

FBA INLAND EMPIRE BAR REVIEW

Issue 17

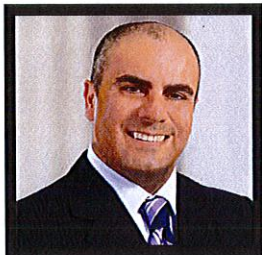
INLAND EMPIRE CHAPTER

WINTER, 2016

FEDERAL BAR ASSOCIATION

Message from Your Federal Bar Association Chapter President

By: *Antoine F. "Tony" Raphael*



As I write my last column as President of this FBA chapter, I want to thank you for giving me the opportunity to serve in this position. It has been an honor and a privilege. Thank you!

In 2015, we continued with our tradition of programs designed to interest and educate all who work in the federal courts. We had many interesting and timely presentations.

These included: 1) a program on California Proposition 47 and its impact on federal criminal cases, which was moderated by the Honorable Jesus G. Bernal, United States District Judge; 2) a program titled, "Random Thoughts on Writing for Judges," which was presented by the Honorable Jean P. Rosenbluth, United States Magistrate Judge; 3) a presentation on the use of body cameras by law enforcement, which featured an excellent panel of speakers (attorneys Brian Dunn, John Porter, and Jeb Brown, and Riverside Police Department Lieutenant Bruce Blomdahl); and 4) the Prosecutors' Roundtable, which featured newly-appointed United States Attorney Eileen M. Decker, newly-elected Riverside District Attorney Michael A. Hestrin, and San Bernardino District Attorney Michael A. Ramos. The program was moderated by newly-appointed Federal Public Defender Hilary Potashner.

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CALENDAR OF EVENTS

ANNUAL JUDGES' NIGHT DINNER (HONORING THE JUDICIARY OF THE CENTRAL DISTRICT) ~ See Page 7

DATE: THURSDAY, FEBRUARY 25, 2016

PLACE: MISSION INN MUSIC ROOM

TIME: 5:00 P.M. - 8:30 P.M.

Featuring: Remarks by Keynote Speaker Eugene Volokh on "Law, Lawyers, Judges and the Media – Past, Present, and Future"

MEDIATION/ADR PROGRAM

DATE: WEDNESDAY, MARCH 16, 2016

PLACE: GEORGE E. BROWN, JR. FEDERAL COURTHOUSE

TIME: 12:00 P.M. - 1:15 P.M.

CIVIL PRACTICE FORUM

DATE: WEDNESDAY, APRIL 20, 2016

PLACE: GEORGE E. BROWN, JR. FEDERAL COURTHOUSE

TIME: 12:00 P.M. - 1:15 P.M.

THE ANNUAL CONSTITUTIONAL LAW FORUM AND PRESENTATION OF THE 2016 ERWIN CHEMERINSKY DEFENDER OF THE CONSTITUTION AWARD

DATE: MAY 17, 2016

PLACE: TBA

TIME: 12:00 P.M. - 1:30 P.M.

Featuring: Dean and Distinguished Professor of Law Erwin Chemerinsky

Inland Empire Chapter of the
Federal Bar Association
~ 2016 Officers ~

President: Joseph Widman
President-Elect: Ruben Escalante
Treasurer: Kay K. Otani
Secretary: Justin Kim

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Clerk's Update



LISA ADAMS | ASSISTANT DEPUTY-IN-CHARGE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, California 92501
Office: (951) 328.4452 Fax: (951) 328.4468
Email: lisa_adams@cacd.uscourts.gov

By: Lisa Adams

Notice from the Clerk re Submission of Certain Prisoner Filings:

On November 16, 2015, the Court adopted General Order 15-09, regarding a Pilot Project for the Submission of Certain Prisoner Filings through Electronic Mail ("Pilot Project"). Under the General Order, unrepresented prisoners at the California State Prison, Los Angeles County ("CSP-LAC") must submit all documents designated as "Pilot Project Documents" to the Court for filing by electronic mail, rather than by U.S. Mail. If a prisoner at CSP-LAC submits a Pilot Project Document to the Court by U.S. Mail, the prisoner will be notified that the submission of such documents through U.S. Mail violates General Order 15-09, and that the document must be resubmitted by electronic mail.

