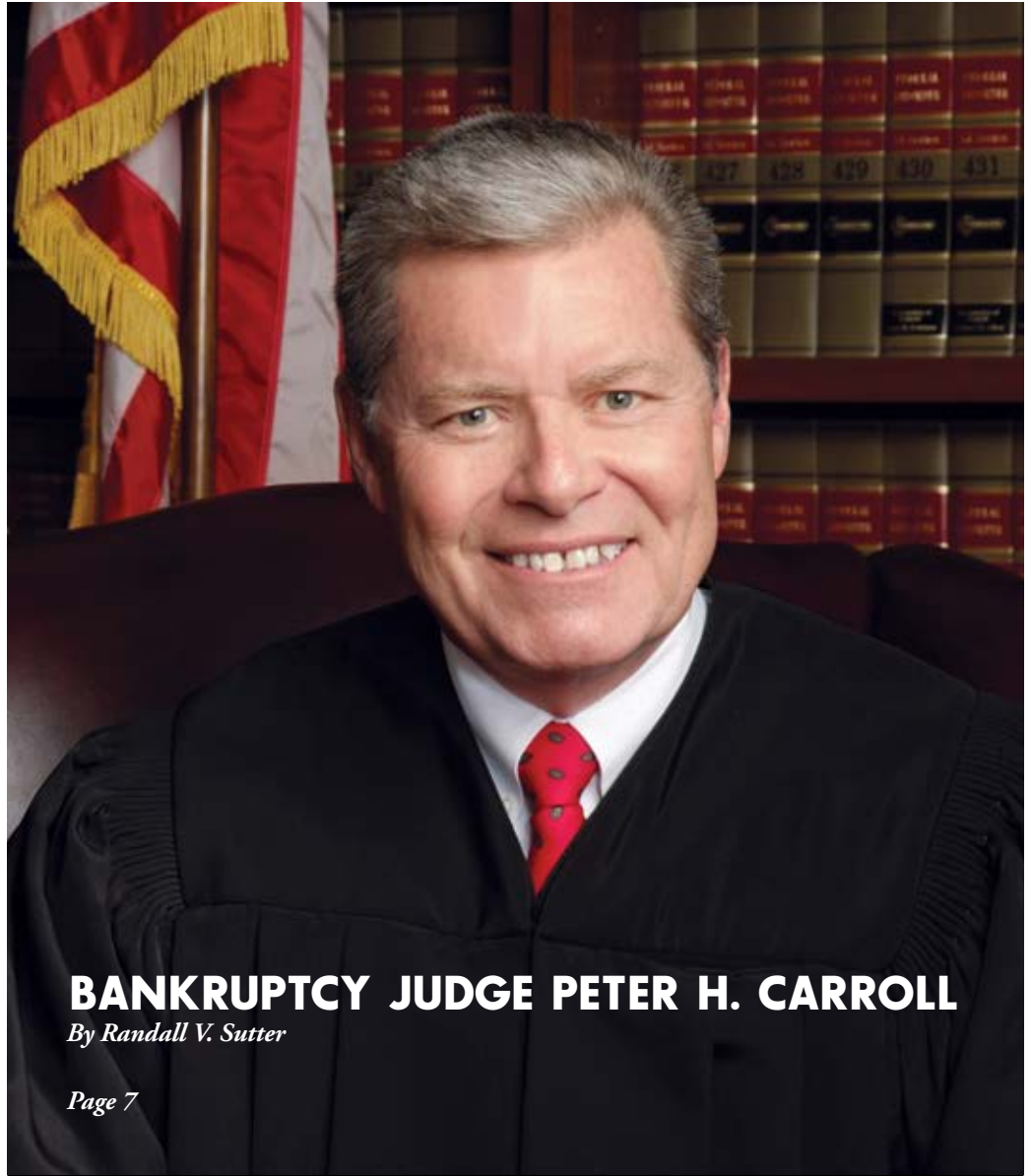




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PRESIDENT'S COLUMN

THE NEW KIDS ON THE BLOCK

by Erik B. Feingold

I have been wracking my brain over the past couple of weeks trying to figure out what to write in my first President's Column. I have reviewed ten years of CITATIONS January columns written by my predecessors, and was thoroughly intimidated by their prose. I don't like to talk (or write) about myself, so this was a particularly unnatural exercise for me.

