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# CITATIONS

J U N E - T W O T H O U S A N D F I V E

## A VIEW FROM THE COURTS

*By Kristi Anderson*



DONALD O. HURLEY

JOAN ALLEN

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## PRESIDENT'S MESSAGE: MR. TOAD'S WILD RIDE

By Don Hurley



I should have known better. A six-day rafting trip down the middle fork of the Salmon River in Idaho sounded like an idyllic vacation, a break from civilization, and a brief hiatus from the County Counsel's Office. That I would be traveling with a fellow attorney, Jim Thonis (a.k.a. J.T.) and his girlfriend, Donna Walters, only added to my anticipation. J.T. was already my friend; I expected that both he and Donna would be great travel companions. Ignoring that I had fractured my tailbone on an American River rafting expedition the previous year, the plan started to become reality.

There were problems to overcome. My wife Carol was not one to volunteer for any vacations entailing mosquitos, primitive sleeping accommodations, and the risk of bodily injury. We discussed driving up to Oregon to visit Gay, her sister. Fortunately, I remembered that the jigsaw puzzle piece representing Oregon fit just above California and was immediately adjacent to Idaho. Of course, there was the nagging doubt that North Dakota entered into the picture, but then again who really knew where North Dakota was?

The drive to Oregon was relatively uneventful - a quick trip up Interstate 5 in my 1971 Porsche 911E, a car combining incredibly bad gasoline mileage with an appetite for oil. These expensive traits were completely offset, in my value system, by the melodic sound of the engine. Arriving at my sister-in-law's home outside of Eugene, we were greeted with the news that Christy, our niece, was infected with head lice. Not wanting to linger, I left the next morning at dawn's early light, abandoning Carol with Christy and a week-long battle at pest extermination. I lost any votes for "Husband of the Year" upon my hurried departure.

I arrived in Stanley, Idaho late in the afternoon, after a speedy 118 mile trip from Boise, testing the curves and the car at the same time. After finding a small motel, I made contact with J.T. and Donna, who had arrived a day earlier. The next morning brought the formation of our 25 member rafting group as we boarded the buses

to take us to the shores of the Salmon River, just a couple of miles away. We were the usual mix of tourists, perhaps more adventurous than most, all anxious to be on our way, and unsure of what the next few days would bring.

The journey was slated for six days, with only one rafting company allowed to begin their trip on the river each day. This separation provided a degree of isolation coupled with a certain anxiety, which was not dispelled by the mandatory safety indoctrination prior to departure. Donna and I took our places in one of the eight-person rafts, attempting to pay attention to the ongoing instructions about paddling and avoiding falling overboard. Donna (a.k.a. Bubbles) proved to be the consummate river companion, equally able to endure the river and my attempts at humor. We were to become the best of friends.

While Donna and I were paddling our raft down generally serene stretches of the river, J.T.—a summer river guide with the rafting company—labored in isolation on one of the supply rafts. The Middle Fork of the Salmon was not entirely for the faint-hearted. Its calm is punctuated by Class III and IV rapids, which could be run either on the regulation rafts or the two-person "seal team" raft. Shortly after departure, we were advised that one of the members of the previous group was airlifted from the river after catapulting from the stern of his raft into an oarlock. Donna and I reached a quick accord that we would defend from the others, at all costs, our somewhat secure mid-raft position during the trip.

At our first lunch break, our leaders told us to take to the higher ground as soon as the rafts were secured if we wanted to "use the facilities." There were no facilities, just higher ground with an urgent need for privacy spurring me on. Later, I rounded a large rock formation and almost ran into one of my fellow rafters, a young woman from New York City, in an embarrassing state of undress. Given the almost total lack of privacy, these encounters between members of our group became more and more frequent and the embarrassment less and less as the trip progressed.

The routine each day was relatively simple: periods of paddling to save our lives, followed by calm stretches through the quiet canyons.

We were spoiled by the guides, who outdid themselves every night by preparing what would be considered "gourmet" meals by any standards. Bubbles and I quickly developed a workable routine whereby we sat back after encampment at the end of the day, sipped a glass or two of wine, and enjoyed the wonders of the river while J. T. set up the camp. After dinner, Bubbles gave me a brief hug and a kiss and left with J. T., quickly establishing his reputation with our fellow rafters at the expense of my own.

Each day on the river brought more of an appreciation for our guides and the local environment. Those who wanted to fish had to use barbless hooks on their lures, but even this didn't stop them from catching an abundance of eager trout. We lost track of the number of bald eagles sighted. Even the most avid nature lover overdosed on the simple beauty of the changing river and the endless canyons. It no longer mattered what you do for a living; this is what you were living to do.

The trip ended over 100 miles from our point of departure. We were bused (slowly) back to Stanley to make our way home. It had rained that day and J. T., Donna, and I departed quickly at dusk, anxious to make it back to Boise. Caution should have intervened when it became obvious that tying two fully loaded duffle bags on the front of the car seriously affected its handling. The wet road and thick fog didn't deter me from keeping to a rapid time table. Even Bubbles' screams ("We're going to be killed!") from the back seat went unheeded as we careened and skidded through the mountain passes, miraculously avoiding several deer, rabbits and one bedazzled owl. Our arrival in Boise carried with it the emotional relief of sighting land after making it through a hurricane at sea.

