except that it refers to the related California rules rather than the ABA rules.<sup>3</sup>

## Limited Legal Services Programs Defined

Limited legal services programs are described in comment 1 to the rule: “Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms that will assist persons in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer’s representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.” Our own county bar building is home to one such program, the Public Service Law Corporation (PSLC), a wonderful organization I have had the privilege of work-

ing with since early this year.<sup>4</sup> In these programs, clients – mostly pro per litigants – are informed of the limited scope of the representation and are able to consult with an attorney to determine what legal paperwork to file and how to fill it out, what arguments are relevant to bring before the court in the matter at hand, what issues to anticipate from the opposing party, and, in some circumstances, what matters would be too complex for pro per litigants and would require assistance of counsel.<sup>5</sup> In these situations, there is an attorney-client relationship, but the limited scope of the representation has the effect of limiting the conflicts of interest that arise.

## Standard for Conflicts of Interest

Just because we are limiting conflicts of interest in these limited legal services programs does not mean there are no conflicts. Rules of Professional Conduct, rule 3-310 is triggered when the lawyer has knowledge of (1) a direct conflict of interest in the representation or (2) an imputed conflict of interest with another lawyer in his or her law firm. Actual knowledge is a sufficient prophylactic in this rule to protect the interests of the clinic client. And if the attorney decides to continue representation with the clinic client beyond the limited legal services, then Rules of Professional Conduct, rule 3-310 and all other professional obligations come into full effect. As for firm clients, there is no conflict imputed to the firm from the work of any lawyer in a limited legal services program, although ethical screens may be required on the conflicted matter.

Rule 1-650 could signal the dawn of a new era in California, when attorneys can use their talents to assist those who so desperately need them, and their firms do not have to fear the loss of business that would make the attorneys desperate themselves. And Professional Responsibility professors in California can sleep easier knowing that at least some tension arising from an attorney’s various duties has been relieved.

*Christopher J. Buechler, a member of the RCBA Publications Committee, is a paralegal for the Riverside County Department of Child Support Services and a private attorney. He can be reached at [chris.buechler@gmail.com](mailto:chris.buechler@gmail.com).*



1 See ABA Model Rules Prof. Conduct, rules 1.7-1.10; Rules of Professional Conduct, rule 3-310.  
2 See ABA Model Rules Prof. Conduct, rule 6.1; Bus. & Prof. Code, § 6068, subd. (h).  
3 See also proposed changes to the Rules of Professional Conduct at <http://ethics.calbar.ca.gov/Committees/RulesCommission/>

4 See Boylston, Jennifer, “Donate Your Latte, Save a Lawyer!,” *Riverside Lawyer*, November 2010.

5 This last scenario is discussed in Rules of Professional Conduct, rule 1-650, comment 2 – lawyers may initially advise pro per litigants on matters requiring services beyond the limited legal services setting, but must advise the client to seek further assistance of counsel.

# THE CURSE OF THE PROPHETS: NO GOOD DEED GOES UNPUNISHED

*by Richard D. Ackerman*

When first asked to write this article, I didn't quite know what to think or how to approach the issues. Naturally, one would inquire as to why one had been chosen to write an article on the idea that "no good deed goes unpunished." Perhaps it's just because I truly believe in a uniform justice system that cannot be destroyed or weakened by the whims of political correctness, unjustified entitlements to power, or discrimination. Maybe it's the fact that I have lost on so many unpalatable positions that I am perceived as being the consistent standard-bearer for the losing argument. Perhaps the characteristics of being hopeful, tenacious and committed are necessarily defined by commitment to suffering humiliation. For all I know, it may just be my fearless stupidity.

A model justice system is ruled by reason, equity, and a sense that one is entitled to rely on equal application of uniform law. With this in mind, it also must be remembered that today's dissent may very well be the basis for tomorrow's justice. We know this, yet so often fear being the voice of dissent or a counterbalance to excess power.

Fortunately, the otherwise controlling fear of change can be defeated. The recent decision by Judge Virginia Phillips on the "Don't Ask, Don't Tell" policy aptly demonstrates the power of commitment to principle. While I did not agree with the decision, for reasons of the constitutional separation of powers, I bear the deepest respect for her courage in taking on the entire military system in the pursuit of equality. Indeed, the very essence of dissent is what makes for human progress and development of the unique democratic experience bestowed upon us.

