# State settles discrimination allegations over pesticide

By Fiona Smith
Daily Journal Staff Writer

The federal Environmental Protection Agency announced a settlement with state pesticide regulators Thursday that resolves allegations they discriminated against Latino children by allowing pesticide spraying near schools in heavily Latino areas.

The settlement stems from an EPA investigation into whether the state Department of Pesticide Regulation violated Title VI of the Civil Rights Act by failing to limit the use of methyl bromide in fields near six mostly Latino schools in the cities of Oxnard, Salinas and Watsonville between 1995 and 2001. Although the state denies it violated the law, it agreed to increase oversight of the pesticide.

In April, the EPA made a preliminary finding that the state had violated the civil rights law by allowing for an adverse disparate impact on Latino children and began negotiations to settle the matter. Title VI prohibits entities receiving federal funds from enacting policies — whether intentional or not — that discriminate on the basis of race, color or national origin.

The Department of Pesticide Regulation, or DPR, has increased local monitoring of methyl bromide levels in recent years, and in the settlement it agreed to do additional monitoring of a school in Watsonville and to increase public education and outreach on pesticide safety.

"The EPA is committed to ensuring that all Americans receive equal environmental and health protections," said Rafael DeLeon, director of EPA's Office of Civil Rights, in a statement. "That is why [EPA] Administrator [Lisa] Jackson has made it a focus of this agency to clear the backlog of Title VI cases and get resolution in these issues that touch people's lives."

DPR was surprised by the investigation, as it has taken many steps to protect the public from methyl bromide exposure, said Lea Brooks, a DPR spokeswoman.

"We disagree with U.S. EPA about the methodology and assumptions in the analysis and dispute that there were adverse or disparate effects on Latino children during the time period examined, however, we agreed to voluntarily resolve the case because we have implemented significant measures as new information became available to reduce the potential health effects of methyl bromide," Brooks said.

Methyl bromide is a highly toxic pesticide that has been widely used for decades on California farms to protect a wide array of crops, including strawberries. Exposure to the chemical can harm the brain, kidneys and heart, and it is deadly in large doses. State and federal regulations limited its use in recent years, and it is being phased out internationally by 2015 due to its damaging effect on the ozone layer. State regulators have approved a replacement pesticide called methyl iodide, which is also highly toxic. Public health advocates have sued to overturn that approval.

The nonprofit Center on Race, Poverty & the Environment, which first filed the civil rights complaint over the issue with the EPA 12 years ago, excoriated the settlement with the Department of Pesticide Regulation.

"[EPA Administrator] Lisa Jackson and her predecessors delayed action until the children named in the complaint have long since graduated from high school and EPA found a replacement for methyl bromide," said Brent Newell, general counsel with Center on Race, Poverty & the Environment, in a statement. "Then, EPA excluded them, their parents, and their attorneys from EPA's back-room deal that does not even help them or the next generation of Latino children in rural schools."

A study done by Deloitte Consulting at the EPA's request and released in March found that the agency has inadequately handled Title VI complaints over the years. There are currently six other pending Title VI investigations in California, according to the EPA.

*fiona_smith@dailyjournal.com*

# Riverside prosecutors settle suit over raises

By Jason W. Armstrong
Daily Journal Staff Writer

RIVERSIDE — Riverside County settled a lawsuit with the union representing deputy district attorneys, enabling 45 prosecutors to each collect thousands of dollars in pay raises they contended they were denied.

The agreement impacts lawyers who were entitled to "step increases," or pay raises tied to their employment classifications and years on the job. The settlement gives the prosecutors increases they contended they should have gotten during a three-month period last year between pay freezes.

"The whole point of step increases is if you don't perform badly after a year in a spot, you get to advance," said Stephen H. Silver, a partner with Silver, Hadden, Silver, Wexler & Levine PLC in Santa Monica who represents the union, the Riverside County Deputy District Attorneys Association. "The county failed to give credit for time worked when there was no freeze."