Currently, only case-initiating documents filed in cases brought by prisoners under 42 U.S.C. § 1983 to challenge the conditions of their confinement have been designated by the Court as Pilot Project Documents. Case-initiating documents are the complaint and any documents submitted concurrently with the complaint, such as an application to proceed IFP/without prepayment of fees, or a motion for emergency relief. All other documents have been designated by the Court as Excluded Documents.

There are only two exceptions to the requirement that Pilot Project Documents be submitted by electronic mail: (a) when the Pilot Project Document is submitted during a period when CDCR notified the Court that the scanning equipment was inoperable for longer than 48 hours; or (b) when the Pilot Project Document is submitted with a motion for leave to file documents by U.S. Mail that is supported by good cause.

Prisoners at a Participating Facility will present Pilot Project Documents to designated CDCR staff ("Scanning Staff"), who will log and stamp those documents. If a prisoner presents a case-initiating document to Scanning Staff that requires a filing fee, Scanning Staff will contact the Participating Facility's

Accounting Department, which will provide a copy of the prisoner's Trust Account Statement to Scanning Staff. Scanning Staff will then scan all Pilot Project Documents and email them to the Court at a designated email address, mark each document with the date it was scanned and emailed to the Court, and return original documents to the prisoner.

Designated staff at the Court will retrieve all emailed Pilot Project Documents and file them into the Court's official case file. The participating facility will thereafter receive a Notice of Electronic Filing (NEF), with a case number, for the initiating documents filed in the case. The NEF will be printed and provided to the prisoner.

All subsequent documents in the case must be filed through U.S. Mail.

Attorneys Required to Electronically File Most Sealed Documents, Effective December 1, 2015:

Significant Changes to the Court's Local Rules Regarding the Submission of Sealed and In Camera Documents in Civil Cases took place on December 1, 2015.

PLEASE TAKE NOTE that on December 1, 2015, the Court's local rules regarding the submission of sealed and in camera documents in civil cases were significantly amended. Among other noteworthy changes, Local Rule 79-5.2 requires attorneys to file under-seal documents in non-sealed, otherwise public civil cases ELECTRONICALLY using the Court's Case Management/Electronic Case Filing (CM/ECF) system. The amended local rules are available on the Court's website at:

www.cacd.uscourts.gov/court-procedures/local-rules; amended Local Rules 79-5, 79-6, and 79-7.

All attorneys practicing in the Central District should familiarize themselves with these amended rules as well as the Court's Guide to Electronically Filing Under-Seal Documents in Civil Cases, posted on the Court's website with the electronic version of this Notice at:

www.cacd.uscourts.gov/notices-from-the-clerk

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Changes in the Clerk's Office

Longtime Eastern Division Deputy-in-Charge Kiry K. Gray Appointed
Clerk of Court for Central District

*Steve Cohen Named New Eastern Division
Deputy-in-Charge*

By: Joseph Widman

On September 24, 2015, the District Court for the Central District of California announced the appointment of longtime Eastern Division Deputy-in-Charge Kiry K. Gray to be the Clerk of Court for the entire Central District. For over 20 years, until shortly before her appointment, Gray served as Deputy-in-Charge for the district's Eastern Division, based in Riverside and servicing the approximately 4.4 million residents of Riverside and San Bernardino Counties. Gray succeeded retired Clerk of Court Terry Nafisi.

Succeeding Gray as the Deputy-in-Charge for the Eastern Division is Steve Cohen. Cohen is a Southern California native who, in addition to a bachelor's degree, has obtained master's degrees in education, and marriage, family, and child therapy. He has been with the clerk's office in the Central District for nearly 19 years. His previous roles included a five year stint from 2002 to 2007 as Deputy-in-Charge in the Southern Division, based in Santa Ana. The majority of Cohen's tenure in the clerk's office has been as Co-Director of Human Resources, in which position he focused on judicial staff, recruitment of magistrate judges, and employee relations and trainings.

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Pro Se Corner



By: Diane Roth

Stud, great dude, angel from heaven, awesome, Captain America! These are some of the words clients of the pro se clinic have written to describe our volunteer attorneys and paralegals.

Hero is a word used by one of our volunteers to describe how he feels when he volunteers at the clinic or takes on a pro bono case.

