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CITATIONS

SEPTEMBER - TWO THOUSAND THIRTEEN

THE NEW FAST TRACK RULES OR “BE THERE, OR BE SQUARE”

by Mark E. Hancock

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Photo courtesy of Carrie Broggie

JOEL MARK
DAVID LAUFER
WILLIAM E. PATERSON
CAROL M. MADEJA
JACQUELINE HALL
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STEVE HENDERSON

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As I was settling into my new office at Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, my old former adversary and now new colleague, **Alex Gutierrez**, came into my office to welcome me. He was not the first. Everyone here has been so nice to this old warrior. Anyway, Alex and I spent some time catching up, and he also spent some time giving me the 411 on how things work around here.

Toward the end of the conversation, he mentioned how he enjoyed my past President's Messages and asked me how I came up with the topics. My only thought was: "Holy crap! I have another deadline for the September issue of *CITATIONS*."

I know that the President's Message is supposed to have some relationship to weighty issues relevant to Ventura County practitioners. In an earlier message, which I am sure you all read with great interest, I offered some reflections on the transition, perceptions and changes that brought me to Ventura County 13 years ago. This month, however, all I can offer are a few more reflections on the transitions, perceptions and changes that have shaped my own life over the past several months. So, please indulge me. I promise you, as I promised Alex, that future messages will return to more relevant issues of the day.

The first transition, as you know, is my transition from the Nordman firm to the Hathaway firm. What I discovered in the

PRESIDENT'S MESSAGE: MORE TRANSITIONS, PERCEPTIONS AND CHANGES *by Joel Mark*

process was that the Ventura County legal community is very much like its own law firm. So many of you were kind enough to reach out to me and the other survivors of the sinking of the Nordman firm – all with genuine wishes for our future success as we went elsewhere, and many with offers of housing or more formal associations. As of this time, everyone – attorneys and staff – has ended up somewhere or has an offer to do so when the Nordman firm finally is wound down.

Having been a partner in a prior life in the largest law firm in the world, Baker & McKenzie, a firm with about four times the number of current members of the VCBA, I can attest that I feel closer to my "partners" here within the Ventura County legal community than I ever did with most of my partners at Baker & McKenzie. I again repeat that it is good to know that we still have here a sense of community that holds strong even as we are competitors and adversaries.

The second major transition in my life recently, and again I apologize for using this forum for such a personal reflection, was the passing of my father, Dr. Jerome S. Mark. He passed exactly 95 1/2 years to the date and hour of his birth. He had quite a run, and I know of no one who lived life more fully.

For 50 years, he was a practicing pediatrician in the San Fernando Valley. He was a consummate professional, he was an expert diagnostician, and he had an exceptional bedside manner. As someone once related to me: "Your dad was 'mellow' before anyone knew what the meant." Frankly, I think his love of the profession was directed far more to the mothers than to the patients. That was Pop.

I remember the time he retired. A letter was sent out to his patients about it. I recall taking my daughter's soccer team to an after-game pizza lunch and overhearing two women in the booth behind me lamenting about the retirement of Dr. Mark and how they were so concerned that they would never find another pediatrician as good as my dad.

As good a physician as my father was, however, he was a challenge as a parent. His father died when my dad was five, and

his mother had severe health issues. By all accounts, she was not much of a parent either. So my dad had to make up parenting as he went along, especially after my Mom passed when I was just 14.

I would say he got it right about 85 percent of the time. Other times, however, as I got older, we would get into it. A number of those conversations would end with him extending his middle finger and walking out of the room. I came to understand that it was not a mean or obscene gesture. It was just his way of telling me: "Ok, kid, I admit you are right, but I still am the father and I still get the final word."

On the day he passed, I got the call that he had been put on life support, and they wanted a family member to come down to the hospital in Santa Monica. Leslie and I raced down there, probably breaking several traffic laws in the process. When we arrived, it was clear that he no longer was cognitive. The doctor told me that he probably had had a massive stroke or heart attack, but that he was functionally gone with no hope of recovery.