One might want to say that this has nothing to do with being punished, *per se*, for good deeds. Nothing could be further from the truth. For its power to be felt, prophecy nearly requires persecution. Throughout the known history of humankind, we have seen one prophet after another being condemned simply for taking a stand and pronouncing the truth.

The essential form of what it means to be a prophet is historically seen in Isaiah, Ezekiel, Jeremiah, John the

Baptist, Jesus, the Buddha, even the unimposing Dharma bum, or just about any other perceived revolutionary.

By the way, don't let your sensibilities about religion get in the way of a good thought about what it means to be human. Don't let my biases as to prophets interfere with the definition of yours. Prophecy has never been a form of proselytization nor evangelism. The latter require the ability to sell or enforce an idea or belief. Prophecy is most defined by its initial lack of luster and desirability (i.e., because of its demand for human introspection).

I must also mention that I believe that prophets are neither nuts nor fortune tellers. To be a prophet means to be a representative of something higher than yourself. It doesn't mean you are a great person. It certainly does not mean that you have any more power than anyone else. You bear the calling of a messenger. You get to bear complete responsibility for whatever you say and may even bear the risk of death itself. Theoretically, each of us in the law ought to be a prophet on behalf of the Constitution and of the judicial branch in all of its noble purposes.

Of course, however, there must be a price for one's desire to profess the law as it is and the reason that provides the lifeblood of the law. The price for your message may very well be disdain, frustration, mockery, lack of understanding, and intolerance. As was recently pointed out by Jack Clarke, one of my most respected colleagues, if it were not for Dr. Martin Luther King and so many others, we would not know the concept of equality as we now understand it. What was the price Dr. King paid? His very life. Yet his prophecy and vision lead to the conclusion that we all ought to be equally able to seek the highest that humanity has to offer. This principle seemingly should never have had to be bartered for death. His humiliation became a call for human dignity.

What is the sacrifice you would be willing to make in order to be a seeker of truth? I don't know if we would all refuse representation of a well-paying client with a bad cause. It doesn't seem respectable that one should disagree with the mainstream. Would you challenge a judge openly on a matter of law, or hide behind the veil of

# NO FREE MEALS

by Steve Braslaw

State Board of Equalization tax regulations are something that the average person may not know much about. For a small restaurant business owner, it is difficult to follow these onerous and often convoluted provisions. From first-hand experience, I have learned that there are certain laws pertaining to the collection of sales tax on employee meals that, if not followed, result in the imposition of stiff fines and penalties. Basically, it does not pay to give your employees a “free ride” on meals.

When I first became a franchise owner, I was quite liberal with my meal policies. I wanted to reward my employees for their loyalty, and to be compassionate to single-mother minimum wage employees, by giving them free meals, including drinks, on a daily basis. I allowed this practice to continue for almost six years, up until I got my first visit from an auditor of the State Board of Equalization. At that time, I was informed that hot sandwiches had to be taxed even if taken out, that dine-out cold sandwiches with chips and a drink had to be taxed, and so on. I was also flabbergasted when I was told that the lack of collection of any taxes from my “free” employee meals was actually exposing me to a great deal of liability. In other words, even though *I* was paying for *all* the food products and giving the employees comped meals, I still had to pay taxes on their meals if they consumed a carbonated drink, chips, or a toasted sandwich, or if they were consuming the meal on-site.

There are some quirky laws when it comes to the sale of foods. For example, if a sandwich is sold to-go and it is cold, the customer is not liable to pay sales tax. However, if that same sandwich is eaten in the restaurant, then tax is applicable. If that same sandwich is sold to go, but is also heated, then the customer must be charged tax. Since employees generally eat their meals on the premises, sales tax is always applied. Some restaurants continue to give their employees meals, but they must charge a nominal fee to cover the tax liability. I believe giving employees meals is wise, unless you are on-site running the business almost 24/7.

When I asked for a clear response on some of the sales tax provisions applicable to the food service industry, even the auditor conceded that there were a lot of “gray” areas and could not give a right or wrong answer. For example, subdivision (k) (“Employees’ Meals”) of Regulation 1603

(“Taxable Sales of Food Products”) of the State Board of Equalization states:

“(1) IN GENERAL. Any employer or employee organization that is in the business of selling meals, e.g., a restaurant, hotel, club, or association, must include its receipts from the sales of meals to employees, along with its receipts from sales to other purchasers of meals, in the amount upon which it computes its sales tax liability. An employer or an employee organization selling meals only to employees becomes a retailer of meals and liable for sales tax upon its receipts from sales of meals if it sells meals to an average number of five or more employees during the calendar quarter.