I consider myself to be social, and after 23 years practicing in the Ventura and Santa Barbara legal communities, I like to think that I know enough of the VCBA membership that I don't need to remind you of who I am and what I do. If we have never met and you have no idea who I am, my apologies. I pride our bar association and its members on our friendliness, so if someone out there does not know me – or would like to suggest how we can best operate your bar association over the near year — please give me a shout and let's meet for coffee or a beer. My treat.

That said, I am going to devote this column not to myself, but to the incoming board members without whom I could not possibly do my job as your incoming president.

Of all the great life lessons my father taught me, one of the best was the Machiavellian concept from *The Prince* that “there can be no better measure of a man than the company he keeps; and therefore one who keeps the company of the wise acquires a name for wisdom, and one who keeps the company of the virtuous is thought to be good, since it is impossible that he should not bear some resemblance to his companions.”

The incoming board of the bar association personifies this concept. I am exceedingly proud of and honored by our diverse incoming group, and feel strongly that each of the incoming board members makes me – and, by extension, the bar association – wiser and better. Here they are in alphabetical order:



Marc Anderson: Marc is a proud native of Minnesota and lives in Oxnard with his wife **Kristi** (also an attorney) and two young children, Bodie and Libby. He is an avid outdoorsman and camper, a competitive Scrabble player, and rocks the accordion. In case you cannot picture Marc, he was the guy wearing the sharp red tuxedo jacket at this year's Nordman dinner. He is a decorated personal injury and medical malpractice trial attorney with the Hiepler & Hiepler firm.



Juan Higuera: Juan is a native of Indio, and lives in Goleta with his wife. He was a teacher in his past life, and is currently an associate with the Hathaway Law Firm in Ventura, where he practices education law, criminal defense, bankruptcy, and personal injury. If you ever want to get on Juan's good side, bribe him with chocolate. His co-workers describe him as “our angel,” who is always the first one to volunteer. He is a truly nice guy, and a terrific addition to the bar board.



Rabiah Rahman: If you have not met Rabiah yet, please make the effort to do so. You cannot miss her; she attends nearly every bar function! Perhaps the friendliest and most outgoing person I have ever met, she is bursting with energy and enthusiasm. Before her current stint as an employment law litigator with **Mike Strauss's** firm, the Boalt Hall grad traveled the world advocating on behalf of refugees from Africa and the Middle East. She has a lengthy and impressive record of volunteer work, and her

passion for public causes was demonstrated recently in her commencement address at Fresno City College. (<https://www.youtube.com/watch?v=9fHyTcHyGWM> (starting at 47 minutes)). Rabiah is a real go-getter, and the bar association will benefit tremendously from her presence.



Jaclyn Smith: Jaclyn comes from a long line of Ventura County legal talent. Her uncle is County Counsel **Leroy Smith** and her aunt is **Kathleen Smith**, a litigator with Schneiders & Associates in Oxnard. Jaclyn is an Assistant County Counsel currently representing the Behavioral Health Department and Juvenile Dependency agencies in litigation matters. She loves to camp and is a competitive runner who recently completed a marathon with immediate past president **Charmaine Buehner**. She is gracious, kind and always the first to volunteer for worthy causes such as the Ventura County Legal Aid Clinic and Girls, Inc. (through Women Lawyers) leading a writing group for incarcerated minors. Jaclyn has a big heart and her positivity is infectious.