While legal observers said they weren't aware of prosecutors elsewhere in the state suing over step increases, the dispute highlights increasing political and legal wrangling over public employees' pay and benefits in the battered economy, including pension rights.

Earlier this year, Orange County sheriff's deputies won the right to a generous pension when the state Supreme Court refused to hear the county's appeal of rulings barring it from backing out of a 50 percent pension increase it gave deputies in a 2001 bargaining agreement.

Because of budget struggles, Riverside County officials froze step increases for deputy district attorneys in the 251-lawyer office from September 2009 through June 2010 and again from October 2010 to the present. During the three-month period when increases were unfrozen, 29 prosecutors reached their anniversary dates with the county and got raises.

But the union contended 45 additional prosecutors were entitled to step increases during that time window. County officials refused to provide the extra pay, said Michael Hestrin, a deputy district attorney who is vice president of the union. According to the settlement agreement, the dispute over who should receive increases involved different interpretations between the county and prosecutors over impacts of the salary freezes on anniversary dates.

The association sued the county in January.

"It was frustrating," Hestrin said. "When we negotiated a new contract, we all agreed they'd pay" the increases.

While the settlement signed by the parties Aug. 9 and 10 provides that the county will pay retroactive step increases to eligible prosecutors who didn't receive them between July and October 2010, the union didn't get everything it wanted. The agreement, for instance, calls for the association to cover its own legal expenses — which the group had sought in its lawsuit to make the county pay.

Figures weren't available by press time on how much back pay the deputies would receive. Prosecutors in the county typically get 5.5 percent raises every six months or year, depending on length of time worked.

County Human Resources Director Barbara Olivier called the settlement fair.

"The real issue is an interpretation of who was entitled to an increase," Olivier said. "We came to an agreement ... so we wouldn't have to incorporate any more judicial costs."

The case is *Riverside County Deputy District Attorneys Association v. County of Riverside*, RIC1101293 (Riverside County Super. Ct., filed 2011).

*jason_armstrong@dailyjournal.com*

# Accuracy of law firm profits questioned

*Dear reader: an incomplete version of this column appeared in yesterday's editions. The Daily Journal regrets the error.*

By Edwin B. Reeser

The law industry is a huge one, with an estimated $100 billion in annual gross revenue. Firms like Baker & Mackenzie, Skadden, Arps, Slate, Meagher & Flom LLP, and DLA Piper each hover around $2 billion in annual revenue, and the top 57 firms all have revenues exceeding $500 million annually.

So when The Wall Street Journal reported this week that a majority of the firms in the AmLaw 50 are misrepresenting their financial performance, according to sources referring to a report issued by the Citi Private Bank Law Firm Group, a Citi group unit, it is big numbers and big news. More than 22 percent of the firms are overstating net income by 20 percent or more.

The article also reveals a spat between Citi and the American Lawyer magazine, publisher of the AmLaw 50, that reflects a complicated issue over financial performance reporting with some seriously competing interests, and more than a few skeletons in the closet for both the lender and the magazine. Of course, we cannot forget the law firms that fundamentally are called out for lying about their financial performance.

We must take note that neither of the players here are disputing or denying that the numbers supplied by a majority of law firms are wildly out of the realm of truth. Citi is allegedly saying more than half of the top 50 law firms in America are materially misstating their financial performance, and that American Lawyer's numbers are misleading. American Lawyer is claiming it's not their fault, they just report the numbers firms have told them. What they have not said is, "and we have known for a long time they were misleading."

Indeed, American Lawyer has replied they really don't think their numbers are that different from Citi's. They both do know and have known for a long time that there are problems with the numbers reported by law firms. But admitting it could prove to be uncomfortable for American Lawyer as the follow up questions become: So why did you folks at American Lawyer not do anything to correct it, why did you persist in using survey results you knew or had strong reason to believe were bogus? And of course, the lens spins back to Citi with the same inquiries, which leads to a panoply of concerns over lending practices and decisions.

