



REMARKS FROM THE PRESIDENT'S DESK -

Once again, the annual Western San Bernardino County Bar Association's Officer Installation and Award Ceremony is quickly approaching. It is therefore time to acknowledge our extraordinary award recipients and their contributions to our legal community. This year, we are privileged to honor the Honorable Paul W. Egly, Ret., Byron C. Thompson, Esq., and Nancy Eberhardt.

This year's Lifetime Achievement Award recipient is retired Judge Paul W. Egly. To put it simply, there is no one more deserving of this distinguished honor. Judge Egly has dedicated his long and distinguished career to improving the lives of others. Immediately following his graduation from George Washington School of Law in 1949, Judge Egly moved to Europe and practiced law. Judge Egly returned to California and began his legal practice in Covina in 1952, wherein Howard Weiner joined him a little later. After achieving prestige in the California legal community, Judge Egly was appointed to the Municipal Court bench by former Governor Pat Brown in 1963. Shortly thereafter, former Governor, Ronald Reagan, appointed Judge Egly to the Los Angeles County Superior Court, where he served until 1981. While on the bench Judge Egly started a law school at the University of La Verne. He was Dean and taught Constitutional Law. Judge Egly was responsible for shaping the legal minds of generations of legal scholars and prestigious attorneys, including several members of our bar association. Judge Egly was asked to preside over *Crawford v. Board of Education of the City of Los Angeles*, the landmark anti-discrimination case where the constitutionality of California Proposition 1 was tested. Following his noteworthy legal work in *Crawford v. Board of Education*, Judge Egly returned to his academic career. Judge Egly continued teaching despite losing his eye sight to macular degeneration at the age of 62. He taught at the Law School until age 85 and then wrote a law review article for the University of La Verne Law Review discussing the Crawford case. In a 1999

American Bar Association article, Judge Egly stated that the reason he continued to practice law was because, "I was stubborn! I didn't know when to give up...I asked myself, what is your greatest asset? It can't be my eyes. It's my brain...I knew the case law by heart." As such, Judge Egly continued to use his vast knowledge of memorized case law in his position as a panel member of the Judicial Dispute Resolution ("JDR"), where he specialized in complex constitutional law, employment law, public entity municipality law, educational law, mass tort and catastrophic injury. There is absolutely no question that Judge Egly has left his mark on our legal community and community at large.

Distinguished family law attorney Byron C. Thompson is our recipient of the Jennifer Brooks Lawyer of the Year Award. After graduating from the University of La Verne, School of Law, Attorney Thompson began practicing Family Law in 1978. After almost 40 years of practice, Attorney Thompson is an acclaimed California Bar Certified Specialist and a member of the American Academy of Matrimonial Attorneys. Attorney Thompson has represented hundreds of clients in front of California's Superior Courts, Courts of Appeal and Supreme Court. Most notably, Attorney Thompson was the trial attorney in the landmark case *Montenegro v. Diaz*, where the California Supreme Court re-emphasized the importance of the "best interest test" in high conflict custody matters. Mr. Thompson is widely regarded amongst his peers as one of the preeminent family law attorneys in the Inland Empire. He is responsible for mentoring and inspiring several of our members. It is therefore our privilege to honor Attorney Thompson with the Jennifer Brooks Lawyer of the Year Award.

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Welcome WSBCBA New Members

Matthew R. Eason, Esq.-Eason & Tambornini, A Law Corp.
Jorge Luzuriaga - ULV Law Student
Jasmine Pico, Esq. - Moore and Pico, Attorneys at Law
David T. Ruegg, Esq. - Law Offices of David T. Ruegg

Inns of Court - September 2017
A Second Look at the Second Look - the Appeal
by Mark H. McGuire, President

I have set myself a task of writing articles for the bar bulletin from the Inn President's desk, side note, there actually is no real desk, I wish there was, based on the idea that we have a responsibility to take a second look at many areas of the law that are currently at issue in society. In taking on this task of the second look at some particular legal issues, perhaps we can find some new solutions to the difficult problems our client's often face.