Erik B. Feingold is a litigator with Myers, Widders, Gibson, Jones & Feingold in Ventura. When he is not dragging his family on “Bataan-like” hikes, “torturous” bike rides, and “blizzard-filled” snowboard trips, you can find Erik pursuing his passions of surfing and mountain biking. Erik is married to Shauna Feingold, who is in the process of returning to the teaching profession after a thirteen-year hiatus to raise their children Stella and Sloane, who are both Spanish immersion students in Ventura. Erik and his family live in Ventura with their labradoodle, Olive.

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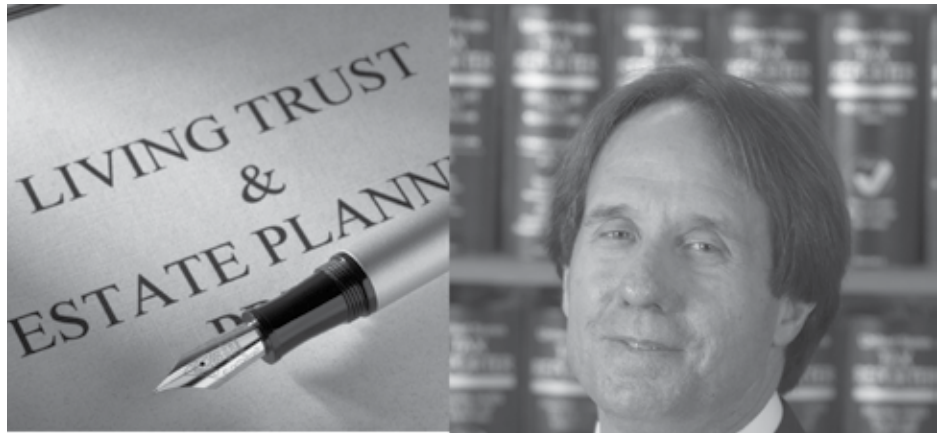
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BANKRUPTCY JUDGE PETER H. CARROLL

By Randy Sutter

Effective Aug. 1, 2016, the Honorable **Peter H. Carroll** began serving his second term as a United States Bankruptcy Judge for the Central District of California. Judge Carroll has served on the bankruptcy court for the Central District since 2002 and was the chief judge from 2011 to 2014. On May 10, 2014, Judge Carroll succeeded Judge Robin Riblet as the resident bankruptcy judge for the Northern Division of the court (located in Santa Barbara), which includes Ventura County bankruptcy matters as well as San Luis Obispo and Santa Barbara County matters.

Judge Carroll spent seventeen years in private practice, nine years with the U.S. Department of Justice, and fourteen years on the bench. He was a shareholder with Brite & Drought in San Antonio, Texas before joining the Department of Justice in 1993. He served as an assistant U.S. trustee in Fresno and was recognized with the Director's Award for Management Excellence in 1999. He received his appointment to the Bankruptcy Court bench from the Ninth Circuit on Aug. 1, 2002. Judge Carroll received his undergraduate degree from the University of California, Berkeley in 1974 and his J.D. in 1978 from St. Mary's University at San Antonio, where he was a member of the *St. Mary's Law Review*.

Judge Carroll is certified as a specialist in both consumer and business bankruptcy law by the American Board of Certification. He is member of the National Conference of Bankruptcy Judges and Federal Bar Association and is admitted to the Texas Bar (1978) and California Bar (1992). Judge Carroll is widely respected and recognized by the bankruptcy bar, community and his peers as one of the most learned and experienced judges on the bench in the Central District of California.

Judge Carroll allowed us the opportunity to interview him.

Why did you decide to become a judge? And why the bankruptcy court?

I graduated from law school in 1978 – the same year Congress changed the practice of bankruptcy law with the enactment of the Bankruptcy Code of 1978. After graduation, I became an associate with Brite, Drought, Bobbitt & Halter, a law firm with an emphasis in oil and gas law in San Antonio, Texas. When the savings and loan institutions failed in the early 1980s, bankruptcy lawyers were in high demand and that soon became my specialty. I always wanted to serve as a judge. After seventeen years in private practice and nine years with the U.S. Department of Justice doing bankruptcy litigation, appointment as a bankruptcy judge was the next logical step in my career.

