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WOMEN LAWYERS HOSTS TWELFTH ANNUAL DINNER

by Sasha L. Collins
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WLVC will honor Assemblymember **Jacqui Irwin** with the Legacy Award and attorney **Danielle De Smeth** with the Spevak Award.

P. MARK KIRWIN

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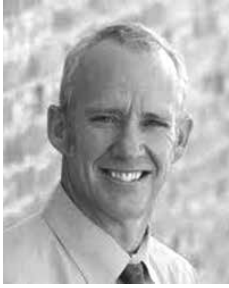
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PRESIDENT'S MESSAGE

by P. Mark Kirwin

The Joys and Challenges of Opening Our Newest Neighborhood Brew Pub

Our county is a great place to taste crafted micro brews. New local breweries continue offering us many options to pour, look, swirl, smell and drink a variety of ales, wheats, sours, IPAs, porters and lagers. One new brewery that I am excited about is the Rincon Brewery, soon to open across from the Ventura Community College. Over the past few months, I have had the pleasure of tasting Rincon's fare as it co-sponsored local trail runs and supported the Ventura Land Trust's annual film festival. One day tasting one of Rincon's local sage beers, I asked head brew master Chas to tell me (us) something about what he does. Here is what he said:

When I first started brewing professionally, Ventura County had two breweries—BJ's in Oxnard and Anacapa Brewing Company in downtown Ventura. Ten years later Ventura County has more than a dozen breweries with more on the way. As the brewing community grows it has been great to get to know the other players in our local market and see their different trajectories. Some breweries are chasing lofty production goals, extending their reach beyond our backyard, while others are staying small by design, focusing on serving the local clientele the freshest beer possible. Regardless of their model, everyone is focused on producing the highest quality beer they can. It is a real treat to have the variety of beers easily within reach and to see the different personal styles of the brewers. It is truly a great time to be a beer drinker in Ventura County.

At Rincon Brewery one of the biggest challenges we are seeing first hand in the growing craft beer industry is the issue of efficiency. This spans everything from brewery design and equipment selection to process management and corporate culture. Our staff take pleasure in our natural surroundings and want to do everything we can to preserve our local treasures and inspire others to do the same. When we started the design process for our new facility in Ventura we quickly noticed that efficient use of what

we have will be paramount to the success of the business. Not only will the raw material procurement and storage require much attention but so will the storage of finished goods and utility usage.

One aspect of larger-scale brewing that requires a great deal of attention is water usage. It should come as no surprise that brewing beer uses a lot of water. The beer itself is around 97% water and the various cleaning protocols use a significant amount of water. Due to the mineral composition of the water available in Ventura we will be using a reverse osmosis (RO) filter for the water used in the brewing process. The reverse osmosis process uses a good deal of water since about 35-50% of the water entering the filter goes down the drain as a mineral-rich brine. With this in mind, we only use RO water for the brewing process, because the mineral profile of the water is very important to the quality of the finished beer. All tank cleaning is done with filtered city water where close attention to usage must also be paid. We closely monitor our cleaning chemical usage and reuse chemicals as much as possible, making sure they are still at an effective concentration. Rinse water usage is also closely monitored to ensure adequate rinsing of caustic and acid

cleaners while not sending clean, potable water wastefully down the drain.

As the craft brewing industry grows, more and more technologies that are available to larger breweries are now available to the smaller producers. Many of these innovations focus on getting the most out of what we are already using, i.e. systems to reuse cleaning chemicals, waste water pre-treatment and carbon dioxide capture from fermentation. These systems are still not financially feasible for relatively small breweries, but I foresee them becoming more cost-effective and their use more widespread in the not-so-distant future.

At Rincon we strive to get the most out of our equipment, ingredients and people. We are constantly looking for new ways to approach these production challenges while maintaining our high standards of quality our customers have come to expect.

Thank you, Chas, for your words of brew wisdom!

Mark Kirwin is the 2018 VCBA President and the 2018 Acting Ventura County Legal Aid President. He is a civil litigator with Kirwin & Francis, LLP in Ventura.

