



CITATIONS

NOVEMBER - TWO THOUSAND TWENTY TWO

MARK KIRWIN: 2022 RECIPIENT OF THE BEN E. NORDMAN AWARD

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PRESIDENT'S MESSAGE

by Jacquelyn D. Ruffin



You may have recently received a beautiful invitation (creatively designed by JP McWaters) to this year's annual installation and awards dinner. I would like to take this opportunity to personally invite the VCBA membership to attend this event.

On November 19, we will gather at Zachari Dunes at Mandalay Beach to honor Ben E. Nordman Award recipient **Mark Kirwin** (who is profiled in this issue of CITATIONS), Verna R. Kagan VCLA Award recipient **Phillip Viramontes II** and James D. Loebel VCLA Award recipient **Zoya Shenker**. The occasion will also recognize two Ventura College of Law students – Josefina Magana and Jessica Cabral – who won CPA Law Society scholarships for their commitment to community service.

Although their pro bono activities are extensive, a brief introduction to the two VCLA awardees must suffice for this article.

Viramontes grew up in the Central Valley of California in a small town where he experienced the warmth, love, consideration and support of his immigrant grandparents and parents. "They showed me by their example how to act," reflects Viramontes. His mother was an active supporter of Cesar Chavez and attended many marches with him. Viramontes elaborates, "The memory and images of my mother's activism . . . inspired me to give back to our community. I feel compelled to volunteer." In his private practice, Viramontes specializes in

community property, personal injury and domestic relations. His volunteer work at the VCLA clinic focuses on domestic relations issues. According to incoming VCLA board president **Lou Vigorita**, Viramontes is one of the most active volunteers at the VCLA legal aid clinic, clearly befitting the Verna R. Kagan award.

Shenker, who is also the 2022 recipient of the Women Lawyers of Ventura County Holly Spevak award, has been a regular volunteer at the VCLA clinic and the Conejo Free Clinic for several years. Conejo Free Clinic legal clinic director **Karen Oakman** says Shenker "truly believes in pro bono work and that everyone deserves access to legal services. She goes above and beyond" to fulfill that commitment. Conejo Free Clinic volunteer Corliss Krivoy applauds Shenker's "amazing mix of common sense and caring but toughness and tenacity" while clinic volunteer Susan Drapkin admires Shenker's "special way of reassuring [upset and emotional clients], getting to the crux of the issue and providing the information they need." VCLA board member **Rabiah Rahman** notes that Shenker "has a heart of gold" and "a wealth of knowledge that she shares freely with those most in need. She is a gem in our community and well deserving of this recognition [as the James D. Loebel award recipient]."

In addition to the award presentations, the evening will include an address by California Supreme Court Justice Martin

J. Jenkins. Justice Jenkins was confirmed as an Associate Justice on Nov. 10, 2020. He previously served as an Associate Justice of Court of Appeal, federal district judge for the Northern District of California and trial judge on the Alameda County Superior Court and the Oakland Municipal Court. His career as an attorney included working as a prosecutor for the Alameda County District Attorney's Office, a trial attorney for United States Department of Justice Civil Rights Division and a litigator for Pacific Bell. His Commission on Judicial Nominees Evaluation report, dated Nov. 6, 2020, notes that "[w]hile on the federal bench, [Justice Jenkins] presided over significant cases including *Dukes v. Walmart* – a nationwide class action suit against Walmart stores alleging sexual discrimination under Title VII of the 1964 Civil Rights Act. At that time, the case was the largest class action ever to be certified by an American court." (See <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2020-11/jenkins%20JNE%20report.pdf>.) The report continues, "Justice Jenkins' impressive 30-year record of professional accomplishment is equally matched by his strength of character, compassion and integrity. He is praised for his brilliant intellect, first-class temperament and boundless humanity." (*Id.*)

After acknowledging awardees Kirwin, Viramontes, Shenker, Magana and Cabral for their tremendous accomplishments and hearing uplifting words from Justice Jenkins, we will close the evening with live music and dancing. I look forward to seeing you on November 19 for an "Evening of Inspiration and Celebration"!