What are the traits of a good judge?

A good judge is even-handed, decisive, maintains complete control of the courtroom, and has the temperament to handle attorneys, parties and witnesses in difficult situations. A good judge knows the law, adheres to precedent, quickly identifies controlling and distinguishing facts in a contested matter, and applies the correct standard of law to the disputed issues. A great judge has all of these qualities, but acts with wisdom and grace.

What advice do you have for the lawyer who does not practice regularly in bankruptcy court?

1. Be candid. By misrepresenting facts or hedging on direct questions from a judge, a lawyer risks losing in an instant a reputation which may have taken years to build.
2. Know the rules (Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California). It's difficult, if not impossible, to play the game with professionalism and any degree of success if you don't know the rules.

3. Be civil. The judge, court staff, witnesses, and opposing counsel must be treated with respect. Counsel must remember to direct all comments to the judge, not to each other. Personal attacks in the courtroom or in the papers, interruptions, impolite remarks, witness badgering, and other rude behavior is not tolerated in bankruptcy court.

Do you recall any particularly interesting cases over which you presided as a bankruptcy judge?

On Dec. 3, 2007, I was appointed by the Ninth Circuit to preside over a chapter 9 bankruptcy case – *Valley Health System (VHS)*. A plan for the adjustment of Valley Health System's debts was confirmed in 2010. The case was interesting because the issues arising in chapter 9 bankruptcies are quite different from those in cases filed under chapters 7, 11, or 13. The issue of eligibility was hotly litigated in *VHS* and we made some new law in the area. Few bankruptcy judges have the good fortune to preside over a chapter 9 case.

You are a strong advocate for pro bono legal services and actively support the Northern Division Bankruptcy & Consumer Debt Clinic (currently operating Fridays 10:00 a.m. – 12:00 noon at the U.S. Bankruptcy Court in Santa Barbara). Why do you think it is important to offer these services, and how does it benefit the court?

Access to justice is one of the goals of our court's Strategic Plan adopted a few years ago when I was chief judge. Over 30 percent of bankruptcy petitions in the Central District of California are filed by individuals who are not represented by attorneys. Pro se filings place an administrative burden on the court. A pro se's petition is not filed electronically. It is a paper filing that takes longer to process. It may be incomplete or replete with errors. Many are dismissed only to be refiled shortly thereafter. Calendars for creditors' meetings and court hearings

Continued on page 9

Letter to the Editor

As a member of the CITATIONS editorial board, I can't resist flagging **Lindsay Nielson's** planned epitaph which he described in our November issue.

After Lindsay turned down an invitation to golf with Arnold Palmer and immediately regretted it, Lindsay wants this quote on his tombstone: "Could have played with Arnold Palmer, but he chickened out."

To me, it sounds like Lindsay, one of the most honest, ethical lawyers I have ever known, plans to trick us with this quote, which seems to claim that Arnold Palmer "chickened out" from golfing with Lindsay.

Kathleen J. Smith, Attorney at Law

January - Question of the Month:

How do you deal with rude opposing counsel?

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BANKRUPTCY JUDGE

PETER H. CARROLL

Continued from page 7

are longer because it takes more time for a trustee or the court to deal with a pro se matter than a matter in which the debtor is represented by counsel.

To address this problem, the court has established a pro se clinic in each of its five divisions. The clinic in Santa Barbara is staffed by volunteer attorneys who counsel pro se debtors in deciding whether they should seek bankruptcy relief, and if so, whether they should file under chapter 7, 11, or 13. Volunteer attorneys explain the process and assist pro se debtors in completing the bankruptcy petition and supporting documents accurately, thereby reducing the risk of dismissal and increasing their ability to navigate the process successfully and ultimately obtain a discharge. Volunteer attorneys are listed on the court's Pro Bono Honor Roll and recognized at a reception held annually in conjunction with the American Bar Association's National Pro Bono Celebration. The clinic's work promotes access to justice by providing valuable legal assistance to unrepresented debtors which, in turn, reduces the administrative burden of pro se filings on the court and the cost of services provided by bankruptcy practitioners to clients. It is a worthwhile endeavor, and I encourage lawyers interested in serving the court and community to volunteer.