These are words that describe the attorney who helped Ms. Smith. When Ms. Smith tried to refinance her home, she discovered that there was a judgment lien on it. A default



judgment had been taken against her years before in a District Court lawsuit she knew nothing about. She came to the *Pro Se* Clinic for help. The proof of service in the case said that they had served a 46-year old white woman. Ms. Smith was a 56-year old black woman. A clinic attorney helped her with a successful motion to set aside the default judgment. She returned to the clinic after winning her motion and, armed with advice from our attorney, Ms. Smith was able to get the lien lifted and negotiate a favorable settlement.



Our volunteers serve an area of extreme need, providing vital services, advice, and in some cases legal representation for unrepresented individuals. In just an hour or less, an attorney can help someone hurdle an otherwise unsurmountable

obstacle to obtaining justice. In most cases, all that's needed is some procedural advice. We have materials to help, including an array of sample pleadings and motions. The service provided by these volunteers greatly benefits the Court and all of its litigants. If helping those in need, serving the Court and feeling like a hero aren't enough, volunteering has these added benefits:

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Inland Empire Federal Bar Association 2015 Annual Report



By: Kay K. Otani, Treasurer

During 2015 the Chapter continued to present educational programs, support the federal court and its pro bono programs, provide information to the public, and host social gatherings for its members and others in the Inland Empire legal community.

On February 5, 2015, we had our annual dinner honoring the judges of the Central District of California. The dinner featured Loyola Law School Professor Laurie L. Levenson as keynote speaker, and the State of the District Court by Chief District Court Judge George H. King. We also provided nine additional MCLE programs, including the Annual Constitutional Law Forum with Dean Erwin Chemerinsky; a civil practice program featuring District Judges Virginia A. Phillips and Jesus G. Bernal, and Magistrate Judges David T. Bristow and Kenly Kiya Kato; a federal practice program featuring Magistrate Judges Sheri Pym, Bristow and Kato; a free writing seminar by Magistrate Judge Jean P. Rosenbluth; a Prosecutors' Roundtable featuring U.S. Attorney Eileen M. Decker, Riverside District Attorney Michael A. Hestrin, San Bernardino District Attorney Michael A. Ramos, moderated by Federal Public Defender Hilary Potashner; as well as programs on mediation ethics, California Proposition 47, law enforcement use of body cameras, and class action lawsuits. We sponsored swearing-in ceremonies to admit new attorneys to practice in the Central District.

We reached out to the Inland Empire legal community by presenting scholarships to law students Marc Tran and Niles Pierson, and the Erwin Chemerinsky Defender of the Constitution Award to Attorney and Mediator Terry Bridges. All three have strong ties to the Inland Empire, and their awards recognized those ties as well as their personal achievements. We also supported the federal pro se clinic at the Riverside courthouse through direct donations. Finally, we supported the Loyola Law School Innocence Project and scholarships through the

Riverside County Bar Association and the John Lewis King Memorial Scholarship.

The Chapter began its 2014 fiscal year on October 1, 2014 with \$20,747.64 in funds, and concluded the year on September 30, 2015 with \$20,426.06 in funds. Gross revenue for the year totaled \$23,995.01, and total expenditures were \$24,316.59. The Chapter remains in sound financial condition.

The incoming officers for 2016 are Joseph B. Widman (President), Ruben D. Escalante (President-elect), Kay K. Otani (Treasurer), and Justin Kim (Secretary). The other directors are Mario Alfaro, Charles S. Duskow, James E. "Jeb" Brown, Stefanie Field, Young Kim, Dorothy McLaughlin, Daniel S. Roberts and Ami Segal. Honorary board members are the Honorable Virginia A. Phillips, the Honorable Jesus G. Bernal, the Honorable David T. Bristow, the Honorable Sheri Pym, the Honorable Kenly Kiya Kato, the Honorable Mark Houle, Jeffrey Aaron, and Steve Cohen. The record of names and addresses of the current members is maintained by the National Office of the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, VA 22201. ❖

[Pro Se Corner cont'd from Page -3-]

Volunteers can gain valuable experience that will help them in future dealings with their own clients. Seasoned litigators may handle things outside of their usual practice areas, or may find themselves briefly researching issues new to them. Newer attorneys may gain experience having face-to-face dealings with a real client.