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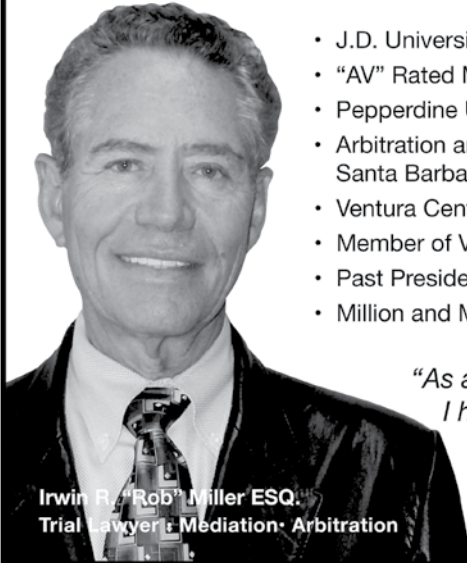
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Barristers Corner**Nominations for Board Positions for 2016 Are Now Open**

A section of the Ventura County Bar Association, the Barristers provides annual programming each year to assist newer members of our Bar with networking, mentoring, and furthering their educations. Each year, Barristers puts on a number of events for entertainment (such as Trivia Night and Game Night), MCLEs (e.g., the Judicial Speaker Series and Bridging the Gap), and connects new lawyers (and law students) with attorneys in fields of expressed interest through its mentoring program anchored by Wine & Cheese Night. The ten to fifteen-member Board of the Barristers coordinates these events each year and is always looking for additional members to assist with planning and to offer new ideas.

Do you know someone who would be a great addition to the Barristers Board? Would you like to be a member? Nominations for the following positions on next year's Barristers Board for are now open: Member at Large, Secretary, Treasurer, Vice President and President. Nominations may be emailed to **H. Frederick Seigenfeld** at hmseigen@gmail.com (subject line: Barristers Nomination) and must be received by 11:59 p.m. on November 10, 2016. **Nominations may only be made by eligible Barristers (described below)**. If you would like more information or to see a Barristers Board meeting in action, please join us at the Ventura office of Ferguson Case Orr Paterson on November 8 at noon for our next regular board meeting.

Nominees will be confirmed for eligibility. A "Barrister" is any member in good standing of the Ventura County Bar Association who, on January 1 of a given year, meets at least one of the following requirements: (i) is under the age of thirty-six (36) years; (ii) has been admitted to practice law in any jurisdiction for a period of seven years or fewer; or (iii) has been in practice in any jurisdiction for a total of seven- years or fewer. Active law students who are members of the Ventura County Bar Association are considered "Student Barristers" and may serve on the Board as a Member at Large, but may not serve as an officer of the Board.

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WOMEN LAWYERS HOSTS TWELFTH ANNUAL DINNER

by *Sasha L. Collins*

On Oct. 18, Women Lawyers of Ventura County will host its Twelfth Annual Scholarship dinner at the Ventura County Museum. At the event, WLVC will honor Assemblymember Jacqui Irwin with the Legacy Award and attorney **Danielle De Smeth** with the Spevak Award.

Jacqui Irwin

As the child of Dutch immigrants, Assemblymember Irwin firmly believes that hard work and a positive attitude can take you far in life. After graduating from Taft High School in the San Fernando Valley, she became the first member of her family to go to college. When deciding on her major, her father told her to, "just major in engineering, it's not that hard." And so she did. Assemblymember Irwin went to college at the University of California, San Diego, where she was an All-American swimmer. After graduating from UCSD with a B.A. in Systems Engineering, she spent years working technical jobs, first at Johns Hopkins Applied Physics Laboratory, where she worked on the Trident II Missile, and later at Teledyne Systems, where she worked on rapid display prototyping for airplanes.

After leaving the work force to raise her three children, Assemblymember Irwin entered the political arena in 2004, as a Thousand Oaks City Council member. She served on the Thousand Oaks City Council for ten years, including four years as the mayor. In her role as the mayor of Thousand Oaks, she was a strong advocate for open space and responsible development. In 2014, she was elected to represent the 44th District in the California State Assembly. Throughout her years in public office, she has continuously proven that she is dedicated to public safety, education and jobs.