You were recently reappointed by the Ninth Circuit for another fourteen-year term as a bankruptcy judge. Do you have any plans to retire in the near future?

I enjoy serving as an active bankruptcy judge in the Northern Division. I will not be eligible to retire for a few more years and have no plan to retire in the near future.



Randy Sutter handles bankruptcy, business, and employment law. He is a partner at Rounds & Sutter in Ventura.



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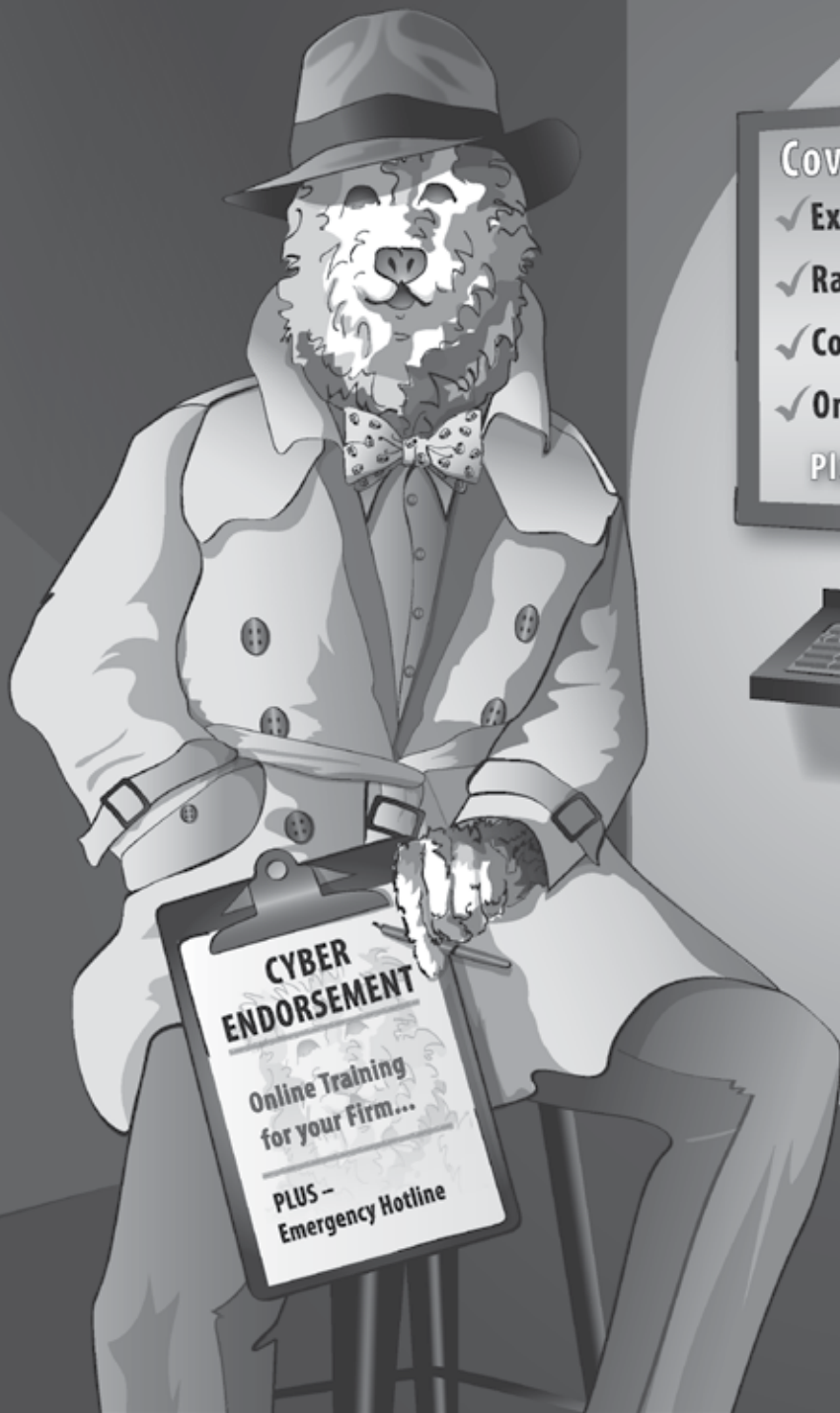