Ever the lawyer, looking for any loophole, I asked repeatedly: "Are you sure? Is there nothing else that can be done?" After much persistence along that vein, the doctor finally lost patience with me and told me that he was so sorry, but that my dad really was functionally deceased. I finally gave the doctor permission to give the order to remove life support.

As Leslie and I stood by his bedside, she looked down at his left hand and exclaimed: "Look!" As he had slipped away, his left hand had curled up into a soft fist, except that his middle finger was extended as straight as could be.

"Well, Old Man," I thought, "You got the final last word again one more time after all."

What does my dad's passing have to do with the Ventura County legal community? All I know is that, when I first joined the Nordman Firm, **Jon Light** included me in a panel presentation on employment law. When

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PRESIDENT'S MESSAGE:

Continued from page 3

Jon introduced me, he began by explaining: "Joel's father saw me naked." Jon had been a patient of my dad's. So, I guess the old man did have at least some influence within the Ventura County legal community, if only with regard to the care and well-being of Jon Light's rear end.

Finally, I want to thank everyone in our legal community who was aware of both of these personal transitions and who reached out and offered support to me as I have gone through them. I appreciate that support so very much. Thank you.

Joel Mark is of counsel to Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez in Ventura. He is happy to be managing nothing anymore, except for his duties as President of the Ventura County Bar Association. He thanks all of his colleagues for their well wishes regarding the transitions about which this message is written.

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Exhibit 6

Exhibit 7

Exhibit 8

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THE NEW FAST TRACK RULES OR “BE THERE, OR BE SQUARE”

by Mark E. Hancock

By now, attorneys should be aware that changes have been made in how the Ventura Superior Court manages compliance with the civil case management rules, AKA “fast track.” The overall effect of these changes is that the court is now less maternal; the parties and their attorneys are, under this new regime, more responsible for their own compliance with the fast track/case management rules and deadlines.

One of the changes is how courts deal with “the” case management conference. Gone is the day of all the little subsidiary conferences and OSCs re service, when the Court would mail out a “Notice of Case Management Conference” to counsel several months after the filing of a case, requesting “Case Management Statements” from counsel, regarding such subjects as service, discovery still to be done and trial length estimate to be filed no later than fifteen days prior to “the” case management conference.

Now, pursuant to Rule 3.03.1 of the Ventura County Superior Court Rules, and Rule 3.722 of the California Rules of Court, a “Notice of Case Assignment and Mandatory Appearance” is provided to counsel filing a new complaint at the time of that filing. This notice identifies the courtroom and judge to whom the case is assigned and sets forth the date, time and courtroom of a **combined** (i.e., “super,” “all-inclusive”) initial case management conference and OSC re sanctions and/or dismissal for failure to file proof of service and/or take default(s). The date is approximately five months after initial filing.

A copy of this notice is to be served by the filing party on all named defendants and/or new cross-defendants. Obviously, the fact of service of this “Notice of Case Assignment and Mandatory Appearance,” if accomplished, should be noted in a filed proof of service.

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THE NEW FAST TRACK RULES OR “BE THERE, OR BE SQUARE”

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This is a big change in a number of important ways. First, it means that the filing party is responsible for giving notice. The court is no longer giving notice of this new combined conference, which includes trial setting. Especially since this conference includes trial setting, it should not be ignored. If the filing party doesn't give the notice, it can cause potential problems.

Second, by eliminating the earlier conferences and OSCs re service, it means counsel have to watch out for the rules regarding when service is to be accomplished on their own, or they will be that much further along in the case (i.e., five months in) when it may be harder to deal with the situation.

Third, showing up at this new “super CMC” is now declared mandatory. Appearance at the CMC in person or by phone is necessary, unless the court notifies you otherwise. Appearance is now the rule, not the exception. It is less likely than in the “old days” that this CMC will be taken off calendar, even if the parties submit their case management statements ahead of time.

Case management statements are still required, pursuant to CRC, Rule 3.725. Parties must meet and confer 30 days before the super CMC, per CRC, Rule 3.724.



Mark E. Hancock is an attorney, with offices in Ventura, who handles insurance disputes, and insurance, personal injury and real estate litigation.

