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CITATIONS

FEBRUARY - TWO THOUSAND NINETEEN

THE LEADER

by Wendy Lascher

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DAVE ELLISON / TOM HINKLE

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PRESIDENT'S MESSAGE

by Douglas K. Goldwater

As mentioned at the conclusion of my column last month, 2019 will be a year of changes for the Ventura County Bar Association. As this year's President, I hope that my old bartending skills will translate over to helping me mix a splash of the old with a healthy pour of the new.

One aspect of "the new" was revealed in last month's issue – the planned transition from VCBA's long-time executive director, **Steve Henderson**, to his protégé, **Sandra Rubio**. As reflected in this month's Citations, Steve has been a steadying force for VCBA for many years. Although we will certainly miss Steve's leadership and galvanizing personality, I am truly excited and privileged to be the first VCBA President to work side-by-side with Sandra. While I trust that most of the membership knows Sandra, you will now have the opportunity to see her blossom into her new role. As you will come to experience, she is full of energy, ideas, and enthusiasm toward guiding the evolution of VCBA.

Similarly, I find myself lucky to be a part of such a dynamic, cohesive, and strong Executive Committee. Being able to work closely with President-Elect **Kathryn Clunen** and Secretary-Treasurer **Marc Anderson**, I have been able to witness their intelligence, principles, and dedication to the betterment of our Bar Association. VCBA finds itself set up well with these leaders over the coming years, as it has been in prior years. Last year's President, **Mark Kirwin**, dedicates himself to serving a variety of charitable purposes and non-profit organizations, including chairing Ventura County Legal Aid for a second consecutive year, while also maintaining a successful legal practice. To give him the opportunity to focus on those endeavors, 2016 VCBA President **Charmaine Buehner** has agreed to step in and serve on the Executive Committee in the role of Past President. I would like to thank Mark for his service to our Bar Association and, especially, for all of his efforts guiding the organization last year as its President. My

gratitude is also extended to Charmaine for coming back aboard, as I must think that she felt a little bit like Michael Corleone in *The Godfather Part III*: "Just when I thought I was out, they pull me back in!"

As for some of "the old," I have been asking some of our more *experienced* members, what did the Bar Association used to be? Many of the responses I received were along the lines of: It was an organization that created opportunities for lawyers to socialize with one another, discuss cases, and refer matters amongst each other. Times have obviously changed. The development of technology and the advent of "networking organizations" have infringed upon the territory that used to near-exclusively be that of the local Bar Association. This does not mean that VCBA must suffer, but rather it demonstrates how we can grow stronger. We are blessed to practice in a community large enough to have a wide variety of quality legal matters, but also small enough that we can know our colleagues and the Court. Unlike other areas where attorneys may burn bridges because they may not ever see that opposing counsel or judge again, our legal community encourages treating each other with professionalism and civility. As such, the VCBA wants to facilitate its members cultivating relationships, referral

sources, and lines of communication. Over this year, begin looking out for VCBA-sponsored social, networking, and education events, and I encourage you not only to participate, but also to bring others with you. To this day, the best source of referrals remains other lawyers – and the VCBA will return to being an avenue for you to obtain business. The first of these events is advertised in a flyer inserted in this month's issue. For those of you who have not yet been fingerprinted in compliance with the State Bar's new requirement, the VCBA is not only offering you the opportunity to get that accomplished in either East or West County, but also to have a free beer while you are socializing with your fellow attorneys.

As your VCBA Board and Executive Director are making a concerted effort to evolve our organization, we welcome your input. Please contact us with your ideas, suggestions, or comments on how we can make your VCBA membership more rewarding.

Doug Goldwater is a partner at Ferguson Case Orr Paterson, LLP. His practice focuses on family law. He can be reached at (805) 659-6800 or at dgoldwater@scoplaw.com.

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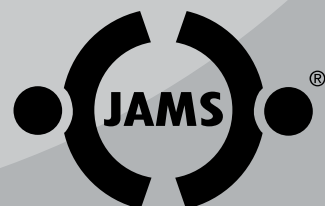
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A TRIBUTE TO ARLENE BRIGGLE

By Dave Ellison and Tom Hinkle




Now that Tom is fully retired, and Dave is almost there after nearly 50 years of trying civil and criminal cases in the courts of Ventura County and around the state, we are spending a lot more time reflecting on the respected judges, courtroom attachés, collegial adversaries and trusted colleagues. We so enjoyed appearing before, crossing swords with or working alongside many people throughout those five decades who contributed much in making our long legal careers so very satisfying and rewarding.