Assemblymember Irwin believes in the importance of improving education at all levels. In recent years, she helped to secure funding for a new engineering program at California State University, Channel Islands. Additionally, she has served on the Education Committee and the Commission for the State Educational Opportunity for Military Children. She has also volunteered with various youth programs, was a Girl Scout Leader and was honored as a Girl Scouts Woman of Distinction.

In addition to promoting education, Assemblymember Irwin also has a strong

track record of supporting women. She has served on the Strategic Advisory Committee for Women's Economic Ventures in Ventura County, a program that helps women plan and start their own businesses. She has also served on the Commission on the Status of Women and Girls, and the Legislative Women's Caucus.

This year, Assemblymember Irwin authored Assembly Bill 2770, which protects sexual harassment victims and prevents employers from being sued by former employees for defamation. The bill allows former employers to inform potential new employers about sexual harassment investigations and findings about former employees. The bill received unanimous support and was signed into law by Governor Brown in July. Assemblymember Irwin also sponsored AB 1163, which allows for Powers of Attorney for immigrant children. (The bill is largely the brainchild of local attorney and former Spevak Award recipient, **Rennee Dehesa**).

Assemblymember Irwin is passionate about her role in representing the 44th district. We are fortunate to have her as a local leader, and we are honored to present her with the WLVC Legacy Award.



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Danielle De Smeth

WLVC is pleased to present the Holly Spevak pro bono award to local attorney **Danielle De Smeth**. Ms. De Smeth was recently named partner at the firm of Bamieh & Erickson, PLC, which will soon change names to Bamieh & De Smeth. De Smeth's professional accomplishments are many, but it is her dedication to pro bono service and volunteer work that makes her stand out from her peers.

In addition to having a busy criminal and civil law practice, De Smeth currently serves on the boards of the Red Cross, California Women Lawyers and Planned Parenthood. Over the years, De Smeth has volunteered in various capacities with the mock trial program. For several years she coached college-level mock trial at University of California, Irvine, and she is currently a faculty member of Championship Mock Trial Academy, a weekend academy to teach mock trial skills at the highest level. Furthermore, she is the Co-Director and host of the Paradise Invitational Mock Trial Tournament in Santa Barbara.

In addition to her involvement with mock trial, De Smeth is an active participant in Emerge California, a program that trains and encourages women to run for political office. De Smeth has served on the board of Santa Barbara Women Lawyers, including serving as its president in 2013, and serving as the President of the Women Lawyers Foundation in 2012. She also is involved in the Santa Barbara County Bar Association and has served as Trustee on the Courthouse Legacy Foundation in Santa Barbara. She engages in pro bono legal

services, frequently advocating on behalf of domestic violence survivors. We are grateful to have her working in our community and look forward to honoring her at our event.



Sasha L. Collins is the President of Women Lawyers. She practices estate planning, probate and trust administration at StakerLaw.



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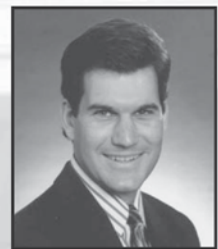
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The Adult Use of Marijuana Act and Its Impact on the Workplace

by *Rabiah Rahman*

In 2016, California voters decided it was high time to legalize the recreational use of marijuana and passed Proposition 64: The Adult Use of Marijuana Act (“Prop. 64”).

Prop. 64 established a system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana. This new law left employers and employees wondering what impact the law would have on their rights and the workplace environment.

The law specifically states that employers have a right to maintain a drug and alcohol-free workplace, and employers are under no obligation to accommodate **the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace.** (Health and Saf. Code, § 11362.45(f).) Additionally, Prop. 64 does not alter existing law regarding drug testing. California law generally permits employers to request drug tests for applicants as a condition of employment, but it severely restricts the right of most employers to require existing employees to submit to drug tests.