“(2) SPECIFIC CHARGE. The tax applies only if a specific charge is made to employees for the meals. Tax does not apply to cash paid an employee in lieu of meals. A specific charge is made for meals if:

“(A) Employee pays cash for meals consumed.

“(B) Value of meals is deducted from employee’s wages.

“(C) Employee receives meals in lieu of cash to bring compensation up to legal minimum wage.

“(D) Employee has the option to receive cash for meals not consumed.

“(3) NO SPECIFIC CHARGE. If an employer makes no specific charge for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.

“In the absence of any of the conditions under (k)(2) a specific charge is not made if:

“(A) A value is assigned to meals as a means of reporting the fair market value of employees’ meals pursuant to state and federal laws or regulations or union contracts.

“(B) Employees who do not consume available meals have no recourse on their employer for additional cash wages.

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“(C) Meals are generally available to employees, but the duties of certain employees exclude them from receiving the meals and are paid cash in lieu thereof.

“(4) MEALS CREDITED TOWARD MINIMUM WAGE. If an employee receives meals in lieu of cash to bring his or her compensation up to the legal minimum wage, the amount by which the minimum wage exceeds the amount otherwise paid to the employee is includable in the employer’s taxable gross receipts up to the value of the meals credited toward the minimum wage.

“For example, if the minimum rate for an eight-hour day is \$46.00, and the employee received \$43.90 in cash, and a lunch is received which is credited toward the minimum wage

in the maximum allowable amount of \$2.10, the employer has received gross receipts in the amount of \$2.10 for the lunch.”

After I read this regulation and many others pertaining to the sales of food, my eyes glazed over and my head spun. My reading of the above regulation and the auditor’s response leads me to believe that employee meals must be taxed. Accordingly, I had no choice but to make my employees pay a nominal amount for their meals to cover the sales taxes. Of course, they all complained in the beginning (as they had gotten used to a good thing), but when I explained to them that I had no choice because it was the law, they understood. Unfortunately for me, I have to pay back taxes on the employee meals. As the saying goes, “No good deed goes unpunished.”



# MANY WELL-INTENTIONED DEEDS GO UNPUNISHED

by Eli Underwood

Both state and federal law shield directors and officers of nonprofit corporations from liability related to decisions they made in their corporate roles as volunteers. (“Volunteers” are those who serve without compensation, and “compensation” refers to any consideration except per diem, mileage, or other reimbursement expenses (Corp. Code, § 5047.5).) This is a relief to anyone honestly trying to do good in their community. But to avail themselves of the liability shield, do-gooders must ensure that their efforts are honest, as these laws have exceptions for less-than-honest efforts.

A director or officer’s first defense is the petition requirement of Code of Civil Procedure section 425.15. Section 425.15 requires leave of court in order to file a cause of action against an uncompensated officer or director. The filing of a petition under section 425.15 tolls the running of any applicable statute of limitations and requires a verified petition and supporting affidavits. A section 425.15 petition operates like a demurrer or motion for summary judgment in reverse – i.e., instead of allowing the defendant to challenge the claim for lack of legal or factual merit, it requires the plaintiff to demonstrate in advance that his or her claim is legally sufficient and substantiated by competent, admissible evidence. (See *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719.)

But section 425.15 does not protect directors and officers of section 501(c)(3) organizations. Its application is limited to organizations that qualify for exemption under 26 U.S.C.A. sections 501(c)(1), 501(c)(4), 501(c)(5), 501(c)(7), or 501(c)(19). (Code Civ. Proc., § 425.15, subd. (e) (1).) So although educational and charitable 501(c)(3) nonprofits cannot take advantage of the rule, certain credit unions, labor, agricultural or horticultural organizations, recreational clubs, and organizations of past or present members of the armed forces can.