Jacquelyn D. Ruffin is a partner at Myers, Widders, Gibson, Jones & Feingold LLP. Her practice focuses on corporate/business, real estate and land use matters. She can be

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WE READ SO YOU DON'T HAVE TO

*Never mind how I acquired this, though I disclaim any involvement by my late husband **Ed Lascher** notwithstanding his vocabulary and capacity for the acerbic.*

In 1980, a lawyer frustrated with discovery correspondence from opposing counsel (in those days, that's how lawyers communicated) replied. He said he would "strive to be as succinct as possible," but filled four single-spaced pages. The dispute seemed to be about the interrogatories each lawyer sent the other. Every word is worth reading, but here are some fun excerpts:

I am [replying to two letters] in spite of having to endure the savage, merciless heat – with no air conditioning. Additionally, the entire subject of "interrogatories" fills me with a constellation of emotions, all of which are negative.

When I first embarked on the study of law, more years ago than I care to remember [the writer was admitted to practice in the early 1950s], I recall my instructor making the comment that "the law was a harsh mistress." The true meaning of that phrase only became clear when interrogatories came into existence. There is not the slightest doubt in my mind that this plague was devised by a group of lawmakers who were totally divorced from reality and who, never having had to answer a set of "boiler plates" from the more illustrious members of the ... bar, assumed that it would in some fashion accelerate the disposition of cases and clear up hitherto ambiguous issues. In truth and in fact, the interrogatory process has not only not accelerated anything, but has brought the majority of legal proceedings to a grinding halt.

It is my carefully considered opinion that the only fashion in which an attorney can conscientiously handle interrogatories ... is by abandoning his wife [remember, this guy had been practicing since 1950-something] and children and dedicating his entire life to such crucial questions as the exact date and the name of the courthouse where his septuagenarian client obtained a divorce when he was twenty-three.

I am re-sending the interrogatories to you once again. They are only oppressive in the same sense that all legal activity is oppressive. Just as dictating this letter in a room that is not air-conditioned is oppressive. The interrogatories are simply thorough.

Your interrogatories are now in the hands of my respective clients. They shall, as do all clients, tell my answering service that they must speak to me. The answering service will then call me during dinner and the plaintiffs (who have called me collect) will announce that they do not understand the questions.

* * *

It is my understanding that by next year the interrogatory process is going to be gravely curtailed. It should be extirpated. It should never have been born.



Wendy Lascher is a co-editor of CITATIONS. She is a partner at Ferguson Case Orr Paterson, LP, and a State Bar-certified specialist in appellate law.

* * *

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HAVE YOU HEARD?



On Tuesday October 25, 2022, the Ventura County Trial Lawyers Association (VCTLA) hosted its annual Trial Lawyer of the Year event. The program honored both the 2019 and 2021 Trial Lawyer of the Year nominees. The 2019 program was delayed due to the COVID pandemic. This year's winners were **Trevor Quirk** (left) as the 2019 Trial Lawyer of the Year and the trial team of **Jody Moore** (center), Susan Kang Gordon (right) and Jennifer Fior (not pictured) as the 2021 Trial Lawyers of the Year.

VCSC Commissioner position open. Applications accepted beginning Nov. 1. See the flyer enclosed in this month's CITATIONS.

Mark your calendars: Ventura County Barristers has scheduled Bridging the Gap for Jan. 21, 2023, at the Colleges of Law, 4475 Market St., Ventura. This biennial MCLE event offers six credits, including ethics, elimination of bias, competence, and other topics to keep you interested and educated. Speakers will include at least one Ventura County judge. Open to all attorneys. More information and flyers will be circulated in the coming weeks. Register by contacting the Ventura County Bar Association at (805) 650-7599 or emailing vcba@vcba.org. We look forward to seeing you there!