J. T. and Donna got married and adopted an adorable child from Russia. I still have hopes that Bubbles will eventually forgive me for "Mr. Toad's Wild Ride" from Stanley to Boise. Carol managed to survive the lice infestation. I hope to survive the telling of this story.

*Don Hurley is an Assistant County Counsel for the County of Ventura and is President of the VCBA.*

## LETTER TO THE EDITOR

Dear Editor:

There are times when being silent is not an option.

Ventura County Black Attorneys Association commends the attorney who declined to remain silent and rose to remind us of the injustices that have been committed. When a team's presentation at the Inns of Court sought to impart continuing legal education at the expense of Native Americans, this attorney rose to protest. Those who believe the issue is one of "political correctness" miss the point. Those who believe that much is being made of what they perceive to be harmless humor fail to understand the legacy of pain borne by those who have yet to receive justice. While we are ardent supporters of the First Amendment and the right to speak freely, and we do believe that well meaning people can have different views on free speech, we believe that as lawyers, we must hold ourselves to the highest standards. Continuing legal education should work to eliminate bias, not perpetuate it.

As attorneys we are the gatekeepers to justice. Those without meaningful access to the courts have no genuine means of legal redress for wrongs committed individually or institutionally. While certainly no one ethnic or racial group can claim a monopoly on suffering, certain groups have historically borne a greater burden than others. As attorneys, we should always deplore injustice and speak out against it, whether in a historical context, or in present day circumstances.

Native Americans have survived state sanctioned genocide, broken treaties, and abject poverty. While some tribes have developed casinos to bring badly needed revenue to their impoverished people, many other tribes have chosen not to construct casinos. They struggle to survive, clinging to tribal traditions in a world that values money and the accumulation of financial wealth above all else. The breadth and seriousness of their experience should be appreciated and recognized by all.

As the Reverend Dr. Martin Luther King, Jr. said, "Justice denied anywhere is justice denied everywhere." To say folks ought to be able to laugh at the expense of oppressed peoples because oppression is a universal part of human history not only denies those who are oppressed the dignity and respect they deserve, but helps to ensure that justice remains denied. And that, our friends, as lawyers, ought to be intolerable to us all.

Respectfully,

Ventura County Black Attorneys Association

"Our lives begin to end the day we become silent about things that matter." ---Dr. Martin Luther King, Jr.

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—Scott Miller

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# VENTURA COUNTY'S "FAST" RESPONSE TO THE CRIME OF INDIGNITY: Financial Abuse of Elders and Dependent Adults

By Joan Virginia Allen

When you meet with an elder or dependent adult client, what can you do when you learn of a situation which may involve financial abuse? Take for example the 40-something son who is living with his elderly widowed mother and is her self-proclaimed full-time caregiver. She is not receiving proper medical care, she is not receiving proper hygienic care, she is not receiving proper nutrition, he is having her sign checks in blank, he refuses to let her see her bank statements, he refuses to let her see her mail, he refuses to let her use the telephone or receive visitors, and he has her withdraw \$50,000 from her investment account for an alleged "business" deal. If she questions or complains, he tells her he will leave her and she will have to go into a facility, or she will never see her grandchildren, or she doesn't love him and appreciate all he is doing for her.

Or, when your client is a victim of Medicare fraud, or telemarketing fraud, or identity theft, or "phishing", or unlicensed contractor fraud, or insurance fraud, who can help?

When it is a legal matter, you can help. When it goes beyond your expertise, how can you help?

## What is financial abuse?

*Welfare & Institutions Code §15610.30 (a)* defines it as a situation which occurs when a person or an entity takes or assists in the taking of the assets of an elder or a dependent adult for a wrongful purpose, or with the intent to defraud, or both. *Penal Code §368* makes it a crime punishable by fine or imprisonment or both to commit any form of elder or dependent adult abuse including financial abuse which includes theft, embezzlement, forgery, fraud or identity theft.

An elder is anyone 65 years of age or older. A dependent adult is anyone between the ages of 18 and 64 who, due to a physical or mental incapacity, is unable to adequately protect themselves.

## What is the FAST?

The FAST ("Financial Abuse Specialist Team") is a partnership of public and private multidis-

ciplinary professionals who volunteer their time to facilitate comprehensive services to elder and dependent adult victims of financial abuse. Sitting on the Ventura County Team are representatives from law enforcement, the District Attorney's office, public and private legal services, Adult Protective Services, Long-Term Care Ombudsman, County Counsel for the Public Guardian's Office, Tri-Counties Regional Center, ARC, HICAP (Health Insurance Counseling & Advocacy Program), Alzheimer's Association, Superior Court Family Court Services, California Department of Insurance, California Attorney General's Office, the FBI, the Social Security Administration,

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***"I believe there is no greater indignity than working hard all your life toward your golden years only to find when you get there, the gold has disappeared."***

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medical and mental health professionals, and a unique component representing the private financial community including financial institutions, accounting, financial planning, and real estate.