The next protection is afforded by Corporations Code section 5047.5, which insulates volunteer directors and officers of 501(c)(3) and 501(c)(6) organizations from personal monetary liability for any negligent policy judgments they may make within the scope of their duties. This exception is very narrow, though. Liability is not limited where the action alleges intentional, wanton, or reckless acts, gross negligence, fraud, oppression, malice, self-dealing (see Corp. Code, §§ 5233, 9243), a conflict of interest (see Corp. Code, § 7233), an illegal loan, distribution, or guarantee (see Corp. Code, §§ 5237, 7236, 9245), or a restraint on trade (see Bus. & Prof. Code, §§ 16700-16770).

(Corp. Code, § 5047.5, subs. (c)(1)-(c)(3), (c)(6)-(c)(7).) The statute also doesn’t limit liability where the action is maintained by the attorney general. (Corp. Code, § 5047.5, subd. (c)(5).) In summary, mere negligence is not enough to establish liability.

A director or officer’s personal liability exposure is limited only if he or she is covered by a liability insurance policy or if the organization took all reasonable, good faith measures to obtain available liability insurance. However, the nonprofit itself remains liable. (Corp. Code, §§ 5047.5, subd. (e), 5239, subd. (a)(4), 9247, subd. (a)(4); *Ritter & Ritter, Inc. v. Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103, 123-125)

The Federal Volunteer Protection Act of 1997 is the final defense for those looking to escape punishment for their good deeds. (42 U.S.C.A. §§ 14501-14505.) Significantly, unlike the California Nonprofit Corporation Law, the Volunteer Protection Act covers all volunteers. (42 U.S.C.A. § 14503(a); *Armendarez v. Glendale Youth Center, Inc.* (D. Ariz. 2003) 265 F.Supp.2d 1136, 1141.) But to benefit from the Act’s protection, a director or officer must truly be a volunteer – the Act protects only those persons receiving less than \$500 per year from the nonprofit. (42 U.S.C.A. § 14505(6)(B).) Notably, the Act does not protect a volunteer officer or director from civil actions brought by the nonprofit organization itself. (42 U.S.C.A. § 14503(b).)

Under the Act, volunteers can’t be held personally liable for acts or omissions within the scope of their responsibilities, unless (1) the acts constitute willful, reckless or criminal misconduct, gross negligence, or a conscious flagrant indifference to the rights and safety of the individual harmed, or (2) the harm was caused by the volunteer’s operation of a vehicle. (42 U.S.C.A. § 14503(a)(3), (a)(4).) Moreover, the law doesn’t apply to misconduct stemming from crimes of violence (see 18 U.S.C.A. § 16), acts of terrorism (see 18 U.S.C.A. § 2331), hate crimes (see 28 U.S.C.A. § 534), sexual offenses, violation of state or federal civil rights law, or harm caused while under the influence of drugs or alcohol. (42 U.S.C.A. § 14503, subdivision (f).)

Cumulatively, these laws provide significant protection to do-gooders and ensure that many well-intentioned deeds go unpunished.

*Eli Underwood is an associate with Redwine & Sherrill and a member of the Bar Publications Committee.*



# FIRST ANNUAL ASIAN PACIFIC LUNAR NEW YEAR FESTIVAL

*by Sophia Choi*

January 29, 2011 will see the launching of the first annual Asian Pacific Lunar New Year Festival in Downtown Riverside, in commemoration of Riverside's Asian-American cultural heritage.

Since the 1880s, Asians have lived in Riverside. Asians have notably impacted this community in many ways and have left lasting impressions. That impact is apparent when one takes a stroll through Downtown Riverside. For instance, the Dosan Ahn Chang-Ho Memorial is at the intersection of the Main Street Pedestrian Mall and University Avenue to honor Dosan Ahn Chang-Ho, who was a Korean independence activist and leader of the Korean immigrant community in the United States and who founded the first permanent Korean settlement in the United States in Riverside. Another example is the Chinese Pavilion located at the corner of Mission Inn Avenue and Orange Street, which is in honor of the early Chinese pioneers in Riverside. These are just a few of the examples of Riverside's growing recognition of Asians' historical, current, and future impact in the community. And, with the launching of this festival, it is hoped that there will be greater awareness of this Asian cultural heritage.