PRACTICE TIP: TENDER THE LAWSUIT TO THE INSURER

by David Laufer

Your new client is sued for wrongful conduct. You are not an insurance coverage lawyer; you do not have time to analyze the client's portfolio of insurance policies; and your client does not know if its earlier insurance policies have been validly terminated, cancelled or renewed ("TCR").

"My insurance agent said the lawsuit is not covered by my GL or D&O policies," Your client says. "Can you defend the lawsuit?"

You do not discuss with your client investigating insurance coverage or the tender of the lawsuit to an insurer for defense. Your retainer agreement with your client does not exclude the duty to investigate insurance coverage for the lawsuit or the duty to tender the lawsuit for defense to an insurer.

Do you advise the client to tender the lawsuit to the insurers for defense? Yes. Why? Because in *Jordache Enterprises Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739,745, the Supreme Court implied that a lawyer may have a duty to inquire about a client's insurance coverage and a duty to tender a case for defense to the insurer.

The following suggestions should be reviewed with your client, and documented, to avoid potential prejudice or liability to the client:


1. Tender the lawsuit for defense to all known insurers identified in writing by the client;
2. Tender the lawsuit for defense under the any earlier insurance policies because they may not have been validly TCR;
3. Request each insurer of a TCR policy to provide proof of a valid notice sent to the insured about the changes made to a previous policy;
4. Notify the insurer that a responsive pleading is due on a date certain;
5. Obtain and confirm in writing an extension of time to file responsive motions and pleadings to challenge the claims and the jurisdiction over your non-resident corporate client; and

6. Advise the insurer that if it does not defend the client, you will and the client will request reimbursement of legal fees and costs.

Related Cases to Read

Fields v. Blue Shield of Cal. (1985) 163 Cal. App.3d 570, 579, says insurance companies are "bound by the greater coverage in an earlier policy when a renewal policy is issued but the insured is not notified of the specific reduction in coverage." *Koltar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1121, fn. 3 provides that the "named insured" entitled to notice of cancellation under Cal. Ins. Code section 677.2(b) includes "additional named insureds" who are added as insureds after the policy issues.

David Laufer is a former general counsel of a public company. He practices at Burke, Williams & Sorensen LLP, focusing on class actions, insurance coverage, franchise-distribution disputes, Prop. 65 and risk management strategies for business enterprises.



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FILM REVIEW: "FRUITVALE STATION"

by Bill Paterson

In the pre-dawn hours of New Year's Day, 2009, a fatal drama played out at the Fruitvale BART station in Oakland. When it was over, young Oscar Grant lay dying on the station floor. In the aftermath, the transit police officer who shot him ended up in prison and many of the officers on the scene were fired. "Fruitvale Station" is a dramatic recreation of the events leading up to that fateful night. It is a remarkably assured piece of work by first-time director, Ryan Coogler.

Oscar Grant was an innocent victim of a racist cop who initiated a confrontation and then kept pouring fuel on the fire. (While the term "racist" is sometimes thrown around too casually, there is no other way of describing the police actions in this case.) Given the stark moral equities, it would have been easy to turn this film into a one dimensional piece of cinematic moralizing. But Coogler resists that temptation, electing instead to focus on a young man's struggle to find himself in the world.

When we first meet Oscar he is a sad product of the streets. He can't keep a job, has done prison time and ekes out a living dealing dope. His only apparent redeeming quality is his love for his young daughter but even that has not led him to turn his life around. And turning your life around is not easy when all your past mistakes come back to haunt you. But ever so slowly it dawns on Oscar that he is at a dead end. He knows something must change. The tragedy is that he was just on the cusp of that change when a police bullet ended his life. Oscar Grant did not die for anything he did wrong that night. He died because the police could not see past his color, his age and the way he was dressed.