**Why is a FAST needed?** Financial abuse of elders is one of the most frequently reported forms of abuse, one of the most rapidly growing forms of abuse, and one of the most difficult forms of abuse to investigate and prosecute. It can be life-threatening. A recent study found that elders who are victims of abuse, neglect or exploitation (financial abuse) are 3.1 times more likely to die at an earlier age than expected.

**What does the FAST do?** The FAST provides trainings for the professionals who serve the elder and dependent adult communities. The purpose of these trainings is to create "financial abuse specialists" so that in their respective disciplines, these professionals are able to more effectively and expeditiously recognize and resolve these cases and bring services to the victims.

The FAST consultants meet monthly to consult on cases of financial abuse. With the broad panoply of expertise sitting on the Team, suggestions, recommendations, interpretations, and a countywide network of resources are provided to the direct service provider.

The FAST drafts, proposes and reviews legislation pertaining to financial abuse.

The FAST provides community education to elders, dependent adults and their families to help them recognize, prevent, report and assist in prosecution of these cases.

The FAST is part of an informal coalition of statewide teams which gives access to a statewide network of resources.

**How can the FAST help attorneys?** As an attorney, under the attorney-client privilege, you may not feel comfortable reporting your suspicions without your client's express consent. And, many times, the victim will NOT consent because the abuser is a caregiver, close "friend" or family member and they are afraid they will be abandoned and have to go into a facility. Does

that mean there is nothing you can do? Quite to the contrary.

The FAST provides you the option to create a hypothetical Case Summary and submit it to the FAST for consultation. You attend the FAST meeting at which the case is to be heard. In a confidential setting, you have the benefit of the expertise of all the disciplines sitting on the Team. You can then go back to your client with additional advice and information about services available without breaching the attorney-client privilege.

There is no fee for this service. Attorneys are invited to use this valuable resource to better serve their elder and dependent adult clients. For more information, please contact Joan Virginia Allen, Ventura County FAST Coordinator, at 805.798.4604 or e-mail at joan\_virginia\_allen@msn.com.



**Joan Virginia Allen** left private practice as an elder law and estate-planning attorney in 1995 to begin advocating for the creation of a FAST. She currently coordinates both the Ventura County and Santa Barbara County FASTs.

## SANCTIONS TO BE COLLECTED \$\$

The Ventura County Superior Court has announced its intention to aggressively pursue the collection of sanctions imposed against counsel. Unpaid sanctions imposed in civil cases since 2000 total \$168,000. If you have outstanding sanctions due, the Court asks that you make payment immediately at the clerk's window.

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## A VIEW FROM THE COURTS

By Kristi Anderson

As most already know, Judge John R. Smiley became the presiding judge in Ventura County in January. In his new role, Judge Smiley is responsible for administering court operations and overseeing the court's \$44 million annual budget. According to Judge Rebecca Riley, Judge Smiley "hit the ground running and has already proven to be caring, thoughtful, dedicated and committed to improving the way the court does business." Even with the obstacles and curves he's faced in his first few months in office, Judge Smiley is continuing to take an active role in restructuring the courts with the aim of improving service to the public. While he is still handling a family law caseload, Judge Smiley spends about forty percent of his time on administrative matters.

One of the most significant events so far this year is the dedication of the Steven Perren Juvenile Justice Center in El Rio. The new center—which opened in March—will be a one-stop shop for juvenile issues. The center will house all juvenile services, including both dependency and delinquency courtrooms. Judge Charles Campbell will handle dependency matters, including adoptions and guardianships, while Judge Brian Back and Judge Donald Coleman will preside over delinquency matters. There will also be plenty of room in the new center for prosecutors, public defenders, county counsel, probation officers, sheriff's deputies, and social workers. As three of the courtrooms will be unused for now, there is also room to grow at the new center.

With the opening of the Perren Center, there will be a major restructuring at the main Ventura courthouse. The civil courts, with the exception of Judge Dave Long, will be relocated to the fourth floor. Although the probate court will stay on the fourth floor, Judge Barbara Lane will be moving two doors down to Department 44. Meanwhile, the third floor will become family law central. The former grand jury room, which most recently housed the dependency court, will now become the new headquarters for the family law facilitator. The family law courtrooms and the family law facilitator

will also be located on the third floor. Proposition 36 cases will be found in— you guessed it— Department 36. Judge Toy White's domestic violence courtroom will also be moving to better confines on the third floor. After some remodeling, the former juvenile delinquency courtrooms will be transformed into criminal courtrooms for in-custody adults.

These changes will not take place overnight. Judge Smiley expects the first phase of re-assignments to start in early May with the second phase in late June. With all the changes at the court, it's a wonder that Judge Smiley finds time to teach community property at the Ventura College of Law and work on his golf game. Despite his busy schedule, Judge Smiley has kindly made himself available to the local bar to keep us updated on all the changes.