This event is being sponsored by prominent figures and entities in our community, including Riverside City Councilman Paul Davis, Riverside County Supervisor Bob Buster, and the Riverside Art Museum, just to name a few. In recognition of the many generous sponsors and as a fundraiser, a VIP reception and dinner will be held on January 28, 2011 at the Riverside Art Museum. The guests will include elected officials and celebrities of the Inland Empire, the sponsors, and other members of the community. Commencing at 6:00 p.m., there will be a showcase of various traditional Asian tea ceremonies, along with the VIP reception. At 7:30 p.m., there will be dinner, with Asian dishes, while the guests enjoy a fashion show of traditional Asian costumes, representing fashions from the historical eras of the Far East.

Starting off the Year of the Rabbit, occupying the fourth position in the Chinese zodiac, the first annual Asian Pacific Lunar New Year Festival on January 29, 2011 will have something for everyone. The morning will begin with a parade. There will be performances, including dance performances and exhibitions of karate, kung fu, and taekwondo. There will be tea pavilions displaying five different tea ceremonies from five different Asian

countries, China, Korea, Japan, India, and Thailand. The festival will have an Asian food exposition throughout the duration of the event. There will also be activities for children to enjoy, such as the Children's Village, at which the children can explore origami, face painting, hands-on arts and crafts, and various educational demonstrations. The evening will close with a display of fireworks to welcome the lunar new year with luck and prosperity.

As this is the first Asian Pacific Lunar New Year Festival in Riverside, it is hoped that it will bring not only greater awareness of Asian-American existence and impact, but also greater consciousness of the unique cultures of the various Asian heritages. Founder and Chair of this festival May Guren-Davis stated, "As Co-Chair of the Jiangmen China Sister City with the International Relations Council, it was important for me to take the lead on this fantastic event of the Inland Empire's first Asian Pacific Lunar New Year Festival. In the history of Riverside, we have yet to put on this type of event, with the collaboration of the Pan-Asian cultures to celebrate and commemorate the Asian Pacific cultural heritage and contributions. There's something for everyone of all ages at Lunar Fest, with the sights, sounds, and tastes of the Far East."

"We are proud to support the upcoming Lunar Festival and to celebrate the Asian Pacific cultural practices and traditions it showcases," said Riverside's Ward 4 Councilmember Paul Davis. He further commented, "It is particularly fitting to introduce this new festival, as it complements our ongoing commitment to our outstanding Sister Cities in Asia."

In the words of Riverside Mayor Ron Loveridge, "The Lunar Festival is another example of the vibrancy and range of arts and cultural offerings in the City of Riverside. As the City of Arts and Innovation, we are always looking for good-quality events that are entertaining and educational, and this first-ever Lunar Festival promises to be both."

Come celebrate the Lunar New Year at the first annual Asian Pacific Lunar New Year Festival in Downtown Riverside on Mission Inn Avenue and Lemon Street.

For more information, visit [LunarFestRiverside.org](http://LunarFestRiverside.org).

*Sophia Choi, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.*





## SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

### PUBLIC NOTICE

#### CALENDAR/GEOGRAPHICAL CHANGES FOR PROBATE AND ADOPTIONS

Effective January 2011, the Riverside Superior Court is making the following calendar changes for Probate, Guardianship and Adoption matters. Please note that geographical locations for filing have changed. Please visit the Court's website at [www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov) to view the updated geographical boundaries.

#### Probate

All Probate matters filed and heard at the Hemet Courthouse will be re-assigned to the Riverside Historic Courthouse, Probate Department for both filing and hearing purposes. Probate matters will be heard in departments 08 and 11.

#### Guardianships

All Guardianship matters that are filed in Riverside Family Law and heard in Department F-401 will be filed at the Riverside Historic Courthouse, Probate Department and heard in departments 08 and 11.

#### Probate Guardianship Matters

All initial (new) Guardianship Petitions that are to be scheduled for hearing in January 2011 forward will be scheduled as follows:

#### Desert:

Palm Springs Probate will hear Guardianship matters in department PS1 Monday through Friday at 8:45 a.m. for cities within the Desert region.

#### Western:

Riverside Probate (Historic Courthouse) will hear Guardianship matters in departments 8 and 11 on Tuesdays at 8:30 a.m. for cities within the Western Riverside & Mid-County regions.

Adoptions and Petitions for Freedom from Parental Control Adoption petitions under Family Code § 8500 et. seq. and Petitions for Freedom from Parental Custody and Control under Family Code § 7800 will move from Probate and will be filed and heard in Family Law courts.