"Fruitvale Station" has been impressively cast, scripted and shot. A number of scenes especially stand out. One of them takes place between Oscar and a young white woman in a market. She is there to buy fish but is not sure how to prepare it. Oscar is standing nearby and you can almost see the wheels turning in his head as he decides how to put a move on her. But then something else happens and it begins to change the way you see Oscar. Then there is an almost

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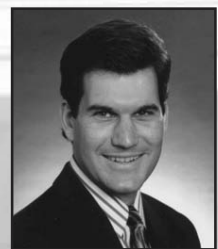
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BAR TASK FORCE SEEKS ADMISSIONS REFORM COMMENTS

by Carol Madeja

The State Bar of California's Task Force on Admissions Regulation Reform will accept comments on its Final Phase I Report *until 5 p.m. on Sept. 5*. The entire report is available online at www.calbar.ca.gov/AboutUs/PublicComment/201307.aspx, but an overview of the proposed recommendations follows:

Pre-admission: A competency training requirement fulfilled prior to admission to practice. There would be two routes for fulfillment of this pre-admission competency training requirement: (a) at any time in law school, a candidate for admission must have taken at least 15 units of practice-based, experiential course work that is designed to develop law practice competencies, and (b) in lieu of some or all of the 15 units of practice-based, experiential course work, a candidate for admission may opt to participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.

Pre-admission or post-admission: An additional competency training requirement, fulfilled either at the pre- or post- admission stage, where 50 hours of legal services is specifically devoted to pro bono or modest means clients. Credit towards those hours would be available for "in-the-field" experience under the supervision and guidance of a licensed practitioner or a judicial officer.

Post-admission: Ten additional hours of mandatory continuing legal education courses for new lawyers, over and above the required MCLE hours for all active members of the Bar, specifically focused on law practice competency training. Alternatively, credit towards these hours would be available for participation in mentoring programs.

Continued on page 16



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FILM REVIEW: "FRUITVALE STATION" *Continued from page 11*

throwaway scene on New Year's Eve when Oscar and a young white father-to-be are conversing outside a restroom. Totally absent is the racial divide that will claim Oscar's life a few short hours later. And finally there is the deadly encounter at the Fruitvale Station as things spin out of control. Words such as "riveting" and "gripping" scarcely do justice to what is up on the screen. It is filmmaking of the highest order.

Michael Jordan has made the most of his role as Oscar Grant and the Oscar buzz (no pun intended) has already started. His perfectly calibrated performance captures the essence of an imperfect young man being pulled in different directions. Octavia Spencer ("The Help") plays Oscar's no-nonsense mom. She is the definition of "tough love," nowhere more memorably than when she forces Oscar to finally make a choice between her and the life he has fallen into.

Bill Paterson is of counsel in business litigation at Ventura-based Ferguson Case Orr Paterson LLP.



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**BAR TASK FORCE SEEKS
ADMISSIONS REFORM COMMENTS**

Continued from page 14

Your input on the Final Phase I Report is encouraged and welcomed. Please direct comments to:

Teri Greenman
Executive offices
State Bar of California
180 Howard St.
San Francisco, CA 94105-1639
Phone: (415)538-2454
Email: teri.greenman@calbar.ca.gov

Other Updates From The State Bar

Proposed rule amendments to Title 2 and Title 3 of the Rules of the State Bar would provide clarification of member requirements, expand specialty requirement definitions, and raise provider standards. Proposed amendments to Rule of Court 9.31 would raise the number of required hours and add a law practice management option as part of the legal ethics requirement. To review the recommendations please go to: <http://www.calbar.ca.gov/AboutUs/PublicComment/201310.aspx>

Carol Madeja is the director of Bar Relations Outreach for the State Bar of California.

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Reprinted from the Santa Barbara Lawyer

Pro Bono Profile: Randall Sutter and the Bankruptcy Self-Help Clinic

by Jacqueline Hall

In 2011, the United States Bankruptcy Court, Central District of California released their report on Access to Justice in Crisis: Self-Represented Parties and the Court. The report found that approximately 28 percent of bankruptcy filings in the Central District are filed without an attorney, compared to about nine percent nationwide. In 2011 alone, the number of self-represented bankruptcy debtors in the Central District of California numbered 38,098; and if self-represented creditors in bankruptcy actions are included, the number of self-represented litigants in Central District Bankruptcy courts in 2011 exceeded 40,000.