Drug Testing

There are three types of drug testing:

1. pre-employment drug screening;
2. random drug testing; and
3. drug testing for “reasonable suspicion” of being under the influence on the job.

Pre-employment testing occurs when an employer requires a job-seeker to submit to a drug test prior to being placed on payroll. This is post-offer/pre-start date testing. This form of drug testing is typically permitted and within the employer’s right to regulate. Random testing occurs when an employee is randomly drug tested at work, without prior notice and essentially at the whim of the employer. This form of drug testing is generally only permitted if the employee is engaged in work or in a position dealing with public safety. For example, this would include employees operating heavy equipment or law enforcement. Finally, drug testing for “reasonable suspicion” occurs when an employer has a reasonable suspicion that an employee is using or abusing drugs or alcohol in the workplace. Reasonable

suspicion includes acting out of character, smelling like the substance, slurred speech, etc. Basically, employers would have to have an articulable and objective reason to require an employee to submit to a drug test to continue their employment. If an employer has a zero-tolerance drug policy and can articulate the purpose for the request, a court will likely uphold the validity and reason for requiring the employee to submit to a drug test in order to continue their employment.

Another issue related to drug testing is that many tests are unable to determine *when* a person consumed marijuana. Lawful marijuana use may pose potential enforcement challenges when implementing workplace drug policies and conducting drug tests on employees. For example, an employee may test positive for marijuana based on off-duty consumption. That employee may argue that despite the test, he or she has complied with the employer’s zero-tolerance policy because the employer’s policy only bans use, possession or being under the influence of marijuana **while on the employer’s property or while on duty.** In fact,



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many factors impact whether someone tests positive for marijuana, including the person's individual metabolism, frequency of use, amount of use, and type of test (urine, blood, hair) used. So this raises the question; May an employer dismiss an employee for consuming marijuana even if it is on their own time and away from work? If that is the employer's stated policy, in clear and concise terms, the courts say yes. If an employee tests positive, Prop. 64 in no way prohibits an employer from terminating their employment even if there is no indication that they were actually impaired while on the job.

But what about medicinal use of marijuana? Employers surely cannot prevent an employee, who has a prescription from a licensed medical professional, from using marijuana for medicinal purposes...right? Wrong.

Medical Marijuana

Medical marijuana has been the norm in California since 1996, when it passed the Compassionate Use Act. The Americans with Disability Acts ("ADA") and the California Department of Fair Employment and Housing Act ("FEHA") prohibit discrimination against individuals with disabilities. These laws require employers to make "reasonable accommodations" for disabled employees to enable them to perform their job. Medical marijuana advocates argue that marijuana should be considered a "reasonable accommodation" for individuals using marijuana to treat medical conditions. They further contend that termination for medical marijuana use violates an employee's rights. Despite changes to state law, federal law remains unchanged. Marijuana is still considered a "Schedule I" narcotic under the Federal Controlled Substances Act. This means that under federal law, including the Americans with Disabilities Act ("ADA"), employers are not required to accommodate "illegal" drug use, including marijuana usage.

A 2008 decision by the California Supreme Court confirmed that marijuana is still treated as a second-class citizen to conventional pharmaceuticals in the employment context. Gary Ross applied for a job as a systems administrator with a Sacramento telecommunications firm called RagingWire Telecommunications. Gary was a United States Air Force Veteran and hurt his back while in the service. His pain was severe and he experienced occasional back spasms.