Yet these days, our fondest memories are for those dedicated women (and occasionally men) who so faithfully supported our trial efforts over the years, more than a few of whom we count among our dearest and most trusted friends. Foremost in our thoughts at this time is our amazing Arlene Briggles who retired after 40 years of loyal service to our firm and who, prior to her retirement May 31, continued to assist Dave in concluding firm matters and managing our professional office buildings at 5550 Telegraph Rd. We are pleased that the Matt Bromund Law Group is now located there in expanded and remodeled offices. Our firm practiced law at the center building after we built the complex in 1979.

Already a consummate professional when she came to us as Dave's new secretary in June of 1978, Arlene's obvious talent soon marked her as the ideal person to take on additional duties as office manager, chief secretary, bookkeeper, and property manager of those new offices, positions she continued to hold faithfully during her entire career with the firm. On the one hand a no-nonsense, old-school legal assistant, Arlene

also proved to be a quietly supportive, tolerant and warmhearted mentor to less experienced staff, a sympathetic hand-holder to clients suffering the normal anxieties of litigation, and a trusted advisor to the two of us. Arlene's foremost concern was always for the welfare of our clients, and our clients invariably grew to depend not only on us, but also upon Arlene. Never shy about admonishing either of us when we were about to do something unintelligent, Arlene was an occasional critic, an always objective observer and a frequent sounding board. As a former employee of Ventura Police Department, Arlene had somehow acquired the street smarts and common sense of a cop, traits that among her many other gifts often proved invaluable in solving formidable problems in both the business and practice of trial law. To observe Arlene patiently and calmly engaging on the phone and face-to-face with prospective or existing clients was to appreciate her deep-seated and abiding concern for the problems of others and for the legal and personal difficulties that


Continued on page 21



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THE LEADER

by Wendy Lascher



Before 2019, whenever anyone asked how to find a local legal job, what is going on at the courthouse, why a law firm is breaking up, who are the bright lights of the next generation of lawyers, the answer was automatic: Ask **Steve Henderson**. He personified what an executive director should be. He knew everyone, made sure they felt listened to, secured grant funding, kept up with gossip, made the Ventura County Bar Association a presence statewide – yet he stayed in the background, letting the lawyers he served take the credit. Steve knew how to be diplomatic even as he shared his feelings. Steve exemplified how to be a single dad, how to be a mentor, and how to be a friend.

As we wish **Sandra Rubio** the best in her new venture as VCBA's executive director, we want to share some of the tributes to Steve that have reached CITATIONS.

David Shain:

From the moment Steve Henderson arrived, he personified the Ventura County Bar Association. With his unparalleled people skills, enthusiasm and skill, he brought us to a new level of participation and cohesiveness. He came to know almost all of us and was always available to address individual concerns. We relied on him. In fact, as a pre-condition, many incoming Bar presidents insisted that Steve guarantee his continuing tenure! Among his many achievements, Steve was instrumental in the birth of the Bar's Pro Bono Program and was committed to its success. Along with many others, I count Steve

as a very good friend. He was the rare person who took his job, but not himself, too seriously. He will be missed.

Rick Rabbin:

*As the torch passes from Steve Henderson to the eminently qualified **Sandra Rubio**, I wanted to take a moment to publicly acknowledge and thank Steve for what I experienced was his tireless service to the Bar and help to attorneys and staff in the County. Steve was always the "go to" person for me and those I knew regarding any questions, issues or help needed regarding all areas related to the Bar Association and more. I have known Steve since we both lived in San Luis Obispo and when I came to Ventura County I did not know he was here. I bumped into him at a Bar meeting in 1994 and he has been of incredible help and assistance since then. I compliment Steve's courtesy and professionalism and couldn't even imagine the number of trusted secrets he holds from many of us. He has kindly offered so many referrals when in need I have now lost count. In any case, thank you Steve, I am grateful for your service and friendship. And, even more so, because you are such a Le Bron "fan boy", that you are now a Laker fan!*

J.P. McWaters:

Thank you Steve for 28 years of dedication and commitment to the Ventura County legal community, courts, and the county's low income citizens seeking legal aid, you are a true non-profit organization executive director, never taking credit or seeking the limelight.