If you take on *pro bono* direct representation, as did two young associates at Gresham Savage not too long ago, you may get your first jury trial. You may get awarded attorney fees (which you may keep). We provide malpractice insurance to cover you on all *pro se* clinic cases.

If every Inland County civil law firm commits to send one lawyer one day a month – *e.g.*, the third Tuesday – we will be covered. The clinic operates every Tuesday and Thursday, from 10:00 am to 2:00 pm, in the lobby of the Bankruptcy Court in Riverside. Please contact Diane Roth (droth@riversidelegalaid.org) or Bob Simmons (rlsimmons@riversidelegalaid.org) to volunteer.

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Alternative Dispute Resolution (ADR) Corner

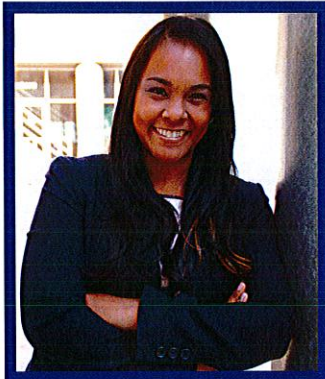


GAIL KILLEFER | ADR PROGRAM DIRECTOR
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LEGAL SERVICES UNIT
ALTERNATIVE DISPUTE RESOLUTION PROGRAM
312 North Spring Street, Suite 909
Los Angeles, California 90012
Office: (213) 894.2993 Fax: (213) 894.5084
gail_killefer@caod.uscourts.gov

“Thinking Fast and Slow”

Mediators Dissect the Concept of ‘Thinking Fast and Slow’

By: Janelle Smith, ADR Extern



Once each quarter, panel mediators meet to discuss a book of their choice relating to mediation. In September, a group of some ten mediators met to discuss *Thinking Fast and Slow* by Nobel prize winner Daniel Kahneman. This book explores a concept that our brains have two characters – one,

fast and intuitive; the second, slow and deliberate. Kahneman writes about the biases of our intuition, how we assume things automatically without thinking them through. He describes many examples of these biases throughout the book -- and how they affect our judgment and decision-making.

The group began by sharing insights about the role these biases play in mediation. To stimulate discussion, a handout listing ten biases addressed in the book was distributed to the mediators. Of the ten topics, four seemed to resonate most with the group.

The first of these topics was the “priming effect.” The book defined this concept by explaining that exposure to an idea, consciously or subconsciously, “primes” us to think about an associated idea. For example, the book explains, if you recently saw or heard the word EAT, you would more likely insert the letter U in the word fragment “SO_P” (SOUP) than A, as in SOAP. The opposite is true if you recently saw or heard the word WASH. EAT primes the word SOUP; WASH primes the word SOAP. Some mediators observed that this bias

often surfaces in the initial stages of mediation when counsel and the parties discuss how they evaluate their case. Others noted that in specific industries, it is common for parties to immediately base their conclusions upon their own narrow experiences.

The second topic discussed was the “anchoring effect.” This concept kicks in when people consider a particular value (or number) before estimating that quantity. This is basically a subconscious phenomenon of making an estimate that is influenced by a previously heard estimate. In practice, the mediators found that parties’ evaluations of settlement numbers are often impacted by the first numbers discussed. For example, if plaintiff’s counsel first makes a demand of \$40,000, he or she seems eminently reasonable if the demand is eventually reduced to \$15,000. Mediators shared that this can get tricky once a number is offered by an expert. For example, if a mediator offers a “mediator’s proposal” of \$100,000, it is unlikely that either party will be willing to settle far from that number, even if the mediator’s number is flawed. The anchoring effect can take hold and affect the outcome of the mediation.

Next, mediators worked through the concept of “confirmation bias”: the tendency to find evidence that confirms one’s belief while overlooking examples to the contrary. Mediators discussed how frequently this occurs in mediation. A party and counsel review certain evidence and often “jump to a conclusion” that favors their case, rather than reviewing all the evidence and fully evaluating the case on the merits.