### ON ASSUMING HIS DUTIES

This is my [three month] anniversary so I'm 12 percent of the way through my term. The second day I was presiding judge it began to rain and by the fifth day I was presiding judge, I had the courthouse send deputies out to La Conchita. By the seventh day I was presiding judge, I had to close most of the basement of the courthouse because we had massive leaks....Within the last couple of months we have gone through the resignation of Commissioner De La Torre and the search for a new commissioner.

### ON THE OPENING OF THE JUVENILE JUSTICE CENTER

It's fairly newsworthy that we opened the juvenile justice complex. I don't think people in Ventura County realize just how astonishing it is, that in these kinds of budgetary times over the last five to ten years, that we were able to open a new court house and that we were able to fully furnish the new courthouse....We were able to open a six-courtroom courthouse even though we are only going to use three courtrooms. So, right now, there are three fully furnished, fully operational vacant

courtrooms sitting out in North Oxnard that are ready for us to use at such time we get more officers or a high profile case... All of those things can happen with courtrooms to spare.

### ON CHANGES AT THE HALL OF JUSTICE

We're doing things in the Hall of Justice to make that a better place to work. We are taking our two old juvenile delinquency courtrooms and turning those into courtrooms that can handle a large number of inmates. The partitions we used to keep juveniles secured do not meet the standards for the Board of Corrections, so we have to make major remodels in the back hallways of those courtrooms so we can handle all defendants.

When we finish that, we are going to do some exciting things. First of all, we are going to move proposition 36 cases into courtroom 36. That wasn't by design, it just happened to work out that way. But more excitingly, we are going to have a courtroom which exclusively handles domestic violence and that is going to be courtroom 37. It's going to be Judge White, the assistant presiding judge, that will handle that courtroom five days a week, morning and afternoon sessions. She is currently doing that in courtroom 13 but that's fairly awkward... So, for a county of our size, we will be one of the few with courtrooms exclusively devoted to domestic violence.

### EVERYBODY'S MOVING

The next exciting thing that we are doing is that I am moving almost everybody in the Hall of Justice to a new location. That will happen as soon as construction is done in courtroom 36 and 37 and as soon as the holding areas are built inside the courtrooms for inmates in courtrooms 12 and 14. At that time, I am going to move all the civil courts into one location.

The civil courts, with the exception of Judge Long, are going to be in courtrooms 40, 41, 42, and 43. Then, we are going



to have a floor [the third floor] that is almost exclusively devoted to family law. So, courtroom 30 is going to be the new facilitator's office. The third floor also has our children's waiting room, our mediation departments, and a spare courtroom for pro tems. We will have the regular assigned [family law] courtrooms in 31, 32, and 33. Courtroom 34 will be Commissioner Daily doing Department of Child Support Service's cases and I will be doing long cause family cases in courtroom 35. In essence...we're going to end up with the third floor of the building almost exclusively devoted to family court services operations.

The next exciting thing we are doing is moving part of the county's Behavioral Health Alcohol and Drug Services into the building. We will have a three-or four-room assessment center staffed by the county and by behavioral health inside the building. So, as we refer people to county services, they don't have to find their way to their car and across town to some remote location; they can stay within the building and they can get the services monitored that they need.

### IMPROVED PUBLIC SERVICE

A lot of what we do does not happen inside the courtroom. We have committees that do everything... For example, we have a committee that deals exclusively with security for our buildings and how we interact with our contract security, which happens to be the Ventura County Sheriff's Department... We are continuing a dialog with them about how services are provided, where the services are provided, what our future needs are, and our future budgetary limitations...in each of our three courthouses.

We also have a new committee that is headed by Judge White exclusively involved with the arrangement for and streamlining of providing services to the people who use the court. We are going to be able to provide

drug and alcohol and psychological services to people who are in need of those as they come from a criminal court, civil court, or dependency court. These services can only be referred out through our courtrooms and of course under the laws...

We now have an executive committee made up of the judges who run the court... Each of the five supervising judges sits on that committee - civil is Judge Long, juvenile is Judge Back, criminal is Judge Riley, and family law is Judge Covarrubias. In addition, our supervising judge at the east county courthouse, Judge Killegrew, sits on the committee. We meet every two weeks.

I have been a judge for 18 ½ years. I don't think I've spent a total of more than about two hours in another judge's courtroom in the last 18 years... I have to do my job which is to administer the court and be aware of how other judges and commissioners are operating from the feedback

I get from lawyers and litigants... On occasion, I get lawyers coming to me and talking to me about how things are going in the courthouse. I appreciate that because I do look upon the lawyers as officers of the court. They are in there not for one case, but for the long haul.

I think the upshot of all of this is that we are in operation for the people that we serve in Ventura County and we try to do that better with the limited resources we have. We are blessed by the opening of a new courthouse. We are blessed by people and managers and staff who are really dynamic about what they want to do and the services they want.

*Kristi Anderson is an attorney practicing in Ventura. She is a member of the CITATIONS Editorial Board.*

Program Advisor: Gina Rae Hendrickson



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# BANKRUPTCY REFORM ACT REPRESENTS MOST COMPREHENSIVE CHANGES EVER IN U.S. BANKRUPTCY LAW

By Michael Sment

After several years of legislative wrangling and intense lobbying from banking, consumer and special interest groups, the most comprehensive changes ever in United States bankruptcy law have now become law. On April 20, 2005, President George W. Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

The Act contains hundreds, if not thousands, of changes to the federal Bankruptcy Code. There are at least 25 major substantive changes required by the new law. As one practitioner aptly commented: "Are you ready to re-learn bankruptcy law?"