I had the privilege of working with Steve on many projects to develop and keep the VCBA membership happy. One included the monthly magazine. Steve redesigned CITATIONS from a black and white newsletter into a full-color magazine with many contributing writers. Everyone loved his monthly Exec's ... Dot ... Dot ... column, which included legal jokes, law firm news, and of course pictures of Sean, Max and Megan as they grew.

Another project Steve spearheaded was the Legal Services Directory. This 200-page mind-testing book was an editor's dream, with all the contact details for more than 900 attorneys, not to mention judges, court departments, and services available for lawyers. I can assure you Steve knew every attorney's middle initial.

A few years ago, Steve revamped the VCBA website to make it more current, and he implemented a regular email blast. Last year the site had more than 9,800 page views, and it receives hundreds of requests for legal referrals.

For me to outline 28 years of Steve's accomplishments at the VCBA would fill this entire issue, so I'll leave it to Steve to write his own autobiography and share his next Dot ... Dot ... Dot with everyone.

It is too soon to write the full history of Steve's leadership of VCBA or to assess the effects of his departure as executive director, but Steve's smiles are always timely.



NO SMALL AFFAIR – IOC TEAM 4

by Alfred Vargas



Left to right: Richard Hanawalt, Andrew Covner, David Lehr, Sonia Hehir, Georgianna Regnier, Jennifer Saccomano, Special Guest John Howard, and John Dixon.

Eight times a year, at dinner meetings of the Jerome H. Berenson Inn of Court, teams of up to ten members provide continuing legal education programs in the form of humorous skits preceded by a social hour and dinner at the Saticoy Country Club.

Experienced members dubbed “Masters” – judges or attorneys with lowish bar numbers – work with less-seasoned lawyers (“Barristers”) and new attorneys and law students (“Associates or Pupils”) to pass on law-related knowledge and unwritten, often local, legal culture. The American Inns of Court adopted this tradition from the Inns of Court of England.

In January, Team 4 (see picture) presented their tongue-in-cheek program, “No Small Affair: The ‘Inns’ and Outs of Small Claims Court.” The presentation consisted of several vignettes with special guests, **Judge David Long (Ret.)** acting as a very effective court bailiff, and the District Attorney’s Small Claims Adviser, **John Howard**, talking about some of the curious disputes that come before small claims court.

Many in the audience had experience presiding over the small claims calendar as judges or pro tem judges, but after the

presentation everyone came away with a deeper appreciation for the Small Claims Act. For example, Civil Code sections 116.110 and 116.221 specify different jurisdictional damage levels based on subject matter and allow for injunctive relief in limited cases. Civil Code section 116.530 limits attorney participation.

The program offered perspective to attorneys who may find it necessary to advise clients of options for low-damages cases, not to mention attorneys who are parties to an action or members of entities that are parties.

Lindsay Nielson reminded the Inn that the Superior Court always welcomes attorneys who meet the minimum qualifications and take the required training to sign up as pro tem judges for the small claims calendar. Future training sessions are announced on the Ventura Superior Court website and in announcement fliers in Citations.

Team 4’s handout may be found at: <https://tinyurl.com/ydcba4c3>. The Department of Consumer Affairs’ 56-page Small Claims Handbook is available for download at DCA’s website, www.dca.ca.gov, and here: <https://tinyurl.com/y9ac34ut>.

The Ventura County District Attorney’s Office maintains a grant-funded position to assist individuals with the small claims process and in completing forms. The Small Claims Advisor is located in the Hall of Justice, Room 314. The office number is (805) 654-2500.

The JHB Inn of Court usually meets the second Thursday of the month, but in honor of Valentine’s Day, the next meeting will be Feb. 7, 2019. Team 5 will present an ethics CLE skit on the new Rules of Professional Conduct that became effective Nov. 1, 2018. You may join IOC by visiting the bar’s webpage at VCBA.ORG or by calling the bar office at (805) 650-7599. Non-members may attend as guests to experience an entertaining, collegial group that has been going strong since 1994.



Alfred Vargas practices in Ventura, where he handles a variety of trial, appellate, and administrative matters. He is a long-time member of CITATIONS’ editorial board.

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THE TIME HAS COME

by Wendy C. Lascher



Some 40 or so years ago, when Donna de Paola was still executive director of the Ventura County Bar Association, she asked me to proofread VCBA's monthly mailing of fliers about social and continuing education events, "The Packet." That bundle of papers grew into CITATIONS, and at some point I became editor if I was not already. It was so long ago I can't quite remember.