Given this task I thought it prudent to enlist others, of greater intelligence, experience and abilities than I to assist me on this clumsy journey. My first appointment did not disappoint. I informed Justice Manuel A. Ramirez, presiding Justice of the California Court of Appeal, Fourth District, Division Two, of my task and asked if he would meet me for lunch to discuss my theme of a second look in law on the topic of the appeal. He did not hesitate to respond in the affirmative and in a few weeks we set to meet.

In a lunch meeting with Justice Ramirez, I knew I would not be the smartest person at the table, but I thought at least I could arrive early and be over prepared. I arrived early only to find him already seated. Strike One! After exchanging pleasantries, as baseball scores, I pulled out my notepad and list of carefully (stressfully) crafted questions. Justice Ramirez softly told me he did not think I would need to take notes and handed me a well-crafted, succinct memo on the question, "Is an Appeal a Second Chance?" Strike Two!

Justice Ramirez first pointed out that the Court of Appeal operates in a narrow band, between the record of the trial court and the prior rulings of higher courts under the concept of *stare decisis*. *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 455. Perhaps it is a second look at the potential abuse of jurisdiction by the lower court, yet always under all of the prior rulings of higher courts. As Ironman said to Spiderman this summer, "There is a grey area there for you to operate in". That narrow band may have also been inadvertently limited by trial counsel. If the issue was not preserved at trial, it is waived. Cal. Evidence Code Sections 353-354, *Herpner v. Franchise Tax Board* (1997) 52 Cal.App.4th 495, 504.

He then went on to make several points: 1) first and foremost the attorney must consult with the client about the many risks and relatively few benefits of the appeals process; 2) reasons not to take an appeal; 3) reasons why one should take an appeal; and 4) settlement of the matter is always a possibility.

Consulting with the client on all matters of law is of course, essential. We do not do our job if we do not consult with our client first. We often think only of the advocacy part of our job and not the more complicated counselor portion. Justice Ramirez stressed first and foremost the counselor duties. Dragging the client into yet another field of battle with its own costs, legal pitfalls, and risks, can perhaps leave them worse off. A result we need avoid.

The reasons not to take an appeal are many and compelling. The state reversal rate is between 10 and 16%, depending on the type of case. The result of a "victory" often only being sent back to the trial court for further proceedings. The judgement of the trial court is presumed correct. *Estate of Goulet* (1995) 10 Cal.4th 1074, 1077. Your appeal is subject to the limits of the applicable standard of review which are generally deferential to the trial court: 1) Abuse of Discretion - *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773; 2) Substantial Evidence - *Jessup Farms v. Baldwin* (1993) 33 Cal.3d 639, 660; and 3) Prejudicial Error - California Constitution Article VI Section 13, mandates that no judgment may be reversed absent a miscarriage of justice. And more than this, not every order in a trial court is appealable. Cal. Code of Civ. Proc. Section 904; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.

The monetary costs of taking an appeal are substantial, to say the least. Not including attorney fees, the appellant will have to pay filing fees, transcript fees, deposits, and any bonds required for the undertaking. In addition to this the prevailing parties cost are to be paid by the losing party. Cal. Rules of Court, Rule 8.278. Moreover, remember you are asking your client to take on all the stress and high stakes of trial again. The battle cry of "Once more unto the breach, dear friends" sounds good until the casualties start mounting up.

The reasons for taking an appeal are narrow but powerful. If your appeal involves a pure question of law, appellate court exercise its independent judgement without deference to the trial court. *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799. If there is a real prejudicial error, then upon careful review of the record and after consultation with your client, the appeal should be taken. If the error involves a ruling on a demurrer or summary judgment the court will review the matter *de novo*. *Buss v. Superior Court* (1997) 16 Cal.4th 35, 60. Finally, the appeal may also motivate the other side to finally settle. Justice Ramirez emphasized the robust settlement program of the 4th District Court of Appeal. Hearing

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In Memory of
Ronald G. Skipper
1940-2017



Ronald G. Skipper, age 76, of San Bernardino, passed away at home surrounded by his loving family on June 28, 2017.