## Some of the major reforms include:

### Means Test

The most significant (and most publicized) change imposed by the Reform Act will force each Chapter 7 individual debtor to undergo a "means test," to be performed by the Office of the United States Trustee, a division of the Department of Justice. If the debtor's income exceeds the "state median income," then the debtor will be forced into a 5-year repayment plan in Chapter 13. While specifics from the OUST have not yet been disclosed, a future VCBA Bankruptcy Section program will focus on testing and related practical issues.

This "forced Chapter 13" concept creates the most significant reform contained in the Act and – perhaps – the biggest change in the history of American bankruptcy law. From its inception, federal bankruptcy law has never forced a debtor into a repayment plan. A debtor could always elect that chapter (presently Chapter 13 of the Code), but could never be forced into repayment, whether through conversion or an involuntary filing. With the new changes in the Reform Act, debtors will no longer have a "free ride" through bankruptcy, paying only what they want.

### Mandatory Credit Counseling

To be eligible for bankruptcy, every individual must have received credit counseling within 180 days prior to the bankruptcy filing from an approved

"nonprofit budget and credit counseling agency." The counseling could be individual or in a group, and the agency must be approved by the U.S. Trustee. No approvals have been made yet and standards and application processes are still being formulated. There are exceptions for "emergencies" or if the OUST certifies no agencies are adequate.

### Personal Financial Management Course

Similarly, a debtor in a Chapter 13 case (the volume of which is expected to greatly increase, one way or the other), cannot receive a discharge until completing an educational course in "personal financial management," approved by the OUST.

### Longer Discharge Periods

In one aspect, the Reform Act has actually changed a policy of creditor law that stems back thousands of years. Previously, a Chapter 7 debtor could receive a discharge only once every 7 years. This policy originated, in part, from the Bible, Deuteronomy, Ch.15, v.1-2: "At the end of every seven years, thou shalt make a release." Under the Reform Act, a Chapter 7 debtor can obtain a discharge only once every 8 years. In addition, a Chapter 13 debtor must have 2 years between discharges and 4 years between other chapter discharges (for so-called "Chapter 20" cases).

### Homestead Exemptions

One key impetus behind recent attempts at bankruptcy reform has been to restrict unlimited homestead exemptions in several states, like Texas and Florida.

These exemptions received widespread negative publicity after the OJ Simpson civil case. Within certain time limits and calculations – and without including some equity build-up – a debtor may only exempt up to \$125,000 of interest in a homestead. The law is even more restrictive for those who have engaged in "violations of securities law" or "certain criminal conduct."

### Automatic Stay

Several restrictions have been placed upon the bankruptcy stay, one of the most significant benefits of filing a bankruptcy

case. If two prior bankruptcies have been dismissed, there will no automatic stay on the filing of a third petition. If one prior case has been dismissed within one year before the new filing or the debtor does not file or comply with intention statements, the stay will last only 30 days. The bankruptcy stay will also not apply to debtors who are tenants and fail to pay rent during their bankruptcy case.

Most of the provisions of the Reform Act become effective on Monday, October 17, 2005. With this delayed effectiveness, Congress has, in effect, created a "limited window" of opportunity for individuals considering a Chapter 7 filing under the old system. Cases filed before the effective date will not be subjected to "means testing" and there will not be forced conversions into Chapter 13 payment plan proceedings. As one expert commentator noted: "Except for credit and financial issues, I would encourage everyone to file a Chapter 7 now to avoid any and all past personal debt."

Practitioners and professionals will be starting anew in some areas. Potential clients will have to be advised about new ideas, rights, remedies, relief and results. The Reform Act even limits what types of advice an attorney may now give a client, at the risk of disgorging fees and other sums. There are many new benefits from the revisions brought about by the Reform Act. But, tread carefully. There are many traps for the unwary and unknowing. Filing a bankruptcy case will never be as easy as it once was.

Remember the old adage, "Be careful what you wish for. It may just come true." The new bankruptcy law is here, finally, and it just may not be the end-all that everyone had hoped that it would be. *Caveat (Lex) Actors!*

*Michael Sment has been practicing Bankruptcy Law since 1980 and is a recognized expert in the field. He is Chair of the VCBA Bankruptcy Section and the Ventura Bankruptcy Forum. He is a member of CITATIONS Editorial Board.*

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### SWEARING-IN CEREMONY

The State released bar examination results in late May. Congratulations to successful applicants. The VCBA will sponsor a new attorney swearing-in ceremony on June 7, at 4:00 p.m. in courtroom 22 at the Ventura courthouse. Photography encouraged.

### VELTHOEN 2.0

Mark Arend Mallery Velthoen was born on 4-21-05 to proud parents **Mike** and **Patty Velthoen**.