Anyway, that was a relatively short-term gig. I was succeeded by a series of talented editors with vastly different approaches, including **David Shain**, **Terence Geoghegan**, **Phil Panitz**, and **Stan Hodson**. The editorial board meetings were often raucous and always fun.

No one, including me exactly recalls when I returned to the editor's seat, but it's easily been ten years and more likely fifteen. It has been a satisfying effort, largely due to the artwork and production support of J.P. McWaters, co-editor **Cari Ann Potts**, a creative and generous editorial board (**Alice Arnold**, **Rachel Coleman**, **Karen Darnall**, **Panda Kroll**, **Carol Mack**, **Michael McQueen**, **Rabiah Rahman**, **Lauren Sims**, **Mike Sment**, **Kathi Smith**, and our longest-serving member, **Al Vargas**), Steve Henderson's instant availability and constant support, and the magazine's most read feature, Steve's Exec's Dot ... Dot ... Dot column.

But times change, as President Doug Goldwater says (see page 3). I am delighted to report that Cari Ann Potts has agreed to take the helm. I will keep writing and proofreading, and I hope my assistant, Alice Duran, will keep baking those delicious cookies for editorial board meetings.

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December 12, 2018

David J. Bradley, Clerk

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SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALIGN TECHNOLOGY, INC,

Plaintiff,

VS.

CLEARCORRECT, INC., *et al*,

Defendants.

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CIVIL ACTION NO. 4:11-CV-695

ORDER

The Court is in receipt of the parties' whiny letters. What is wrong with you parties/lawyers?

Just **STOP IT!**

1) Align may produce a supplemental expert report by December 17, 2018. If the report is substantially different and does more than update the financials, the expert must appear at the courthouse for a supplemental deposition on December 27, 2018.

2) ClearCorrect must provide the Court with proof that all 167 individuals added were previously disclosed in discovery by December 13, 2018. If any of the three new witnesses will be testifying at trial, they must be produced for deposition before December 14, 2018.

3) A new 30(b)(6) deposition of Defendants' witness addressing any supplemental financials must be completed by December 21, 2018. If ClearCorrect still needs to complete a 30(b)(6) deposition of Plaintiff's witness, that deposition may take place on or before December 21, 2018.

There will be no extension granted on the motion deadline - **DON'T ASK.**

This is my oldest and least favorite case. Please stop trying to become my least favorite lawyers.

HAPPY HOLIDAYS!

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 12th day of December, 2018, at Houston, Texas.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

ENTITLED TO OVERTIME?

Confusion in Agriculture Wage and Hour Laws

by *Alexandra Jaimes*

Determining when an employer must compensate an employee for overtime can be a tedious task in the agricultural industry. California's wage and hour laws are complex and difficult for many employers and employees to navigate. Generally speaking, the California Legislature attempts to provide clarity for both employees and employers by imposing standards for specific industries. However, the nuances within those industries often make it difficult to understand the applicable laws. Specifically, nuances within the agricultural industry complicate understanding how to characterize an employee because of a series of exemptions and occupational distinctions. As a result, employers and employees in the agricultural industry often struggle to determine whether they must pay, or are entitled to, overtime premium wages.

California wage and hour laws are governed principally by the Labor Code and a series of eighteen wage orders. Included within the wage orders are sixteen industrial and occupational regulations, one regulation applicable to employers not covered by any specific industrial or occupational order, and one general minimum wage regulation. The California Industrial Welfare Commission ("IWC") issued rules and regulations to establish the minimum standards pertaining to wages, hours, and working conditions for California employees. While the IWC is not currently in operation, the Division of Labor Standards Enforcement ("DLSE") continues to enforce the provisions of the IWC wage orders.

If an employer's business does not fall within the scope of any industry-wide wage order, occupational wage orders may apply. Some employers may be subject to more than one wage order. Confusion arises when it is unclear what wage order governs specific employees within a given industry. This confusion is most commonly seen in agriculture.

California businesses employ a substantial number of agricultural workers. Some are entitled to overtime and some are not. IWC wage orders 4, 8, 13, and 14 are all potentially applicable to agricultural employees. Wage orders 8 and 13 are

industry wage orders and wage orders 4 and 14 are occupational wage orders. They differ as to overtime compensation requirements. For example, wage orders 8 and 13 require overtime for work in excess of eight hours per day, 40 hours per week and the first eight hours on the seventh consecutive day of work in a workweek. On the other hand, wage order 14 requires overtime pay for work in excess of ten hours in a workday or six days in a workweek. Wage order 14 also contains an exemption for irrigators who satisfy certain standards.