Does it matter if a litigant has an attorney? Most attorneys know that answer is yes. The Central District's report shows how much of a difference attorneys make in bankruptcy cases. The goal of a chapter 7 bankruptcy is a discharge of debts. In the Central District of California, self-represented debtors in Chapter 7 cases obtain a discharge of debt approximately 61 percent of the time whereas attorney-represented debtors in Chapter 7 cases obtain a discharge of debt 95 percent of the time. In Chapter 13 bankruptcy, the goal is to create, and stick to, a plan to pay arrearages over many months to make up for missed payments. Approximately 55 percent of attorney-represented debtors reach confirmation of a plan, whereas only 0.4 percent of self-represented debtors do – showing that it is nearly impossible for self-represented debtors to succeed in Chapter 13 bankruptcy.

To help level the playing field for bankruptcy litigants, a free Bankruptcy Self-Help Clinic was started in 2009 in Lompoc and moved to the Northern Division Bankruptcy Court on State and Cota Streets in 2010. Every Friday morning, pro bono attorneys meet with self-represented bankruptcy litigants and assist them with their bankruptcy related issues. **Randall Sutter** helps manage the Bankruptcy Clinic by coordinating the volunteer attorneys and by searching for grants to help provide funding to the clinic.



Randall began his career with the United States Department of Defense and then became an entrepreneur in the trucking industry, where his company conducted cargo claim investigations on damaged or lost freight for the trucking, ocean, and airline industries. He had always considered going to law school, and eventually decided to take advantage of the evening classes offered by the Ventura and Santa Barbara Colleges of Law. Randall started practicing law part-time in 2006, focusing on small business and transportation legal issues, and by 2009 decided to expand his practice to full-time. It was then that he was introduced to bankruptcy law. "Initially, I did not think this area of the law would interest me as I was focused more on building businesses than bankrupting them. But, once I began learning bankruptcy in-depth, I found that bankruptcy law is really about allowing businesses and individuals to reorganize or liquidate their debt so that they can rebuild their business or life." Bankruptcy is now a major part of Randall's practice at his firm, Rounds & Sutter LLP in Ventura, which also handles consumer debt issues, real estate, and business law.

Two years ago, while waiting to make an appearance at the Bankruptcy Court in Santa Barbara, Randall ran into a Legal Aid employee who informed him of the Bankruptcy Self-Help Clinic and said they were looking for volunteer attorneys. Randall, who already had a history of volunteering with the Ventura Teen Legal Clinic, agreed to become a volunteer.

"By volunteering, I thought it would be an ideal way to help others, give back to the community, and further my knowledge of bankruptcy." During the two years that he has been working at the Clinic, Randall has been able to help many different individuals. "In a particular way, each client makes an impact on me with their unique circumstances. My primary goal is to give each client a sense of relief and eliminate the stress they may be experiencing." Many of the people Randall has helped have expressed their thanks to him in the form of phone calls and notes informing him of how they were able to turn their lives around, professionally and personally, after getting assistance at the Clinic.

Continued on page 19

REMEMBERING JUDITH WONG

by Frank Bellinghiere

Judith L. Wong, a long time Ventura County practitioner, died of stage four throat cancer on July 1.

Judith was born on April 14, 1949, in Los Angeles to Ben and Doris Wong. Her legal career began in high school when she was a legal secretary for William B. Ritner.

Wong attended UCLA as an undergraduate and studied law at Loyola Marymount University, where she graduated in 1974. Admitted to practice in California in December, 1974, Wong practiced in the areas of business law; family law; and estate planning and probate in Thousand Oaks and Westlake Village.

From 1974 until 1982, Judith practiced at the firm of Ritner & Wong. She then worked as a sole practitioner from 1982 until 2010 in Westlake Village.

At various times, Judith shared offices with **Frank Bellinghiere**, **Barbara DiMeo**, **Richard Loftus** and **John Pinnell**.

She is survived by her mother, Doris, brother, Alan, ex-husband Alan Tom, her three sons, Trevor, Travis and Tanner, and two grandchildren.

Memorial donations may be made to Hospice of the Conejo.



Frank Bellinghiere practices in Westlake Village and in Wyoming.