Meanwhile, save Dec. 6 for VCTLA's holiday party, this year at Sterling Hills Country Club. A flyer is enclosed in this issue of CITATIONS.



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MARK KIRWIN: 2022 RECIPIENT OF THE BEN E. NORDMAN AWARD

by *William M. Grewe*



Do you know someone who grew up on an island? They are different. When they look at photographs of the earth from space, they point to their island and say, “There’s my home.” A problem on the island is everyone’s responsibility. No artificial boundaries. No shoulder shrugging. Everything surrounded by the water’s edge is home and matters deeply.

Mark Kirwin was born and raised on Bermuda. Later, he moved to the States and became a U.S. citizen while in law school. He brought with him his island mentality that problems, concerns and needs beyond his field of view were his concern, too. He has yet to realize he left the island behind, and in other places it’s acceptable to look away and leave it to someone else.

Quietly, Mark has made a lot of noise in the role which the Wizard of Oz called “Good Deed Doers.” Far away and close to home, Mark has left his mark. Here’s a short list:

Locally

- Mark created and worked in the Thomas Fire Insurance Claims pop-up clinics;
- Mark, together with **Judge Charmaine Buehner**, helped and guided VCLA in the creation of the Ventura County Legal Aid Walk-In Clinic. Mark was active in the leadership of VCLA from 2016 through 2021 and worked in the walk-in clinic;
- Mark distributes food with the Salvation Army on the west side of Ventura;



- When his children were in grade school, Mark was a member of the Schools Site council, which was tasked with managing and integrating competing interests and views;
- Mark is a five-year member of the Ventura Downtown Lions Club where he has served as a board member and officer and will serve in the near future as its president;
- Mark was a volunteer attorney assisting the public in walk-in clinics serving DACA applicants, migrants and asylum-seekers;
- Mark was a member of the Board of Directors of the Ventura County Bar Association in 2014 and 2015, Secretary-Treasurer in 2016, President-Elect in 2017 and President in 2018.
- Mark is a Board Member of EPIC (Every Day Progress in Character) which serves Ventura’s highest-risk neighborhoods by partnering with local government and businesses in providing education and leadership opportunities to children.

Public Service Projects

Mark is Co-Founder, together with his spouse, Angela, of KIRF (Kirwin International Relief Foundation). Please see kirfaid.org.

Through their nonprofit, Mark and Angela, with the help of their children, have assisted thousands, locally and internationally, by promptly and personally – hands-on,

frontline stuff – delivering relief aid. To describe it briefly, Mark likes to go to the community where disaster has struck, meet the decision makers, assess at street-level what is being done and what isn’t, and then begin filling the gaps between Big Aid and the people.

Hurricanes, floods or whatever, Mark has quietly rolled up his sleeves, put his work on pause and helped. Sometimes, it is just not that far away, and he fills his truck with needed stuff and goes to where he can help.

As well, Mark was a member of Mediators Beyond Borders for six years. He served on the Climate Change Team tasked with advocating the peaceful resolution of disputes associated with climate change involving diverse countries and cultures. He traveled internationally. Mark has a gift for listening. He is an under-the-radar, take-no-credit kind of guy who cares about people and their differing ways of seeing the world. He is from Ventura. When Mark traveled about doing this work, we were fortunate to have him carry our banner far from home. He was from Ventura, California.

That Special Quality

I nominated Mark for the Ben E. Nordman Award. I have been present at many Bar-type meetings where little things had to be done. Again and again Mark would say, “I will call her.” “I’ll take care of it.” “Email me, remind me.” Mark showed-up. He dotted the “i’s,” crossed the “t’s,” and always put the pin back in the hole. He does it all with a relaxed manner. His only fault: He does not know how to say “No.”

Please join us to celebrate Mark, and others, at the upcoming VCBA Annual Dinner.