To determine what agricultural wage order applies to an employee, the wage orders must be analyzed more closely. Wage order 8 applies to "industries handling products after harvest." This generally applies to employers who operate establishments that handle farm products produced by another business. This can include, for example, commercial establishments that clean, dry, sort, pack, dehydrate, slaughter, ferment, or pasteurize. Wage order 13 applies to "industries preparing agricultural products for market on the farm." Wage order 13 regulates wages, hours, and working conditions of employers who pack, process or otherwise prepare only their own farm products on their own premises. Thus, the principal distinction, for coverage purposes, is whether the employer handles products produced on its own farm or whether it also handles another farmer's product.

Wage order 14, on the other hand, is an occupational wage order rather than an industry order. Agricultural occupations which are covered by wage order 14 include those engaged in the preparation of land for planting, caring for or harvesting crops, or raising and managing livestock, poultry, fish, or insects. Wage order 14 applies to employers who grow or harvest their own crops, raise and manage their own animals, poultry, fish or insects and do not pack, process or otherwise prepare their farm products for market.

A business is classified according to the main purpose of the business. Large businesses may conduct a variety of operations, and it may appear that different industry orders could apply; however, when those

operations are part of the main business, only one wage order will apply. The fact that an employee's job duties may fit into more than a single wage order adds a level of complexity to determining which overtime laws apply. This confusion can potentially subject the employer to legal penalties if it is out of compliance with the Labor Code. Conversely, if employees do not understand that their work is governed by two wage orders, they may not be aware that they are entitled to overtime compensation.

The California Legislature has taken a step in clearing up the overtime carve out within the agricultural industry. Assembly Bill 2757 went into effect Jan. 1, 2019. It requires employers with employees who fall under wage order 14 to pay overtime compensation on a gradual scale. AB 2757 operates in a similar fashion to that of the new California minimum wage increase. As of Jan. 1, employers with 26 or more employees must begin paying their employees overtime compensation after nine and a half hours of work or more than 55 hours in a week. Each year the number of hours until overtime premium wages are owed decrease by 30 minutes until it reaches eight hours in a day or 40 hours in week by Jan. 1, 2022. Employers with 25 or fewer employees have a three-year extension to phase in the overtime requirements.

Employers should proceed with caution and refrain from making assumptions when classifying an employee, or category of employees, before conducting research into the applicable IWC wage order. Conversely, employees should research what wage order they belong to, based on their day-to-day job duties within the industry. In doing so, they will be able to ensure that overtime hours are being paid pursuant to their applicable wage order. If confusion still exists, consulting with an employment attorney will help both employers and employees ensure that the employer is complying with California wage and hour laws.

Alexandra Jaimes is a law student at the Colleges of Law, Santa Barbara Campus.



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Announcements

FAMILY LAW BAR

The Family Law Bar is announcing their 2019 elected officers and board of directors: Susan Elston, President; Karen Oakman, Vice President; Carla Hartley, Treasurer; Marcie Kraft, Secretary; with Shane Loomis, Heather Kadeg, Lisa Sale, Iva Oza, and Zoya Shenker, board members.

VENTURA COUNTY HIGH SCHOOL MOCK TRIAL


The Ventura County Office of Education will be hosting the 2019 Ventura County Mock Trial on February 25, 26, 27, and 28. The event will take place at the Ventura County Court House from 5pm-11pm on these dates. We are in great need of volunteer scoring attorneys and presiding judges and are seeking the support of the Ventura County Bar Association. Materials, details and sign-ups are available at the following URL: <https://www.vcoe.org/Competitions/Mock-Trial/Volunteer>

MIDDLE SCHOOL MOCK TRIAL IN SIMI


Seeking Volunteer Scoring Attorney & Judges for Middle School Mock Trial – March 8 & 9, 2019. Simi Valley Unified School District is excited to announce the 3rd annual Mock Trial. We anticipate 12 participating teams from Hueneme Middle School, La Reina, Trinity Pacific, Medea Creek, Holy Family (San Marino), Fruitvale (Bakersfield), and all four SVUSD Middle School programs! We are in great need of roughly 100 volunteer scoring attorneys and presiding judges and seeking your volunteerism and/or that of your practicing and retired colleagues and/or highly trained college students. Spend a morning, afternoon, or evening with our youth leaders sharing your expertise and enthusiasm for our legal system. Please contact Wendy Mayea 805-306-4500 x4310 or wendy.mayea@simivalleyusd.org