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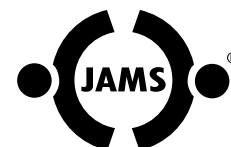
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Pro Bono Profile Randall Sutter and the Bankruptcy Self-Help Clinic *Continued from page 17*

Volunteering at the Clinic has also helped Randall. He states that "it has reinforced my belief that what is important is not the challenges and struggles we face in our lives, but how we respond to these adversities." Along with that, it has also validated his decision to practice bankruptcy law and afforded him the chance to meet, work with, and learn from a variety of exceptional people in the bankruptcy community. Volunteering at the Clinic has been "very rewarding and very humbling" for Randall, and the work he and the other volunteers have done has made a big impact on our community.

At the time Randall started volunteering at the Clinic, it consisted of only two volunteer attorneys and only operated twice a month. Since that time, the Clinic has expanded to every Friday morning and has a rotation of seven attorney volunteers, one non-attorney volunteer, and five court staff who assist self-represented litigants. On April 19th, the Clinic opened a new office space in the lobby of the court. Seeing the good work that was being done by the Clinic, the Bankruptcy Court provided the funds to build the new Clinic space and also created a dedicated clerk window for Clinic clients. This summer, the Clinic hopes to expand its services to have two attorney volunteers assisting self-represented litigants each Friday morning.

Legal Aid would like to extend its thanks to Randall Sutter for his hard work at the Bankruptcy Self-Help Clinic. Legal Aid would also like to thank the United States Bankruptcy Court, Central District of California, Northern Division for the construction of the new Clinic space. Additionally, we would like to thank all of the Clinic volunteers and supporters - Attorney Volunteers: Carrissa Horowitz, Reed Olmstead, Monica Robles, Luis Esparza, Natalie Spilborghs, Anne Rycroft; Clinic Staff Volunteer: Jean Linn; US Bankruptcy Court Staff: Judge Riblet, Meredith Klassen, Cheri Davis, Jim McNabb, and Casey Nelson. Please stop by the Clinic this summer to see the new space and see how you can make a difference in our community.

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President **Joel Mark** may be located at Hathaway Perrett et al. by calling 644.7111 or jmark@hathawaylawfirm.com...**Randall George** landed at Myers, Widders et al. and may be reached at 644.7188 or rgeorge@mwjlaw.com...A few more movements of notice: **Kathleen Smith** started August 12 as

a civil litigation associate with Schneiders & Associates LLP...**Katherine Hause Becker** has also joined the firm as Of Counsel, but shall remain FT with the Law Offices of **Ben Schuck** and Katherine Hause... **Matt Purcell** is now at www.tricitylaw.com located at 2415 W. Falls Ave., Kennewick, Washington, 99336...

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Mark your calendars! The first ever joint meeting between the Business Litigation Section and the Intellectual Property Section is scheduled for Sept. 12 atop the Tower Club. Entitled, "A Banner Year in Biotechnology Law," check out the promotional brochure contained inside *CITATIONS*...Yo, Barristers! The Annual Judges' Pizza Night is set for September 19 inside Café Fiore located in downtown Ventura. Kudos to **Rachel Coleman** for coordinating once again. Open only to justices, judges and Barristers, proceeds benefit the vcba/vlsp, inc...

Congratulations to **William M. Grewe** who has been recommended by the VCBA Nominating Committee, comprised of 12 past presidents, to become the next secretary-treasurer of the bar association effective January 1, 2014. This also positions him for the presidency in 2016. The VCBA Slate of Officers and Directors is inside this issue of *CITATIONS* and they will be formally approved during the Installation and Awards Banquet. **Laura Bartels** will assume the presidency also in January and Deputy District Attorney **Alvan Arzu** will become president-elect...

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 celebrating his 50th in Rio on the 10th and donations of Red Stripe, Fosters and Trader José's may be delivered to his office. Better yet, a donation to the vlsp, inc.! Henderson may be reached at steve@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or better yet, 650.7599.

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Baby Victoria!



Joey celebrating his new baby sister's Arrival with some cake!



Baby #9 – Victoria Kathryn Joy Lehr arrived early on May 6 at 8:15 pm! She weighed in at 6 pounds, 3 ounces. After a brief stay in the NICU, Mom and Baby are at home!

NOW we REALLY appreciate your criminal law referrals.

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