He was born December 16, 1940 in Brawley, CA to Roland and Vena Skipper. A resident of San Bernardino for 68 years, Ron was the product of public schooling, having attended Harding Elementary, Sturges and Arrowview Junior Highs. He was a graduate of San Bernardino High School, class of '58, the University of Redlands, and the University of California - Hastings College of Law with honors. After law school, he returned to San Bernardino and joined the law firm of Chapman and Sprague. In 1967, Ronald opened his private law firm, where he practiced until his retirement in 2012.

Throughout his career his practice included personal injury, business litigation, and administrative and education law. He represented the California Teachers' Association, Inland Empire Auto Center, and the National Orange Show. His devotion to the law and his success as an attorney led to his being elected President of both the California Trial Lawyers and the San Bernardino County Bar Association. In 2005, he was the recipient of the John B. Surr Award, which is awarded to a member of the legal community who best exemplifies the high standards of the legal profession and the administration of justice.

In addition to his professional accomplishments, Ron was an active member within his community. He was instrumental in establishing the local chapter of the Boys & Girls Club of America and his dedication to the city is evidenced by his service to the San Bernardino Civic Light Opera, Economic Development Council, Chamber of Commerce, St. Bernardine Hospital Foundation, Mayor's Council for International Friendship, Sister Cities Committee, and the California State University S.B. Foundation.

Ron is survived by his high school sweetheart and wife of 57 years, Wanda O'Brien Skipper; children, Rhonda Skipper Marple of Dallas, TX, Kristin Skipper Arellano, of Palm Desert, CA, and Garret Skipper of Rancho Mirage, CA; grandchildren, Christopher Marple, Lauren Marple, Alysia Arellano, and Erynne Arellano; sisters, Geraldine Atkins of San Bernardino, CA and Marilyn Stubbs of Oklahoma City, OK; and numerous cousins, nieces and nephews.

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**President's Remarks**  
**Continued from page 1**

Last but certainly not least, the Western San Bernardino County Bar Association honors Nancy Eberhardt as our Legal Assistant of the Year. In January of 2017, Ms. Eberhardt was appointed as San Bernardino Superior Court's Executive Officer. Prior to becoming Executive Officer, Ms. Eberhardt served as an assistant executive officer for the San Diego Superior Court and then as a deputy court officer for the San Bernardino Superior Court. During her tenure, Ms. Eberhardt has been instrumental in the creation of an expanded resource center in both the historical courthouses, as well as the San Bernardino Justice Center. Her work has been widely lauded by the attorneys and judicial officers our local courts serve. In December of 2016, San Bernardino Superior Court Presiding Judge Raymond L. Haight III stated that "... we are fortunate to have Nancy Eberhardt's extensive experience in court administration and with Ms. Eberhardt as our court executive officer, we will have effective and sustained leadership for years to come." After more than 26 years of experience working for the California Courts, it is evident that Ms. Eberhardt is well deserving of Presiding Judge Haight's high praise, and perfectly suited for the award she is to receive.

On behalf of the Western San Bernardino County Bar Association, I invite our entire membership to come together next month to honor the dedication and service of each of these individuals to our legal community.

**ATTENTION NEWLY  
 ADMITTED ATTORNEYS**

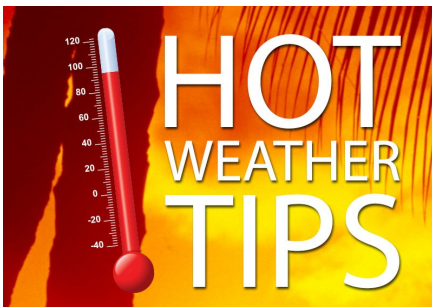
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 please contact the  
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 Bar Association at  
 (909) 483-0548 or email at  
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 and request an attorney mentor.  
 We are here to help you succeed!**

## Inns of Court Continued from page 2

Appellate judges advocating for settlement, is like *deja vu* all over again.

Justice Ramirez and I concluded our discussion of the second look at the appeal with a comparison to what else, *baseball*, of course. I told him that I had been wracking my brain for a good example of the appeal in baseball and that the best I could come up with was when the batter keeps hitting foul balls, even after the count is full, keeping the at bat alive. This placing more and more pressure on the pitcher and perhaps changing the tide of the at bat. I also thought of time the manger, in futile attempt to change the call, yells at the umpire.