### TRANSITIONS

**Raymond L. Stuehrmann**, Attorney at Law, is pleased to announce the relocation of his law offices. As of May 1, 2005, his contact information is 100 East Thousand Oaks Blvd., Suite 225, Thousand Oaks, CA 91360. Telephone (805) 230-1288, Fax (805) 230-1291 and E-mail: [RLS@raystulaw.com](mailto:RLS@raystulaw.com).

Attorney and Mediator **Susan R. Bulfinch** is moving out of state; her new address is: 4815 E. Carefree Highway, #A108-512, Cave Creek, AZ 85331-4718.

After 8 years, Sandra Rubio former administrative assistant for the Ventura County Bar Association has joined the Ventura Center for Dispute Settlement team. The VCDS office is located at 1200 Paseo Camarillo, Suite 165, Camarillo. Phone number is 650-9202.

### CHANGES IN COUNTY COUNSEL'S OFFICE

**Noel Klebaum** reports on several changes at the County Counsel's office: "We have had three retirements this year: **Don Greenberg** retired in January; **Dennis Slivinski** retired in March after 25 years with the office; and **Tony Waters** also retired in March after 35 years with the office. We have hired four attorneys, all of whom started with us in April. **Robert Orellana**, who was with us for 12 years before he retired in 2002, has returned. We also hired Jim Ross, who was with the Shasta County Counsel's office; **Linda Stevenson**, who practiced juvenile dependency law in Los Angeles; and **Matt Bromund**, who served in the Navy JAG Corps. We greatly miss the sage counsel Tony, Dennis and Don provided for so many years, but the County will be well served by the highly qualified lawyers who have joined us."

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case. It is such a shame that more attorneys do not sign up with your Pro Bono program to help people such as myself who cannot afford legal services. I know you had to make many calls on my behalf and I can't begin to tell you what that meant to me. Donna is such a nice person and a good human being for giving her time and legal knowledge to those who need it but cannot afford to pay.

Thank you again,  
Thelma Koppen

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## TRUST ME!

### *New Trust Accounting Requirements In Probate Court*

By David B. Shea

Trusts continue to be in vogue and are used almost exclusively to dispose of property at death. The proactive approach of going to your local estate planning attorney to prepare a living trust in advance of any health issues, however, is not always followed.

We don't always plan ahead for our death or, more importantly these days, incapacity. Incapacity comes in many forms. A minor child involved in a traffic accident is legally incapacitated during minority. A senior citizen suffering from dementia cannot care for himself. Trusts are frequently created by the courts to address these situations.

Public policy generally dictates that fiduciaries managing funds on behalf of incapacitated persons provide an accounting of their activities. Preservation of the trust estate and safeguards against excessive expenditures, including trustee's and attorney's fees, must be maintained.

A new rule will substantially change the administration of such court-ordered trusts. Effective January 1, 2005, California Rule of Court 7.903 provides that trusts funded by court order must contain provisions that will result in continued court supervision. Courts may no longer waive accountings or allow trustees a more flexible alternative to formal accountings except for "good cause."

Rule 7.903 will uniquely impact conservatorship proceedings. It has long been a common practice to set up living trusts for incapacitated adults who are subject to conservatorships. The benefits are many. Setting up a living trust avoids probate after death, thus reducing attorney's and executor's fees. In addition, estate tax provisions may be included to reduce estate taxes. In the past, living trusts have been able to eliminate court accountings during the conservatee's lifetime. This last advantage will especially be impacted by the new rule.

Under Rule 7.903, a trust created pursuant to a substituted judgment must include a provision that "require[s] the trustee to file

accounts and reports for court approval in the manner and frequency required by Probate Code §§ 1060 et seq. and 2320 et seq." What does that mean? If trust law is applied, an annual accounting must be provided. If conservatorship law is applied, an account would be due after the first year and every two years thereafter. To be on the safe side, a trustee should render an annual account and present it to the conservatee/trustor and his or her counsel. In addition, the trustee should prepare a formal court accounting under the guidelines of Probate Code §§ 1060 et seq. and present it to the court for approval.

Oh... one last thing. Remember the old days when you simply sent a bill to the trustee and the trustee paid your "reasonable" attorney's fees? No more. Under

Rule 7.903 (c) (8), both the trustee's and attorney's fees "must be fixed and allowed by the court."

It will certainly be interesting to see if this new law impacts the use of substituted judgments to establish living trusts in the conservatorship context.

*David B. Shea is Certified Specialist in Estate Planning, Trust and Probate Law and a Partner at Ferguson, Case, Orr, Paterson & Cunningham LLP in Ventura.*



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## VOTE FOR MARIA CARMEN RAMÍREZ FOR BOARD OF GOVERNORS

Dear Ventura County Attorneys,

I am asking for your vote for the Board of Governors for District 6. By this time you have all received the ballot, which must be postmarked by June 30, 2005. I won't repeat all the information which you received with your ballot or what is on the bar's website at: <http://www.calbar.ca.gov/calbar/elections/BOG.html>.