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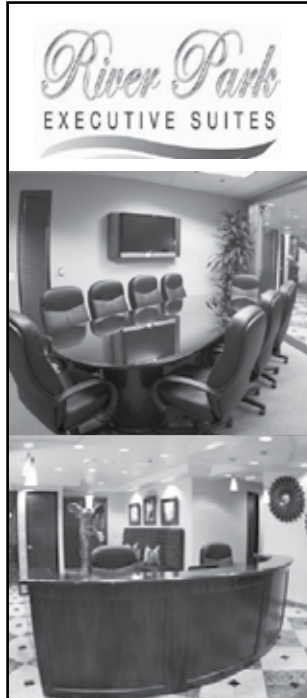
By Wendy Lascher

If you haven't yet read *Butler v. Sheriff of Palm Beach County*, 685 F.3d 1261 (11th Cir. 2012), you're missing out. We don't have room to reproduce the entire opinion, but this first paragraph will give you a taste:

In one of his ballads, Jim Croce warned that there are four things that you just don't do: "You don't tug on Superman's cape/ You don't spit into the wind/ You don't pull the mask off that old Lone Ranger/ And you don't mess around with Jim." He could have added a fifth warning to that list: "And you don't let a pistol-packing mother catch you naked in her daughter's closet."

Thank you, Judge Carnes.

Wendy Lascher is an appellate lawyer at Ferguson Case Orr Paterson LLP, and editor of CITATIONS.



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“HOLY COW” – JIM SPENCER

By Lou Vigorita

Given the current state of affairs following this national election it is a particular cruelty that **James “Jim” L. Spencer**, who was a standard-bearer for magical arts, a mentor of rookie Toastmasters, and a profoundly decent colleague, should depart now, when we have never been more in need of those qualities.

To remember Jim was to recall anecdotes that scream “Holy Cow!” Once we were waiting under the canopy for the valet to bring our car. It was a very enjoyable evening at the Magic Castle in Hollywood where we had been guided through several timed magic shows by Jim and his lovely and talented wife of 26 years, Shirley Lorraine Spencer. Since Jim was a member of this exclusive club due to his proclivity and talent as a professional magician, we were treated to all of the “shows” because Jim knew how to time them and make sure we were in the right place at the right time. I never saw so much magic before or since! There were small stadium performances, as well as close ups with “sleight of hand” (my favorite) that were truly amazing. Along the way Jim attempted one on us while waiting in the hallway, and surprisingly he failed. I chose from the deck an 8 of spades but he failed to “conjure” it up and briefly remarked, “Well, that was a new one I am still perfecting. Let’s go on in to the next show.” Thinking it was merely one slip-up during a truly amazing evening of card cuts, close-up, parlor, and street magic, I forgot about it...until the end of the evening. Under the canopy interspersed among the revelers while waiting for my car a genie hologram appeared in midair and asked me, “Lou, is this your card?” And there it was: The 8 of spades in the hologram’s hand! I turned to Jim and he had that impish smile which I readily understood meant, “welcome to my world.” That is the best example that I have which describes how I perceived Jim. Sharp and entertaining in a world filled with magic and unlimited possibilities.

The Ventura County *Star* reported that Jim passed away at the age of 74 from a swiftly-moving inoperable brain tumor on Sept. 30, 2016, with Shirley at his side. Jim was born Feb. 19, 1942, in Los Angeles. He graduated from Cal State LA and Southwestern School of Law, then served in the United States Army as military intelligence, spending time in both South Korea and at the Pentagon.