Citi has the lion's share of the AmLaw 50, and even AmLaw 100, law firm market for lending. It has been a lucrative and relatively secure lending field, at least until the last three years. While the banks have not typically lost serious money in lending to this sector as of yet (the Bank of America loss of $25 million due to the erroneous handling of a UCC-2 filing being an exception in the Heller Ehrman LLP bankruptcy), this is now the season for working line of capital renewal discussions, and there is growing anxiety about the dependence of law firms on their use of debt.

> If every law firm is misrepresenting their financial performance, and everybody knows it, does it matter?

Underwriting will probably be tougher, covenants will almost certainly more numerous, interest rates may be higher, maximum loan amounts may be lower than prior years, and demands for increased partner capital could be higher. And tolerance for baloney in the numbers from creative modified cash basis accounting practices could be headed towards zero. The Howrey LLP bankruptcy is probably the wake up call. Why? Because the typical approach of lending, say 60 percent of the receivables base, and expecting to be able to comfortably collect all of the outstanding working line didn't work (there is still more than $25 million outstanding). The no brainer credit became a brain damager problem with full recovery dependent on future contingent fee collections; and as previously reported, the law firm turned on its lender and blamed it for its inability to make pension and employee severance payments by holding back on the extension of more credit. (Remember the parable of the frog and the scorpion?)

The crack pipe of debt is now more widespread in the industry than ever, in some cases out of control, and thus threatens the viability of a greater number of law firms. The use of debt is corrupted to arguably inappropriate uses beyond the working needs of the business (distributions to partners of uncollected income is only one of them).

What is not addressed, but lurking under the surface, is the way some law firms have made use of personal lines of credit to partners from the same banks that finance their working capital lines, to finance capital contributions, all of which capital will be lost in most law firm failures and for which the individual partners will still have liability for unpaid balances due to the lender. Then, of course, there are the personal lines of credit to lawyers to pay for their annual living expenses as they wait for year end draws and distributions, which in a failing firm do not arrive or are subject to clawback to pay creditors in a bankruptcy. And the car and home mortgage loans to the lawyers. And we cannot forget the handling of the law firm pension plan accounts, which are a terrific fee generator for the banks. There is a lot more money in play than just the aggregate of the working lines of capital, or secured term loans to the law firms.

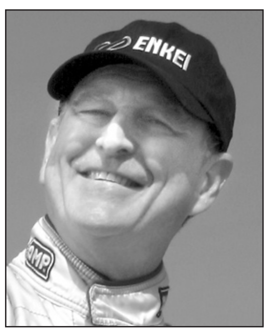
American Lawyer is struggling in the new age of information to maintain its profitability, and this survey of comparative law firm financial performance is a franchise, it defines American Lawyer. If the survey is discredited, and American Lawyer with it, what will the damage be financially? It is too soon to tell, but the risk is that it could be significant.

Citi is struggling with — well the list is so long we can just leave it with Citi has more than a few challenges of its own in the current business environment.

But what is really powerful is that both sides will, in the defense of themselves, be incentivized to spill the beans about how misleading the majority of the most prestigious law firms in the nation are with their financial performance reporting. That is not very promising for impressing clients, or recruiting talent, or for the prospect of future stories about large law firms. This could be the opening chapter in what will prove to be a very revealing series from many sources on what leadership, governance and decision making law firms have adopted.

I was asked "If every law firm is misrepresenting their financial performance, and everybody knows it, does it matter?" My opinion is that not every law firm is misrepresenting their financial performance, and that yes it does matter. If it didn't matter, there would be no need to do it. I think that is a fair message for Citi to convey to their law firm clients. Citi may not have relied on the creatively presented numbers given to American Lawyer when making their business decision to lend. I don't believe that top law firms would provide anything other than the "real" financial performance numbers to their bankers. But I do believe that deliberately releasing false results for publication is corrosively damaging on a wide range of issues beyond reputational, and can cause law firms to undertake imprudent business decisions that destabilize their business, increasing risk and jeopardizing the credit extended to them. That is a fair and relevant concern for a bank. You are free to differ.