I have the support of Jim Herman of Santa Barbara, State Bar President from 2003-2004, Jim Heiting, the current representative of District 6, Don Hurley, our VCBA President, and many of your friends and colleagues. This is a message that Jim Herman sent out to his colleagues regarding the election:

"Under an informal rotation agreement among the five District Six counties, the bars of the various counties alternately

support candidates from each county in rotation to make sure every county gets a shot. This does not mean others cannot run, it just means that official support goes to the next county in the rotation. The current Dist. Six rep, Jim Heiting (who I hope will be the next State Bar President) is from Riverside. Carmen Ramirez is from Ventura and has the support of the organized District Six bar including Jim Heiting and the Riverside County Bar Association even though the other candidate is from Riverside.

"I strongly support Carmen. First, the Riverside candidate has withdrawn even though his name is on the ballot. Second, we should honor the rotation agreement. Third, and most importantly, she is the best candidate. Many of you know her. She is past Ventura County Bar President, has

served on a number of State Bar committees, and is the former director of Channel Counties Legal Services. She is currently an attorney for the Ventura County Superior Court's self-represented litigants center. She will serve our district well. Please give her your support (i.e., fill in the bubble next to Carmen Ramirez on your ballot, dammit!)."

Yes, and don't forget to fill in the bubble, to avoid the San Diego scenario.

Thanks very much!

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## CASTING CALL TO ALL ATTORNEY ACTORS!

Ventura's Rubicon Theater Company has announced plans to produce a stage version of *Twelve Angry Jurors*, starring local attorneys and judges. Maybe even you. The fundraising project is modeled after annual events throughout the country involving judges and lawyers in play productions. Proceeds will be used to renovate the company's historic building and create an endowment.

Company co-founder and artistic director James O'Neil held a news conference to announce reading auditions on June 26-28 for performances on November 4-6. Court of Appeal Justice Steve Perren and Santa Barbara Superior Court Judge George Eskin will be involved in the production, which may have multiple casts depending on how many people audition.

The local Ventura and Santa Barbara Bars need only supply the actors, as O'Neil says the theater will provide professional set, lighting, sound, and costume designers. One of the company's leading actors, Joseph Fuqua, will direct. Fuqua also directed Rubicon's production of *J for J*.

This version of Reginald Rose's play, *Twelve Angry Men*, will include roles for both men and women. The play was made famous by Sidney Lumet's 1957 film version featuring Henry Fonda and Lee J. Cobb.

Rubicon Theatre Company is the region's premier professional theatre company. O'Neil, a native of Santa Barbara, and Karyl Lynn Burns founded the company in 1998. In just seven seasons, the company has become the rising star of West Coast theatres. Luminaries such as Ed Asner, George Ball, Stacy Keach, Michael Learned, Amanda McBroom, Linda Purl, and Efrem and Stephanie Zimbalist have worked with the company. Jack Lemmon and John Ritter both made their final stage appearances with Rubicon.

Contact the Rubicon Theater Company for tickets, an informational packet or to schedule an audition: (805) 667-2900.

According to a press release issued May 18, the production will be an annual fundraising event for the Rubicon Theatre Company. "The cost for 'Show of Justice' participants... will be \$500 per person and a commitment to buy or sell 25 tickets for \$85 to the shows. The organization hopes to net \$50,000 in the first year."

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From Michael Schwartz, Sen. Tom Coburn's chief of staff, on the federal judiciary: "I'm a radical. I'm a real extremist. I don't want to impeach judges. I want to impale them."... Another door to his music career opened on April 15<sup>th</sup>, when **Justice Steve Perren** performed serious concert music in a program sponsored by Women Lawyers. Perren sings regularly in local music theatres, but *Songs of Love, Laughter & Tears* was technical, difficult, operatic stuff. The hall was filled with concert-goers, including Court of Appeal Staff (with **Justices Gilbert and Coffee**), **Judge Fred Bysshe**, **Judge George Eskin**, **Bill Paterson**, **Tom Hinkle**, **Wendy Lascher**, **Al Vargas**, **Terence Geoghegan**, **Georgie Regnier**, **Ricarda Bennett**, **Mindy McQueen**, **Don Worley**, **Susana & Irvin Miller**, **Dora Gonzalez** and **Lisa Spillman**... A good bar friend passed away April 10<sup>th</sup>. **Lois B. Carlton** (135497) practiced family law, real estate and bankruptcy law since 1981. She also donated loads of time to the Coalition Against Domestic and Sexual Violence Against Women and handled a few matters for the bar's pro bono program, VLSP, Inc...Real World Rules #6 by Bill Gates: "If you mess up, it's not your parent's fault, so don't whine about your mistakes, learn from them."...