With a smile on his face, Justice Ramirez gently signaled with his right arm and pointed with his index finger as if appealing to the first base umpire on the checked swing. The classic dramatic moment of the appeal in baseball, played out in nearly every game every day in every major U.S. city. I had of course missed this fact. Strike Three! The second court (base umpire) can over turn the call from the home plate umpire and change the course of the at bat (case). Of course, as Justice Ramirez pointed out in his memo on the taking of an appeal, the cost to the player is nothing, only to point to down the base line at the second set of eyes on the pitch and swing. The costs to our clients however, in stress, time, and coin are far greater and should be entered into only after careful consideration.



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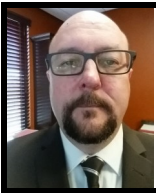
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## Appellate Ruling Adds Complexity to Trail Immunity

By Donald Matejka  
WSBCBA Member

Here in southern California, fair weather, sunny skies and beautiful scenery make it a joy to get outside and exercise. But what happens when someone is injured while enjoying recreational activities on property that has been set aside for public use? Trail immunity has long shielded public entities from liability in such cases.

However, this does not mean that victims of personal injury accidents on public paths, trails, and walkways should be automatically turned away at the door of a personal injury law firm. As a recent appellate ruling shows, trail immunity is actually not a given in all circumstances. It may depend on what type of dangerous condition caused the injuries.

### What is Trail Immunity?

Though at first it might seem unfair, trail immunity is actually a wise and necessary doctrine. Without trail immunity, the possibility of costly and burdensome personal injury litigation would discourage property owners from allowing public use of their land, and everyone's recreational opportunities would suffer as a result.

Since trail immunity was adopted in 1963 under section 831.4 of the California Government Code, the courts have interpreted it fairly broadly. Though the wording of the section refers to unpaved roads or trails giving access to recreational or scenic areas, the courts have expanded this to include paved roads and trails and even sidewalks that are used for access or for recreation in and of themselves. Also, where section 831.4 refers immunity for injuries caused by the "condition" of the trail, which might be narrowly interpreted as just the maintenance of the trail, the courts have found that immunity applies to injuries caused by negligent maintenance, negligent design, and negligent location, as all of these can be considered part of the trail's condition.

### New Appellate Case Limits Trail Immunity

Of course, if trail immunity were applied indiscriminately, public entities—and private property owners who deed land for public access or use—would have no incentive to take the steps that may be necessary to protect the public from hazards found on or around the trail. One example of this has to do with injuries caused by a trail's proximity to "dangerous conditions" on an adjacent property. Do these conditions fall under the cloak of trail immunity or not?

The Second District Court of Appeal recently considered this issue in the case *Jacobo Garcia v. American Golf Corporation*. The case involved a young child who was hit in the head by a golf ball while being pushed in a stroller past a golf course on Pasadena's Rose Bowl Loop. The child suffered brain damage and the mother sued the city of Pasadena (which owns the golf course) as well as the private company that manages and runs the golf course.

In the initial trial, the city claimed that the injury was caused by the location of the path, which should be covered by trail immunity. The lower court agreed and dismissed the case. However, the plaintiffs argued that the location of the path was not the cause of the injury; it was the inadequacy of the fencing and other safety measures that had been put in place around the path to guard against stray golf balls. On appeal, the Appellate Court agreed. Specifically, the court found that while the City did have protection from liability for injuries caused by the walkway, that protection did not extend to injuries caused by dangerous conditions on nearby property.

### A Departure from Precedent

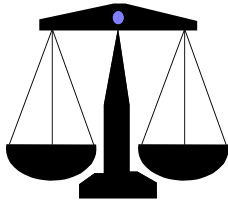
In reaching this conclusion, the court departed from the precedent set by previous rulings. Take for example the case *Leyva v. Crockett & Co., Inc.*, which was decided in January. This case also involved a golf ball injury, suffered as the plaintiff was walking on a public trail beside a golf course. However, in this case, the Appellate Court found for the defendants. The owner of the golf club, who had granted easements to the county for the trail, was found to be protected by trail immunity.