JUSTICE TO SPEAK ABOUT WOMAN IN GOLD

Attorney Randy Schoenberg will be joined by **Presiding Justice Arthur Gilbert** Sunday, Feb. 10, at 2 P.M. to discuss their involvement in the events leading to the 2004 U.S. Supreme Court case, *Republic of Austria v. Altmann*, which was the basis for the film *Woman in Gold*. The film will be screened before the talk. The event, open to the public, will be at Temple Beth Torah, 7620 Foothill Road, Ventura. Schoenberg specializes in legal cases related to the recovery of looted or stolen artworks, particularly those by the Nazi regime during the Holocaust. There will be a wine and cheese reception at the Temple following a Q&A session. The event is open to the public and tickets will be available at the door ahead of the screening.



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A TRIBUTE TO ARLENE BRIGGLE
Continued from page 7

brought them to us.

Always one to give back to the community, Arlene generously shared her organizational and fundraising skills for many, many years as a volunteer with both Ventura Legal Secretaries Association and Soroptimists. Her hard work, dedication and quiet competence was recognized not only by those organizations but also by the attorneys, secretaries, financial professionals and others with whom she had frequent contact. For forty years, the entire legal community with whom Arlene dealt had only positive and complimentary things to say about her courtesy, good humor, professionalism and perfect work product.

And so, Arlene, we thank you for making the firm such an important part of your life and for sharing your time and talents with us for almost too many years to count. We know that you took great pride in the firm's reputation and in your own efforts to enhance its standing in the community. We wish you a happy retirement and a well-earned rest. We love you and will forever sing your praises. In short, we know that you are one of a kind, that few attorneys are ever fortunate enough to have someone like you working beside them, and that Dave and Tom were lucky enough to be two of the few.

Dave Ellison and Tom Hinkle are retired VCBA members.

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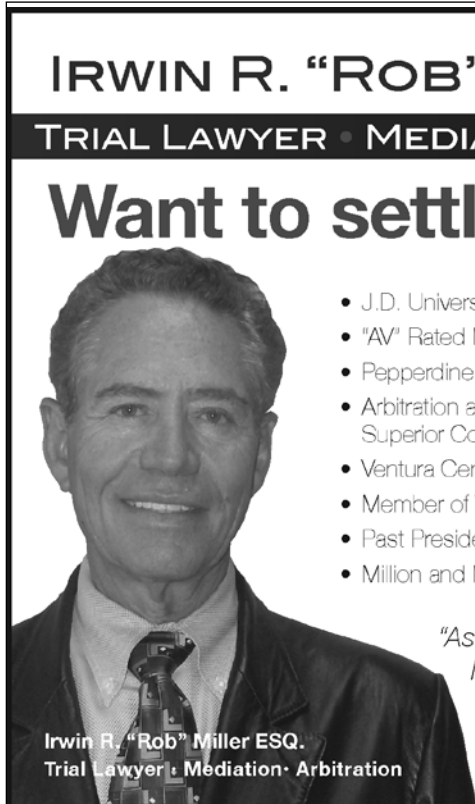
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FEB 4 Mon	Citations Editorial Board Feb 4 @ 12:00 pm – 1:15 pm
FEB 5 Tue	Barristers Board Feb 5 @ 12:00 pm – 1:00 pm
	VCLA Clinic @ Ventura Superior Court Feb 5 @ 4:00 pm – 7:00 pm
FEB 7 Thu	Inns of Court @ Saticoy Country Club Feb 7 @ 6:00 pm – 8:00 pm
FEB 12 Tue	Law Day 5k Committee Meeting @ FCOP Feb 12 @ 12:00 pm – 1:00 pm
FEB 13 Wed	VCBA Board of Directors @ Sumo Sushi Feb 13 @ 12:00 pm – 1:00 pm
FEB 19 Tue	VCLA Clinic @ Ventura Superior Court Feb 19 @ 4:00 pm – 7:00 pm
FEB 20 Wed	Family Law Bar Association @ Ventura Superior Court , Department 32 Feb 20 @ 12:00 pm – 1:00 pm
FEB 21 Thu	Women Lawyers of Ventura County @ Paradise Pantry, Ventura Feb 21 @ 5:00 pm – 6:00 pm
FEB 25 Mon	MOCK TRIAL – VENTURA COUNTY HIGH SCHOOL @ Ventura County Court House Feb 25 @ 5:00 pm – Feb 28 @ 11:00 pm

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