License Plate of the Month: KEEAAH, driven by **Sonia Hehir**. You'd have to know a little about martial arts to understand that one... OK. Two this month: GUILTEY, on a silver 2005 BMW driven by **Senior Deputy DA David Lehr**...From Mortimer Zuckerman: "I decided law was the exact opposite of sex; even when it was good it was lousy."...From Law.com Newswire: What was the hottest ticket of this term's oral arguments at the Supreme Court? That honor goes to *MGM Studios v. Grokster*, the copyright dispute over peer-to-peer downloading. Lawyers who attended the arguments--or tried to--are still talking about the extreme tactics used to get inside the courtroom. Queuing up as early as 4 a.m. was an unusual crowd, including "line-sitters" hired by the Motion Picture Association

## EXEC'S DOT...DOT...DOT...

By *Steve Henderson, Executive Director*

of America and reportedly paid as much as \$500 for the assignment...Recommended Reading: "Courtroom 302--A Year Behind the Scenes in an American Criminal Courthouse," by Steve Bogira. 401pp. Alfred A. Knopf, \$25. Bogira, a reporter for The Chicago Reader, with permission from Judge Dan Locallo, writes about "the biggest and busiest felony courthouse in the nation."...After more than 22 years in California, **Susan Bulfinch** has packed her bags and left for Cave Creek, Arizona. Susan's opening an ADR practice in the Phoenix-Scottsdale area and she'd love to hear from you at 480.209.1294 or sbulfinch@aol.com...

It's a boy!!! **Linda Ash** and **Brian Vogel** of the County Counsel's office are beaming parents of Bennett born April 17 at 3:00 a.m. Bennett weighed-in at 6 pounds/6 ounces and 22 inches long with a full head of hair...Jose Canseco's lawyer after his client was found liable for a nightclub fight: "This is a very bad message to the young women in Miami. If you go out to a club in Miami, be prepared to be assaulted."...From Cicero: "When you have no basis for an argument, abuse the plaintiff."...

**Chief Deputy Public Defender Michael McMahon** has been reelected to the California Public Defenders Association Board of Directors for a two-year term... The late **Supreme Court Justice Harry Blackmun** ceded so much authority to his law clerks that it amounted to "a scandalous abdication of judicial responsibility," historian David Garrow asserts in an article out April 25. Using his research on Blackmun's papers, Garrow recounts cases in which clerks' memoranda show what he describes as an assertive tone and partisan rhetoric. At least one former clerk said that, after the more liberal justices left, Blackmun "wanted us to turn up the rhetorical heat a notch."...

From Mark Twain: "We have a criminal jury system which is superior to any in the world, and its efficiency is only marred by the difficulty of finding twelve men every day who don't know anything and can't read."...A Los Angeles juror was cited for contempt and fined \$1,000 by a judge for yawning loudly while awaiting questioning during jury selection. The fine was later reduced to \$100. The yawn came after the man, identified as Juror No. 2386 in an April 1 court transcript, had been sitting in the courtroom for two days. "You yawned rather audibly there. As a matter of fact, it was to the point that it was contemptuous," said Superior Court Judge Craig Veals. "I'm sorry, but I'm really bored," the juror said. "I'm sorry?" the judge responded. When the juror repeated his

statement, he was admonished by the judge for having a "lousy" attitude. "Your boredom just cost you \$1,000. I'm finding you in contempt," Judge Veals said. "Are you quite so bored now?"...

Team Arrogant Bastard (most definitely *not* officially sponsored by the brewery--their lawyers made us say this) recently traveled to Puerto Penasco, AKA "Rocky Point" in Sonora, Mexico, for the 10<sup>th</sup> Annual Las Palomas Olympic Triathlon, hosted by Tucson Racing ([www.tuconracing.com](http://www.tuconracing.com)) on April 30. There was also a sprint-distance race, as well as individual events, but our stalwarts chose the full measure of abuse. **Ryan Schaap** of Panitz Schaap finished in 3:39:05; his schoolmate (from his days at the U of A Law School) **Gary Kraft**, who now clerks for the Federal District Court in Tucson, and who does full Ironman-distance triathlons, finished in a blistering 2:42:38. **Terence Geoghegan's** brother Sean, flew in from Providence, R.I., for the event and turned in a respectable 3:15:44. **TG** finished in 4:20:56; look for his full report and pathetic excuses in the July \*6O!06B@M..

**Benton, Orr**, hosted a little soiree for new Commissioner **Mark Borrell** after he swore-in earlier in the day. Attending were Judges **Bysshe**, **Long**, **McGee**, **Walsh**; **Justices Coffee** and **Perren**; and lawyers **Ron Harrington**, **Rob Sawyer**, **Bob Bayer**, **Rick Rabbin**, **Carmen Ramirez**, **Creighton Stephens**, **Ken Clayman**, **Hillary Shankin**, **Jim Sherren** and **Jeff Loebel**. **Bob Davidson** and **Mike Planet** were there too... In case you missed this one: criminal defense attorney Ronald S. Miller does more than file his briefs; he also takes them off--as Don Hollywood, porn star. Miller, 56, has performed in more than 90 films, including such titles as "Justice Your Ass." He says he's had no trouble balancing his two careers and that he tells his clients about his night job. Ethics experts say Miller's specific brand of moonlighting, while unusual, does not violate any professional rules. By the way, his wife's a porn star too...

*Steve Henderson has been the executive director of the bar association since November 1990 and recalls being mistaken for Steve Nash and Paula Abdul coming on to him. Frequently yawning during his board meetings, Newseek magazine recently named him executive director of the year. Additionally, he wa stopped at LAX with the Whizzinator.*

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