Lastly, the group talked at length about the role of overconfidence in mediation. The book discussed overconfidence as part of the brain’s tendency to suppress ambiguity and doubt by constructing coherent stories from incomplete information, “scraps of data.” Usually, the other part of our brain (the inner skeptic) weighs those stories, possibly doubts them, and suspends judgment. Sometimes, however, our ‘inner skeptic’ fails to suspend that judgment and we tend to believe those scraps of data. Mediators discussed what this looks like in the mediation context and how difficult it is to overcome. For example, lawyers often become so persuaded by their own view of the case and their “scraps of data” that they fail to consider other reasoning. Mediators must work hard to engage the lawyers’

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[President's Message cont'd from Page -1-]

Also, at our Annual Constitutional Law Forum, which was held on May 6th, our chapter presented the 2015 Erwin Chemerinsky Defender of the Constitution Award to long-time Riverside attorney and mediator Terry Bridges. Terry is a pillar of our legal community.

I hope you were able to join us for some or all of these programs. Importantly, we are looking forward to our Annual Judges' Night event, which will be held on Thursday, February 25, 2016 at the Mission Inn Hotel and Spa. This year's event features as keynote speaker UCLA School of Law Professor Eugene Volokh. Professor Volokh will speak on the topic of "Law, Lawyers, Judges, and the Media — Past, Present, and Future."

On another note, our chapter was awarded a 2015 Chapter Activity Presidential Achievement Award, which recognizes the excellence of our programs and the vitality of our chapter. We were also awarded a Meritorious Newsletter Award. I attended the FBA's Annual Meeting and Convention in Salt Lake City and had the honor of accepting these awards on behalf of our chapter. I want to give a shout-out to Kim Connelly for her excellent work as our newsletter editor. Thank you, Kim!

Our chapter continues to support the efforts of the staff of the Pro Se Clinic, which serves those with cases in both the U.S. Bankruptcy Court and the U.S. District Court. The Pro Se Clinic serves a very important function. However, volunteer attorneys are always needed to staff the clinic.

Once again, thank you for giving me the opportunity to serve as president of our chapter. I wish you all a happy and healthy 2016 and I look forward to seeing you at the Annual Judges' Night on February 25th.

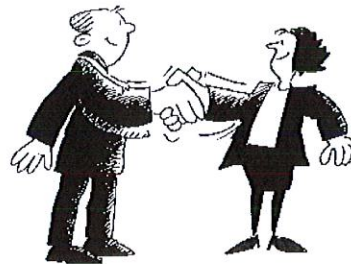


[ADR Corner cont'd from Page -5-]

"inner skeptic" that allows enough doubt and suspends judgment long enough that the lawyers are open to considering other information that supports another view and evaluation of the case.

The group exchanged strategies to deal with assumptions and biases as they arise in judgments and decision-making in the mediation context. All agreed that the mediator's awareness of these biases and ability to identify and candidly discuss them in mediation will positively impact the parties' ability to reach an agreement.

For January, the group read and discussed *The Conflict Paradox: Seven Dilemmas at the Core of Disputes*, by Bernard Mayer. On April 21, 2016, the group will meet at the lunch hour to discuss a book written by Panel Mediator Jan Frankel Schau, *View from the Middle of the Road: A Mediator's Perspective on Life, Conflict and Human Interaction*. Come join us if you're interested! For more information, contact the Court's ADR Program Director, Gail Killefer (gail-killefer@cacd.uscourts.gov or 213-894-1215).



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The Inland Empire Chapter of the Federal Bar Association

*Cordially Invites You to Attend a Dinner
Honoring the Judges of the Central District of California*

Featuring:

Honorable George H. King

*Chief United States District Judge
Central District of California
“The State of the District Court”*

Remarks by Keynote Speaker:

Eugene Volokh

*Professor of Law, UCLA School of Law
“Law, Lawyers, Judges, and the Media — Past, Present, and Future”*

Thursday, February 25, 2016

The Mission Inn

*3649 Mission Inn Avenue
Riverside, California 92501*

*Social Hour at 5:00 p.m.
in the Glenwood Tavern*

*Dinner at 6:00 p.m.
in the Music Room*

\$70.00 FBA Members

\$75.00 RCBA/SBCBA Members

\$85.00 Non-Members

\$60.00 Government Employees

\$50.00 Law Students/Judicial Law Clerks

1/2 hour of MCLÉ credit will be provided

*To reserve a seat for this special night, please send an e-mail to sherrigomez4@gmail.com by February 19,
2016*

Send payment to:

IE – FBA

P.O. Box 42

Riverside, CA 92502