William M. Grewe

BARRISTERS CORNER

Nominations for 2023 Barrister Board Positions Now Open

A section of the Ventura County Bar Association, the Barristers provides annual programming to assist newer members of our bar with networking, mentoring, and furthering their educations. Each year, Barristers puts on social/entertainment events (Trivia Night, Wine & Cheese Night and Meet the Bench), MCLEs (Judicial Speaker Series and Bridging the Gap). The group also connects new lawyers (and law students) with attorneys in fields of expressed interest through its network. The Barristers Board of Directors 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 next year's Barristers Board for the following positions are now open:

1. Member at Large (3)
2. Secretary
3. Treasurer
4. Vice President
5. President

Please email nominations to Leonidas Nicol at ln@QLFLaw.com (subject line: Barristers Nomination) by 11:59 p.m. on Nov. 30.

Nominations may only be made by eligible Barristers. A "Barrister" is any member in good standing of the Ventura County Bar Association who, on Jan. 1 of a given year, is either under the age of 36 or has been admitted to practice law or 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 members at large, but not as officers.

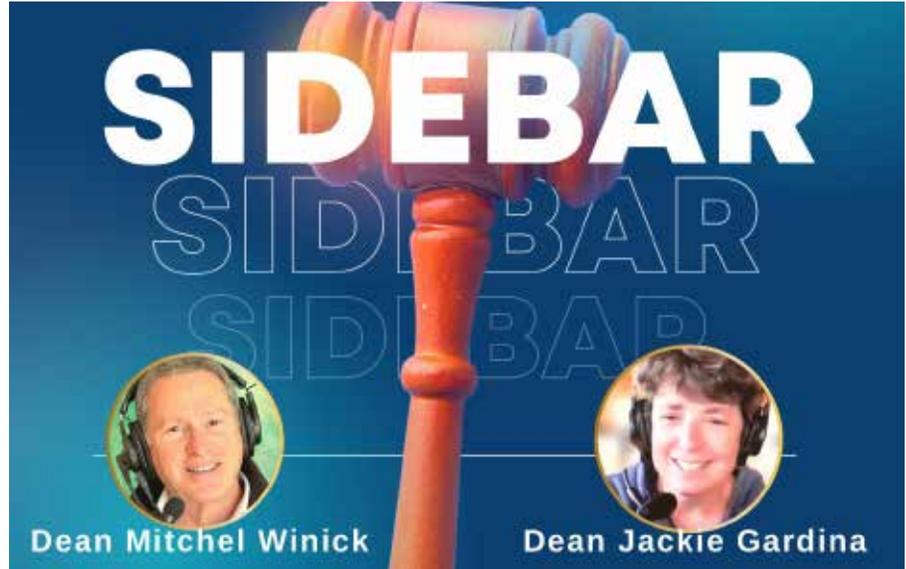


If you would like more information or to see a Barristers Board meeting in action, please e-mail Nicol at Nicol@quirklawyers.com for information. We meet on the first Thursday of every month.

SIDE BAR PODCAST

MAKING LAW ACCESSIBLE

Dr. Jackie Gardina



The Colleges of Law mission has always been about making a quality legal education accessible. Its website speaks to "democratizing the law within and beyond the classroom." To make that statement a reality, Colleges of Law is sponsoring a new podcast, *Side Bar* on Legal Talk Network.

Jackie Gardina, the dean of the Colleges of Law, and **Mitch Winick**, the dean of Monterey College, the cohosts of *Side Bar*, are educators at heart and believe the law should be accessible to everyone and should never be boring.

The podcast focuses on the current challenges to our constitutional and civil rights. The two cohosts intend to introduce their audience to local, state and national experts who will speak on topics ranging from voting rights to reproductive justice and from free speech to freedom of religion. They hope the podcast will enhance their audience's understanding of daunting topics and expose them to new ideas.