#### Adoptions/Petitions for Freedom for Parental Control

All initial (new) Adoptions petitions under Family Code § 8500 et. seq. and Petitions for Freedom from Parental Custody and Control under Family Code § 7800 that are to be scheduled for hearing in January 2011 forward will be scheduled as follows:

#### Desert:

Indio Family Law will hear Adoptions and Petitions for Freedom from Parental Custody and Control matters in Department 2J on Fridays at 1:30 p.m. for cities within the Desert region.

#### Mid-County:

Hemet will hear Adoptions and Petitions for Freedom from Parental Custody and Control matters in Department H1 on Mondays at 8:30 a.m. for cities within the Mid-County region.

#### Western:

Riverside Family Law will hear Adoptions and Petitions for Freedom from Parental Custody and Control matters in Department F401 on Thursdays at 8:30 a.m. for cities within the Western Riverside region.

*If you have any questions, please contact Michael Gilfillan, Civil and Probate Director, at 951-955-0025 or Carrie Snuggs, Family Law & Juvenile Director, at 951-955-1533.*

*Michael Gilfillan - [Michael.Gilfillan@riverside.courts.ca.gov](mailto:Michael.Gilfillan@riverside.courts.ca.gov)*

*Carrie Snuggs - [Carrie.Snuggs@riverside.courts.ca.gov](mailto:Carrie.Snuggs@riverside.courts.ca.gov)*



# JUDICIAL PROFILE: JUDGE ELAINE JOHNSON

by Donna Thierbach

There is a new meaning to “Johnson & Johnson” in the Riverside Superior Court these days. We now have a husband and wife team of judges (I think it’s our first!). Judge Mark Johnson was appointed to the bench about two years ago, and now his wife, Elaine Johnson, has joined him. I knew both of them when I worked at the Law Offices of the Riverside County Public Defender and must say they are the friendliest couple, with the best sense of humor, that you could ever imagine.

So who is Judge Elaine Johnson? Elaine grew up in Greenfield, Massachusetts. Her father was a Greenfield police officer for 33 years and had become the Chief of Police by the time he retired. Her mother was a stay-at-home mom, which was a full-time job, because Elaine was one of five children! She was very proud of her father and did not even mind being dropped off at school by her father in the police cruiser. (Though in true teenage fashion, her brother insisted on being dropped off several blocks away.) Her first exposure to the legal system came from watching her father perform his duties as the police prosecutor. She was fascinated and loved it. Then her father pretty much cinched it when he introduced her to the first female attorney in their county. In high school, she briefly wavered from her goal, thinking she might want to be a veterinarian, but it turned out she is very allergic to most furry critters, so she was quickly back on track.

Judge Johnson earned her bachelor’s degree from Amherst College in Amherst, Massachusetts and her Juris Doctorate from Suffolk University in Boston, Massachusetts. She worked as a waitress and paralegal to help pay her way and somehow managed to finish law school in three years. So how did this Massachusetts girl end up in California? I’ll give you a hint: She definitely took the long way!

As Judge Johnson neared graduation, she knew she wanted to do trials, but she loved to travel. Knowing this, a professor suggested she check into positions with the Judge Advocate General (JAG) Corps. At first she was hesitant, but her older brother had attended Annapolis Naval Academy and was enjoying his career in the Navy, so she inquired into the JAG Corps. When she learned her first assignment would be three years in Germany, she was hooked. She joined as a direct commission, went to Charlottesville for



*Erica Johnson, Judge Elaine Johnson, Loretta Johnson (Elaine’s mother-in-law), Judge Mark Johnson*

training, and then was off to Germany. It must have been kismet, as the person assigned to pick her up at the airport and show her around was another JAG attorney, Mark Johnson. They married the following year. They both loved to travel, so they spent their honeymoon in Greece and then spent all their free time traveling to different countries in Europe. After two years in Germany, her husband convinced her they should accept an assignment in Seoul, Korea. Seoul proved to be a difficult place to live and get around, but she loved the people. It also provided them with new places to explore, including Hong Kong, Thailand and Malaysia.