The difference between the two rulings seems to be policy-driven. In *Jacobo Garcia*, the court repeatedly referenced fairness and the idea that applying trail immunity would disincentivize the city from correcting the dangerous conditions that led to the injury.

Only time will tell whether future rulings on this issue will follow *Jacobo Garcia* or *Leyva* and similar cases. However, it is worth noting that preventative measures—or the lack thereof—can affect liability for injuries on public trails under certain circumstances.

This should certainly be considered by personal injury attorneys when evaluating any potential new clients who have suffered injuries on public paths and trails.





## *27th Annual Red Mass*

Tuesday, October 3, 2017, at 6:00 p.m.

*Our Lady of the Rosary Cathedral*  
2525 North Arrowhead Avenue, San Bernardino

The entire legal community and persons of all faiths are invited to attend the 27<sup>th</sup> Annual Red Mass on Tuesday, October 3, 2017, at 6:00 p.m. The mass will be held at Our Lady of the Rosary Cathedral, which is located at 2525 North Arrowhead Avenue in San Bernardino. The chief celebrant will be the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Red Mass Steering Committee will follow the mass.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass.

### *Presentations of the Saint Thomas More Award and The Saint Mother Teresa of Calcutta Award*

For the first time, the Red Mass Steering Committee will be presenting two awards: the Saint Thomas More Award and the Saint Mother Teresa of Calcutta Award. The Saint Thomas More Award will be given to a lawyer or judge who gives hope to those in need, is kind and generous in spirit, and is an overall exemplary human being. The new Saint Mother Teresa of Calcutta Award will be given to anyone with those attributes who is a member of the legal community or who has made contributions to the legal community. The awards will be presented at the reception following the Red Mass. For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387-4334 or Mitchell Norton at (909) 387-5444.

Western San Bernardino County Bar Association's 19th Annual Bench Bar BBQ

# MARDI GRAS

Please join us as we mix and mingle among  
colleagues and friends

Friday, September 15, 2017

6:00 p.m. - 9:00 p.m.

Cost: \$60.00 per person

(\$70.00 per person after August 31, 2017)

Place: The home of Greg Flynn and  
Angelique Bonanno in Rancho Cucamonga  
(Address & directions provided at RSVP)

Delicious Creole Food, Entertainment, Raffle Prizes,  
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Please RSVP to WSBCBA

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NOTE: A \$60.00/\$70.00 fee will be charged for failure to show or cancellation of reservation  
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**WSBCBA/Lawyer Referral Service needs LANDLORD/TENANT, CIVIL RIGHTS, SSI/SSDI and APPELLATE attorneys** to join our Lawyer Referral Service panels. If you are interested, please contact Deva Mora at (909) 483-0548.

**MEMBERS:** Did you know you can place a classified ad (up to 25 words) for free in the Western San Bernardino County Bar Association's Bar Bulletin? For more information please call Deva Mora at (909) 483-0548.



## Western San Bernardino County Bar Association

cordially invites you to its

2017 - 2018 Installation of Officers and Awards Ceremony

### HONORING:

Legal Assistant  
of the Year

**Nancy Eberhardt**

Court Executive Officer  
SBCSC

Jennifer Brooks  
Lawyer of the Year

**Byron C. Thompson**

Thompson & Thompson

Lifetime Achievement  
Award

**Hon. Paul Egly**

(Retired)

Thursday Evening  
October 5, 2017

5:30 p.m. - Social Gathering  
6:30 - 9:00 p.m. - Dinner & Program

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### 2017-2018 Officers:

**Fernando D. Vargas**

*President*

**Justin King**

*President Elect*

**Thomas Dominick**

*Vice President*

**Matthew Taylor**

*Secretary/Treasurer*

**Daren Lipinsky**

*Imm. Past President*

### Directors-at-Large:

**Fernando Bernheim**

**Angelique Bonanno**

**Hon. Janet Frangie**

**David Goldstein**

**Randal Hannah**

**Diane Hartog**

### Directors-at-Large:

**Gilbert Holmes**

**Dean McVay**

**David H. Ricks**

**Candice Garcia-Rodrigo**

**Mitchell Roth**

**Michael Scaffiddi**

**William Wooten**

Join us as we extend our sincerest appreciation to outgoing  
President Daren Lipinsky