With elections looming, the first several episodes will focus on the power of state legislatures. David Pepper, author of *Laboratories of Autocracy: A Wake-Up Call from Behind the Lines*, will describe how severe gerrymandering has made the Ohio legislature unresponsive to the voters and how the state legislature's efforts are spreading to other states. Next, David Noll, co-author of *Vigilante Federalism*, will discuss whether private subordination

laws, like Texas's SB 8 and California's SB 1327, thwart the democratic system and erase longstanding constitutional rights. Next, Assemblymember Buffy Wicks will discuss California's legislative response to the Supreme Court's *Dobbs* decision and its efforts to protect reproductive health care in California.

The guest list continues with Dahlia Lithwick, senior editor at *Slate* and authors of *Lady Justice: Women, the Law, and the Battle to Save America*, Professor Orly Lobel, author of *The Equality Machine: Harnessing Digital Technology for a Brighter More Inclusive Future* and Ninth Circuit Judge Margaret McKeown who is out with a new book, *Citizen Justice: The Environmental Legacy of William O. Douglas*.

The episodes will be available every first and third Saturday of the month, starting November 5 on Apple, Google, Spotify and Stitcher. You can find links to the show on the Colleges of Law website and social media sites as well. If you would like to hear about a specific topic, reach out directly to Dean Gardina, who will be busy reading all the books so you don't have to.



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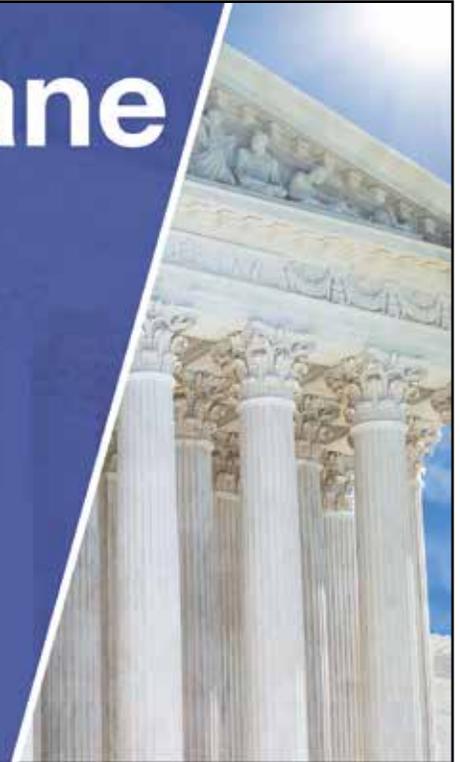
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NEW TRUST ACCOUNT RULES

The Supreme Court of California has approved new State Bar rule 9.8.5, effective Jan. 1, 2023, to implement the new Client Trust Account Protection Program (CTAPP), designed to strengthen proactive oversight and regulation of client trust accounts.

In its initial phase, to be implemented for the 2023 license renewal cycle, the CTAPP will require actively licensed attorneys to:

- Report annually to the State Bar whether they are responsible for client trust accounts and provide basic account information. Law firms will be able to report account information for lawyers who work for them.
- Complete an annual self-assessment that highlights specific rules and requirements for managing a client trust account.
- Annually review the applicable Rules of Professional Conduct related to safeguarding client funds and certify to the State Bar that they comply with those rules.

In future phases, the State Bar will implement steps authorized by the Supreme Court, including risk-based compliance audits.

The Supreme Court also approved amendments to rules 1.15 and 1.4 of the Rules of Professional Conduct:

- Under the revised Rule 1.15, a lawyer must notify a client within fourteen days after receiving funds or property on their behalf. A new comment to rule 1.4 was added to underscore that receipt of client funds is ordinarily considered a “significant development” that an attorney must promptly communicate to their client under that rule.
- Rule 1.15 was amended to compel an attorney to disburse any entrusted funds or property within 45 days after their client’s interest in them becomes undisputed. Failing to meet that deadline will result in a presumption that the attorney violated rule 1.15, which the attorney can only rebut with evidence showing good cause.



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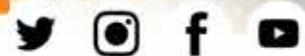
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From left to right: Aletheia Gooden, Esq., Adriana Margarita Reynoso, Carlos Gonzalez, Jr., Jose Gonzalez, Trevor Quirk, Esq., at the Chico Courthouse, June 30, 2022.