But there is another troubling question that this now public tiff has released. When the question of absence of veracity legitimately surfaces as characterizing law firm financial reporting, it quickly spreads to, "And what else have you been saying, and to whom, that you knew was untrue?"



**Edwin B. Reeser** *is a business lawyer in Pasadena specializing in structuring, negotiating and documenting complex real estate and business transactions for international and domestic corporations and individuals.*

# Layoffs will bring court closures in L.A.

Continued from page 1

tive Office of the Courts, the state courts' bureaucracy. Los Angeles County Superior Court comprises $657 million — 28.6 percent — of that amount.

Earlier this week, the Los Angeles court's executive committee approved the three-year plan of cuts and layoffs by the fiscal year 2013-14. In June 2010, the latest figures available, the court had 594 bench officers and about 4,900 employees, whose pay makes up 80 percent of its total budget, according to the court.

> 'There will necessarily be courtroom closures as a result of so many layoffs.'
>
> — *Presiding Judge Lee Smalley Edmon*

The reduction plan comes as Los Angeles court officials have worked furiously to clear logjams in the local civil legal system and make the court system more efficient. Officials have set up a settlement program to tackle employment cases, crafted voluntary litigation stipulations designed to cut down on extraneous motions and discovery disputes, and moved to consolidate the asbestos lawsuits for trial courts in Los Angeles, Orange and San Diego counties.

Tight budgets are exacerbating animosity between the Administrative Office of the Courts and the state's trial courts. This week, San Francisco County Superior Court Presiding Judge Katherine Feinstein said she "mistakenly followed" the AOC's guidance not to layoff workers — to her court's detriment.

Paul R. Kiesel of Kiesel Boucher Larson LLP, who was in San Francisco on Thursday, at a meeting of approximately a dozen senior legal officials to discuss forming a committee of lawyers to lobby on behalf of the state's court system, said the AOC, the courts and the bar need to face the threat together.

"Those differences need to be set aside 100 percent," Kiesel said, or else "We're going to be bickering ourselves to oblivion."

*ciaran_mcevoy@dailyjournal.com*

# Victim Restitution: rights and responsibilities

Continued from page 1

to aggressively pursue "restitution deadbeats" — offenders who owe restitution for violent crimes, but have not fulfilled their court order.

Restitution language is embedded in the California Constitution and is a right for everyone in the state. We can all play a role to get help to victims and better understand the process and obligations of offenders.

Here are some facts about restitution:

In California, victims have a constitutional right (California Constitution Article I, Section 28(b)) to be fully reimbursed for losses as a result of the crime.

Victims have a statutory right to full restitution. (Penal Code Section 1202.4.)

Restitution must always be ordered if the victim has a crime-related loss. There are no exceptions. The victim may be asked to show that the loss is a direct result of the criminal act.

Expenses that can be ordered as restitution include, but are not limited to: medical and mental health treatment expenses, property loss, income loss and support loss. In addition, the defendant can also be ordered to pay future expenses through a modification of the original order.

A defendant's ability to pay is not to be considered when ordering restitution on behalf of the victim. It is only considered when ordering restitution fines above the minimum.

A restitution order is a lifelong debt. It never expires and cannot be discharged in bankruptcy nor should a bankruptcy hold apply to restitution orders.

Parents may be liable for the losses caused by the criminal acts of their children. (Welfare and Institutions Code Section 730.7(a).)

CalVCP offers online training as well as a team of restitution experts who can help answer your questions. We can be reached via our website at www.calvcp.ca.gov or by phone at (916) 491-3714. If you need additional information, please feel free to contact our publications department and request any brochures to distribute to your clients.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