2017 - 2018  
 Installation of Officers and Awards Ceremony  
 Sponsorships

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- \$70.00 Individual     \$650.00 Table of 10     \$50.00 Law Students  
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**Please Mark Your Meal Selection(s)**

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 \_\_\_\_ Vegetable Brochettes (Gluten Free/Vegetarian)

Attendee Names and Food Choice:

|       |       |
|-------|-------|
| _____ | _____ |
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| _____ | _____ |

Please return this RSVP no later than September 25, 2017 to  
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*NOTE: A \$50.00/\$70.00 fee will be charged for failure to show  
 or cancel reservation within 48 hours of event.*



Join us at beautiful Arrowhead Country Club for our  
**17th Annual Bench-Bar Golf Tournament**

**Friday, October 27, 2017**

**Shotgun Start: 1:00 pm**

**Registration starts at 11:30a**

**\$150 player / \$550 team — Dinner only: \$25**

Arrowhead Country Club | 3433 Parkside Drive, San Bernardino, CA 92404 | (909) 882-1638

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| <input type="checkbox"/> Raffle Prize - Your product(s) or Gift Certificate(s) for our dinner raffle:                   |           |               |

**PLAYERS**

Tournament Rules

- Each team must use a minimum of two tee shots per player.
- Select best tee shot, then all players must play second shots from one club length of that point, except putts, which must be played from the same point.
- Play continues in this manner until the ball is holed out.
- Longest drive - trophy awarded.
- Closest to the pin - trophy awarded.
- 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> place trophies awarded.
- Women play from red tees; men play from white tees.
- Each team may purchase/use maximum of 18 Mulligans (only one per team per hole).
- Each team must submit a score card.
- Really pitiful players may bring a croquet mallet.

| Team/Company Name: |  | Single Entry? |    |
|--------------------|--|---------------|----|
|                    |  | Yes           | No |
| 1.                 |  |               |    |
| 2.                 |  |               |    |
| 3.                 |  |               |    |
| 4.                 |  |               |    |

**PAYMENT** Fee includes dinner & 2 Raffle Tickets per player  
 (Limited to 36 teams or 144 players)

Make check payable to SBCBA and mail form and check to:

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 San Bernardino County Bar Association  
 412 East State Street  
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Amount Enclosed: \$ \_\_\_\_\_  
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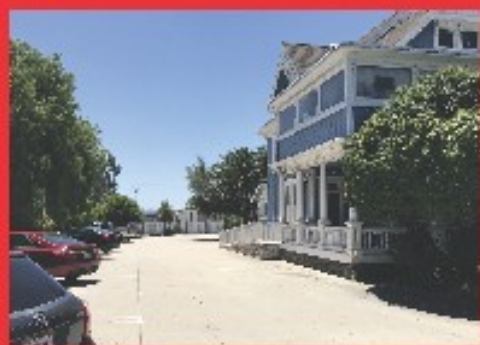
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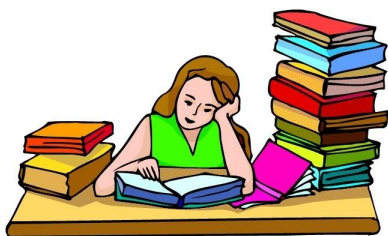
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# NEWS BULLETIN

## Save the Dates

**Bench Bar BBQ-Mardi Gras**  
**September 15, 2017 @ 6:00 p.m.**  
**Rancho Cucamonga, CA 91739**

**Installation of Officers**  
**& Awards Ceremony**  
**October 5, 2017 @ 5:30 p.m.**  
**DoubleTree by Hilton**  
**Ontario, CA 91764**

**Holiday Celebration - Toys for Tots**  
**December 8, 2017 @ 6:00 p.m.**  
**Redlands, CA**