Jim’s solo law practice focused on estate planning and business law. He taught business law courses at Ventura College for nearly 40 years. His interest in magic began at age fourteen. He used the old unbreakable rope trick in jury summation. **Glenn Campbell** represented the defendant in a case in which Jim was trying to collect fees flowing from a contract that Jim felt could not be broken. Glenn describes Jim’s closing argument in disbelief: “There he was in front of a jury with a short rope that he cut in half, and then magically produced it whole and uncut before the attentive jurors, exclaiming that some things just refuse to be broken.”

“I just sat there watching my case go down the tubes. Jim captured their attention and won them over. What could I say or do in response? They loved him!” The jury concluded that Jim’s client’s contract was indeed unbroken, one of many examples of Jim’s communication skill.

As half of Spencer/Lorraine Entertainment since 1988, Jim brought magical and comedy performances to many charitable organizations and private parties. No matter if it was Toastmasters, Rotary or the Salvation Army, Jim had the flair for entertaining while making his point and keeping your attention. Once I asked him to advise on using an overhead projector (before Power Point), and he gave me a one hour demonstration of all the things you could do with an overhead projector during a presentation. I still remember the little cardboard flap that he attached with Scotch tape that assured a smooth transition without the busy screen between those pesky plastic slides.

Jim’s primary persona was that of Professor Tinker, a medicine show recreation of Old West vintage. His sleight of hand was very

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good and I think I may have bought some snake oil from him once. Jim was co-author of "Two On the Aisle," writing theater reviews for the Ventura Breeze and the Ventura County Reporter for over twenty years. Evidence of his love for Shirley is epitomized in his repeated comment about their sharing of life such that "I write the vowels and Shirley writes the consonants... because there were more of them." It was famously a team effort with each interacting in a loving and participatory way that was the envy of many. Succeeding as partners on and off the stage is not an easy feat, and that attested to Jim's respect and love for Shirley. His own years of performance as an actor and singer on local stages endeared him to equally many.

Jim was a long-time member of the California Bar Association, Hollywood's Magic Castle Academy of Magical Arts, Downtown Rotary, the Salvation Army Advisory Board, Toastmasters International, Business Network International Network of Champions, and many other arts and charitable organizations through the years. An avid theater-goer, Jim was a major force behind establishing the Ventura REP awards for recognizing local talent which has evolved into an unprecedented cooperation among Ventura County theaters.

A memorial service was held on the day before International Day of Magic, Oct. 30, 2016, Jim would be honored to have contributions made to a local theater of your choice or to the Salvation Army (Ventura Corps).



Lou Vigorita, a frequent contributor and former CITATIONS editorial board member, practices workers compensation and Social Security law in Ventura.

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SIGNIFICANT CHANGES TO LOCAL PROBATE RULES

By Amber Rodriguez



During his annual presentation to our section in 2015, **Judge Glen Reiser** “encouraged” (and we all know what it means when a judicial officer “encourages”

something) our section to review the Local Rules for major revisions and updates. The board for your Estate Planning and Probate Section heeded Judge Reiser’s call and began an extensive review and overhaul of our local probate rules. It was not a quick or easy process.

The new local rules (Chapter 10 of the Ventura County Superior Court Local Rules) have finally been approved by the court and will be in effect beginning Jan. 3, 2017. More information can be found on the court’s website at www.ventura.courts.ca.gov.



Amber Rodriguez is the Chair of the Executive Committee for the Estate Planning and Probate section of the VCBA. Her practice focuses on probate and trust litigation

and administration, estate planning and conservatorships. She can be reached at arodriguez@estateattorneycalifornia.com, or you can visit her website at estateattorneycalifornia.com.