When their enlistment was up in 1990, Elaine and Mark came to Southern California to settle down, since this was where Mark had grown up. Elaine accepted a position as an associate attorney for MacLachlan, Burford & Arias, an insurance defense firm in San Bernardino. After two years, they decided to move to Santa Maria, because they loved the Central Coast area. Elaine accepted a job as judge pro tem and research attorney for the Santa Barbara County Municipal Court. She presided over small claims, traffic, unlawful detainer and civil law and motion matters. She really enjoyed the assignment, and it was then that she realized she would like to become a judge. She left the assignment when Mark was awarded the criminal defense conflict contract and they went into private practice together. In addition to the criminal conflict cases, they handled personal injury and family law matters.

After seven years of private practice, Mark and Elaine felt they were ready for a change. Their daughter was born in 1996, and they decided they preferred Southern California weather and the outside activities the community had to offer. They really liked the Murrieta and Temecula area, so when Mark’s brother, Greg Johnson, who was working for the Riverside County Public Defenders’ office, told them the office was hiring, they both applied and were hired.

Judge Johnson worked for the Riverside County Public Defender’s office for 10 years. Her assignments included drug court and felony trials, which included death penalty cases. During her tenure, she continued to have an interest in becoming a judge, but she wanted to establish her reputation within the community before applying. It was

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eight years before she felt she was ready and two more years before she was actually appointed.

Judge Johnson took the bench on August 23, 2010. Her first assignment is in Riverside Drug Court. As a defense attorney, she saw that drug court programs can really work and learned what a difference the judge's involvement can make. She is enjoying the assignment and is committed to the drug court program. The transition has been smooth, because the clerks, court personal and judges have all been so helpful.

Elaine and Mark continue to love to travel, as does their teenage daughter, so they travel as much as possible. Their daughter is not interested in pursuing a career in law at this time, but she loves to act, so she may decide being a trial attorney might be fun, after all.

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*Donna Thierbach, a member of the Bar Publications Committee, is retired Chief Deputy of the Riverside County Probation Department.*



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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](http://www.riversidecountybar.com) (click on >For Our Members, >Resources) to submit your email address.

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.



# OPPOSING COUNSEL: JEAN-SIMON SERRANO

by L. Alexandra Fong

“It All Started with a Banana Peel . . .”

Torts was Jean-Simon Serrano’s<sup>1</sup> favorite class in law school.

Southern California’s weather beckoned him from his home in British Columbia, Canada. He initially came to Southern California as a teenager, with dreams of surfing and relaxation. After one year of fun in the sun, he realized the importance of furthering his education, returned briefly to Canada, then came back to Southern California to attend California State University, Dominguez Hills. At CSU, he majored in Political Science, graduating at top of his class for his major.

In his last year of undergrad, prior to attending law school at the University of La Verne (where he obtained a full scholarship), Jean interned for United States Congressman Howard P. “Buck” McKeon, the U.S. Representative for the 25th District of California. He became known among vacationing constituents for giving entertaining, factual tours of the Capitol building. Being a “hands-on” type, Jean spent summers building houses in the Inland Empire as an employee of a framing company based in Beaumont.

In December 2006, he became licensed to practice law and began working at Heiting & Irwin, a Riverside-based plaintiff’s law firm specializing in wrongful death, personal injury, professional negligence, medical malpractice, premises liability, product liability and worker’s compensation. He was honored to have been hired at such a well-regarded law firm in Riverside, headed up by James Heiting, former President of the California State Bar Association and the Riverside County Bar Association.

Jean’s love of torts has been indispensable to his career so far at Heiting & Irwin. Since he began practicing law in 2006, he has handled hundreds of cases, both state and federal, including two jury trials and one appeal before the California Court of Appeal for the Fifth District. He has aided those with life-changing injuries such as amputations, brain injuries, and paralysis.

“In law school, I learned that people really do slip on banana peels. There’s a whole string of case law about it. It’s not just in the cartoons.”

Though the banana peel cases raised an eyebrow in law school, while at Heiting & Irwin, Jean quickly learned that



Jean-Simon Serrano

people suffer devastating injuries every day, and that an effective personal injury attorney can positively affect these people and help improve their lives.

Much to the chagrin of his family of medical professionals, he also represents victims of medical malpractice. Jean enjoys doing plaintiffs’ work because it allows him to take cases on a contingency basis, providing wider access to the legal system for those who would otherwise be without the financial means to pursue their claims.