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SEE YOU NEXT TUESDAY?

This is an actual minute order from a 2022 San Diego Superior Court case

The purpose of this Minute Order is to address a statement made by Plaintiff's counsel, Timothy Scott, on the record during trial on June 30, 2022. Specifically, while Mr. Scott was addressing the Court, and after this Court orally granted Defendant MTS's motion for nonsuit, Mr. Scott stated as follows:

"... I hope this doesn't sound unctuous, but just to end the weekend on a good note, I want to thank the court staff. I want to say to have a good weekend to Mr. DeMaria. I want to say have a good weekend to Ms. Frerich. And I want to say have a good weekend to both MTS counsel. I'll *See you next Tuesday. See you next Tuesday.*"

(Judge's Ex. 1 at p. 110, emphasis added.)

Completely unaware of the intended meaning of "See you next Tuesday," (see *infra*), the Court responded, "How kind." (Judge's Ex. 1 at p. 110.)

On Tuesday, July 5, 2022, counsel for MTS approached the Court and requested to be heard about an issue concerning the above statement made by Mr. Scott on June 30, 2022. The Court and all counsel met in chambers to discuss the issue. The in-chambers meeting was recorded and documents consisting of various emails were provided to the Court. (Judge's Exs. 2-4.) During this meeting it was revealed, that unbeknownst to the Court, the term "See you next Tuesday," is a serious covert insult directed towards women. (See Judge's Ex. 5 at p. 6-9; see also <https://www.dictionary.com/slang/see-you-next-tuesday/>.) It was also revealed during the in-chambers meeting that Mr. Scott intentionally made the statement with the full knowledge of the meaning of the phrase. (Judge's Exs. 2, 5 at pp. 8-9.) Mr. Scott tried to explain that his deliberate use of the phrase was an "inside joke" between him and one of this firm employees which he expected no one in the courtroom would detect. (Judge's Ex. 5 at pp. 8-9, see also Judge Ex. 2.) However, it is not a joke to this Court that Mr. Scott made this egregious and offensive insult intentionally to two female attorneys via a coded message. In fact, but for Ms. Lagasse bringing it to the Court's attention, this wrongdoing would have been undetected.

Mr. Scott not only attempted to deceive all counsel, but also this Court, into believing he genuinely was wishing everyone a nice weekend when in fact he was purposefully directing a derogatory epithet toward the female defense attorneys who had just prevailed in a nonsuit in this case.

"An attorney is an 'officer of the court' who, by virtue of his or her professional position, undertakes certain 'special duties ... to avoid conduct that undermines the integrity of the adjudicative process.' " (*F.T.C. v. Network Services Depot, Inc.* (9th Cir. 2010) 617 F.3d 1127, 1143.) In other words, "[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law." (*People v. Chong* (1999) 76 Cal. App.4th 232, 243, 90 Cal.Rptr.2d 198.) Indeed, unwarranted personal attacks on the character or motives of the opposing party, counsel, or witnesses are inappropriate

and may constitute misconduct. (*Id.* at p. 245, 90 Cal.Rptr.2d 198; see also *Stone v. Foster*(1980) 106 Cal.App.3d 334,355, 164 Cal.Rptr. 901.)" (*In re S.C.* (2006) 138 Cal.App.4th 396, 412.) "When, during the course of trial, an attorney violates his or her obligations as an officer of the court, the judge may control the proceedings and protect the integrity of the court and the judicial process by reprimanding the attorney." (*Chong, supra*, 76 Cal.App.4th at 243-244.)

Mr. Scott's statement directed to Ms. Lagasse and Ms. Oberrecht is reprehensible and will not be tolerated in this courtroom. As such, for reasons stated above, the Court finds that it has a duty to alert the State Bar of California of Mr. Scott's conduct on June 30, 2022 and will be filing a Discipline Referral with the State Bar.

Judge Eddie C Sturgeon



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