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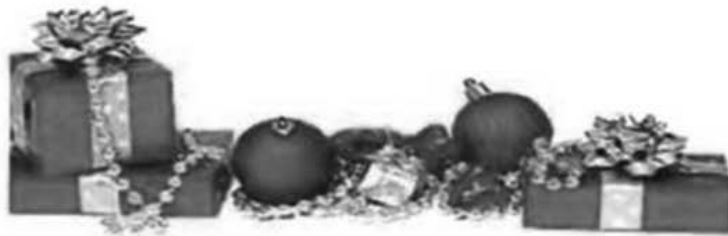
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Exec's Dot...Dot...Dot...

by Steve Henderson, M.A., CAE



Twelve new admittees were sworn in Dec. 6 inside Courtroom 22, presided over by **Justice Steven Perren** and capably assisted by **Judge Donald Coleman**. Taking the oath were **Robert Graham, Rachel Reed, Beau Braunberger, Blake Hannah, David Dorsey, Taylor Daxnn, Keri Nesbitt, Ashley Reese, Marilyn Rossa, Anita Barooni** and **Conrad Wilton**. The pass rate for the July Bar Exam was a crusty 43 percent, a 32-year low...



Bar leadership complemented the event with presentations by: Bar President **Erik Feingold**; Barristers President **Josh Hopstone**; CYLA Rep **Katherine Becker**; and Women Lawyers President **Kymerley Peck**...



The Law Offices of **Lowthorp, Richards, McMillan & Templeman** are pleased to announce that partner **Cristian Arrieta** has been chosen as one of 30 participants for the Ventura County Leadership Academy. The only attorney selected among local police officers, firefighters and folks from the non-profit sector...

Although 80 percent of ABA-accredited law schools had double-digit percentage decreases for students admitted, bloggers observed following the Dec. 15 annual release of Standard 509 Information Reports that this year marked the first time that women outnumbered men as JD students. Deborah Merritt, a professor at the Ohio State University's Noritz College of Law, found that women now make up 50.42 percent of law students at ABA-accredited schools. However, the Kyle McEntee blog Law School Transparency wrote that, on average, higher-ranked law schools still have significantly smaller percentages of female law students... **Chris Gray** and **Claudia Barba** have



joined forces and established Gray & Barba LLP effective immediately

If you, like way too many lawyers, have waited this long to complete your MCLE requirements, the bar association has good news for you. We have scheduled the many hard-to-get courses for your ease during this tension-filled month of completing those pesky CLEs required by the State Bar. On Jan. 17, Family Law will provide a Substance Abuse event as will Estate Planning and Probate on Jan. 26. Both

Inns of Court and the Ventura County Trial Lawyers will offer Ethics events Jan. 12 and 24 respectively. Additionally, the Conejo Valley Estate Planning Conference presents an activity Jan. 19 offering an hour of bias and an hour of ethics. Lastly, when you are real desperate, the San Fernando Valley Bar Association and the Santa Barbara County Bar Association have scheduled all-day CLE events on Saturday Jan. 14 and 21. I can put you in touch with the folks in charge of the events. You are welcome everybody!

Our 27th Annual Bar Leaders Planning Session has been scheduled for Saturday, Jan. 28 and will be presided over by President **Erik Feingold**. This event convenes with leadership of our Board, Sections, Affiliates, committees and friends of the Board gather to discuss the year in review and 2017 and the future. Invitations will be out shortly, but do mark your calendars. Feingold insists on adjourning at 11:30 a.m....



On a personal note, longtime Member Relations Director **Nadia Avila** is departing our association, effective Jan. 2, to greener pastures with the Law

Offices of **David Karen**. Nadia managed our Lawyer Referral Program, the Mandatory Fee Arbitration Program, CITATIONS and our Legal Services Directory ad sales, all MCLE record keeping, our social media Queen and all sorts of rewarding and distasteful responsibilities. Thanks for the hard work and contagious laugh. Your dream of having your name in **bold** in our monthly mag is now yours...

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He will be attending the BCS game in Tampa on Jan. 9. Henderson may be reached at steve@vcba.org, FB, LinkedIn, Twitter at [steve_hendo1](#), Instagram at [steve_hendo](#), Snapchat at [iamhendo1](#), or better yet, 650-7599.

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