Continued on page 17



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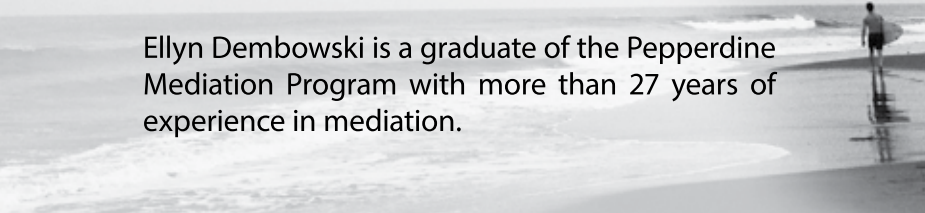
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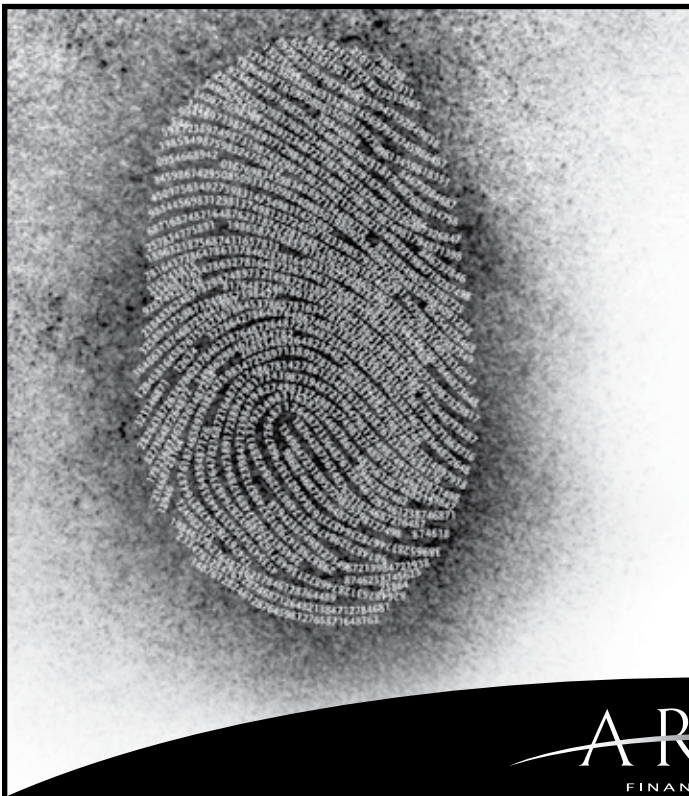
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Continued from page 13

When RagingWire hired Gary they asked him to submit to a drug test. He obliged, but made no secret about the fact that he had a medical marijuana prescription for his service-related back pains and spasms. As anticipated, Gary's drug test came back positive for marijuana. However, Gary did not anticipate what would happen next. RagingWire terminated Gary for failing the drug test. Gary filed a lawsuit against RagingWire alleging, among other things, a violation of the Fair Employment and Housing Act for disability discrimination and failure to accommodate his disability.

Gary took his case all the way up to the California Supreme Court. The California Supreme Court found that the Compassionate Use Act does not grant marijuana the same status as a legal prescription drug (Health & Saf. Code, § 11362.5), and therefore does not require employers to accommodate illegal drug use. The Court stated that marijuana cannot be "completely legalize[d] for medical purposes" because it is illegal under federal law. (*Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 926.) *Ross v. RagingWire Telecommunications* remains the governing law on medicinal use of marijuana, and Prop. 64 did not address this issue.

One word of caution to employers: An employee's disclosure of medicinal use of marijuana may put the employer on notice that the employee has a potential disability. This could trigger the employer's **obligation** to engage in the interactive process and reasonably accommodate the employee's condition through means other than continued marijuana use during work hours. The law permits employers to preclude illegal (and sometimes legal) drug use in the workplace, but if you waded too deeply into the reasons for the employee's consumption of medicinal marijuana, and then fail to hire them or terminate their employment without engaging in the interactive process, you could risk a lawsuit for disability discrimination.



Rabiya Rahman is an employment attorney with Myers, Widders, Gibson, Jones & Feingold LLP.

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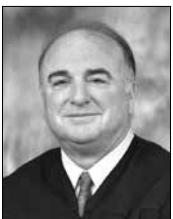
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An appreciation to folks who wished me a Happy 50th Birthday last month and boy have times changed a smidgen – 111 FB messages, 37 texts, twelve Instagram posts and just TWO cards. Thank you **Wendy Lascher** and my mother-in-law. Appreciated too were the donations to Ventura County Legal Aid, Inc.; the first \$50 came via a check from one **Jonathan Light**...According to data collected for the most recent U.S. News & World Report rankings, the law school with the lowest 25th percentile LSAT score is Appalachian School of Law (25th-75th percentile ranging from 141-149). Appalachian State is best known for early season upsets in NCAA football for the past several years upending Top Ten teams...**Judge Edward Osborne** passed September 15 and services are being organized. Ed served admirably on our bench since appointed by Gov. Deukmejian in 1986. He was admitted to the bar in 1960 and went to the Bruin School of Law...