As current President of the Barristers Association, a section within the Riverside County Bar Association, this theme of legal access has been carried throughout Jean’s commitment to the organization. He joined Barristers in 2006 and has thoroughly enjoyed his time with the group, because it is a good source of networking and provides camaraderie among young lawyers beginning their careers in Riverside County.

Nevertheless, he also wants Barristers to be known for reaching out to the public and providing top-notch service to the community. This year, many Barristers members, including Jean, have teamed up with the Associated Students of the University of California, Riverside to provide a free legal education clinic to registered undergraduate students at the university. The volunteer attorneys provide education and self-help services to assist the students in solving their legal problems. Additional information about the Associated Students of the University of California Riverside Legal Education Clinic is available at <http://www.asucr.ucr.edu/legalclinic.html>.

Jean’s commitment to the community is further evidenced by his organization of the December 2010 Barristers social event, which included a food drive and a fundraiser for the Riverside County Bar Association’s Elves Program. Barristers has also been involved in other community efforts throughout year.

In addition to his involvement with Barristers, Jean is a member of the Leo A. Deegan Inn of Court and the Publications Committee of the Riverside Lawyer.

Reflecting on his past, Jean is hopeful that the future will bring additional opportunities for growth in his firm. He is grateful that his type of work allows him to help those in serious need and to make an appreciable difference in the lives of his clients. He has no plans of changing his area of practice.

<sup>1</sup> Jean’s name is pronounced “John.”

In Jean's spare time, he can be found running and hiking through the mountains, as he is training for a half-marathon. He can be goal-oriented about his fitness, and most recently, along with friends from Reid & Hellyer, he completed the Riverside Mission Inn 10K Run in under an hour. He also likes to work with his hands and is currently remodeling his kitchen.

He plans to continue to help others in the community, both through his work at Heiting & Irwin and his continued involvement with Barristers and the Riverside County Bar Association. He hopes that new attorneys will continue to join Barristers and help accomplish its goals of being a philanthropic group of attorneys.

*L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside. The author expresses her gratitude to Deputy County Counsel Patricia Munroe, who assisted with the interview with Mr. Serrano.*



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**LEO A. DEEGAN INN OF COURT**

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**The Honorable Carlos Moreno**  
Associate Justice, Supreme Court of California

**Wednesday, February 23, 2011**  
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**Mission Inn, Music Room**

*Cost:*  
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**INFO/RSVP:**  
**Contact Sherri Gomez, 951-689-1910**

# KRIEGER AWARD NOMINATIONS SOUGHT

*by Commissioner John Vineyard*

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, 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 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. Neither 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 your nomination to the RCBA office not later than February 28, 2011.** 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.

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



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Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle at 951-686-3547 or email tow-erpm@sbcglobal.net. Residential services available also.

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4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Sue Burns at the RCBA, (951) 682-1015.

### Conference Rooms available

Conference rooms, small offices and the third floor 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.



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective January 30, 2011.

**Reggie K. Alexander** – Martiros & Alexander APC, Yucaipa

**Khymerli S. Apaloo** – Haslam & Perri LLP, Ontario

**Robert F. Jacobs** – Jacobs & Vega PLC, Riverside

**Jonathan J. Marshall** – Law Offices of Jonathan J. Marshall, Yorba Linda

**Kelly Matney** – Law Student, Chino

**Sara R. Smith** – Sole Practitioner, Riverside

**Auriol L. R. Steel** – Sole Practitioner, Riverside

**Joseph Torri** – Torri Law Firm, Palm Springs

**Ana Luz Vazquez** – Law Student, Rancho Cucamonga



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### YOU ARE INVITED TO SPA FOR A CAUSE!

The Riverside County Bar Association is having a Day Spa fundraiser for its giving-back programs, such as Mock Trial, the Elves Program, Good Citizenship Awards for high school students, Adopt-a-School Reading Day, and other RCBA community projects.

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- 1.) Each Spa Card entitles the recipient to 4 visits at a spa near them.
- 2.) Go to the website [www.spasforacause.com](http://www.spasforacause.com) and select/click on "pick a fundraiser." Type in Riverside County Bar Association.
- 3.) Select/click on "pick a spa" and type in your address or city for the spa nearest you or your recipient. The spa cards will be sent via email within 48 hours, Monday through Friday.

*Thank you for continuing to support the RCBA and its giving-back programs.*

Riverside  
County

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