The **Hon. Kent Kellegrew** and the **Hon. Bruce Young** have been selected to be the Presiding Judge and the Assistant Presiding Judge of our Superior Court. Both will take the reins January 1, 2019 and hats off to **Judge Patricia Murphy** for a job well done during her tenure as PJ. Judge Kellegrew was a Commissioner from '97-'99 before his matriculation to the bench and Judge Young was with the DA's office from '99-'03 before being appointed in 2007. Two excellent selections...



EXEC'S DOT...DOT...DOT...

by Steve Henderson, M.A., CAE



Danielle DeSmeth and **Doug Goldwater** both named to the *Pacific Coast Times*' 40 Under 40 and celebrated at a dinner held mid-September. Doug will be the President of our bar association in 2019 while Danielle will join the board for her first term also in January. Moral of the story? Be active in your local bar

Speaking of Danielle, **Ron Bamieh** announced DeSmeth, the firm's managing attorney, has become the managing shareholder. In the "it's a small world" reference, Ron coached Danielle when she participated in Mock Trial just a few short years ago. DeSmeth will also be honored by the VC Women Lawyers October 18. Quite a month!



Have you ever been corrected by **J. Roger Myers**? I have. My column last month did not identify a few lawyers who deserve credit for a weekend of success with the Stand Down event in its 26th year..**DDA Brent Nibecker** and **PD Andre Nintcheff** assisted with the felony warrants and were helped by **Jody Prior** and paralegal Renee Ramirez. On the civil side, **Glenn Campbell**, **Tom Adams**, **Bill Raymond** and Roger worked with the 200 veterans in attendance. In 1993 most of the veterans were from the Vietnam era with a smattering of Korean and WWII. Now, most of the veterans are Desert Storm and Afghanistan Well done and thanks people...

On the move: **Robyn Weiss** has accepted a new position and is relocating to Lost Angeles later this month. Robyn has been active with our bar and currently is Vice President of Barristers and active with our JHB Inn of Court. Robyn is joining the Healthcare Business Unit of the Los Angeles office of Clark Hill LLP.



Congratulations to the proposed officers of the bar association starting in 2019: in addition to Goldwater as president, they are: **Kathryn Clunen**, Vice-President; **Marc Anderson**, Secretary-Treasurer and **Mark Kirwin**, Immediate Past President. A complete list of proposed Officers and Directors is located at www.vcba.org. The new officers and directors will be sworn in during the bar's annual Installation and Awards Dinner set for Nov. 17 at Channel Island University. The new face, Marc Anderson, will be president in 2021...

Kathryn Wells has announced that Edsall Law has moved their offices to 400 Camarillo Ranch Road, Suite 102, Camarillo, 93012. 805.484.9002 and www.edsalllaw.com...

There remain a few vacancies on the JHB Inn of Court roster and you are encouraged to apply for a whole mess of reasons. Let me know and I will send you the application--steve@vcba.org...

LOTS of CLEs this month, so train your eyes on on this issues promotional brochures. You've got Estate Planning & Probate, Bench & Bar History Project, Family Law Bar (2), Barristers and the CPA-Law Society. Take immediate advantage.

Steve Henderson has been the executive director and chief executive office of the bar association and its affiliated organizations since November 1990. His annual Halloween Bash is set for Oct. 31 inside Hearst Castle. The invite-only crowd will be greeted by Rob Lowe, George Clooney and Julia Roberts. Henderson may be reached at steve@vcba.org, FB, Twitter at [steve_hendo1](https://twitter.com/steve_hendo1), Instagram at [steve_hendo](https://www.instagram.com/steve_hendo), LinkedIn, or better yet, 650.7599.

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