



the bar bulletin

FEBRUARY 2022

FRESNO COUNTY BAR ASSOCIATION

www.fresnocountybar.org

VOL. 43 NO. 2

“CRISTINA’S COMMENTARY”

By Cristina M. Jelladian-Buchner
President,
Fresno County Bar Association



Due to recent updates regarding the Omicron Variant in January 2022, the Fresno County Bar Association (FCBA) has decided to delay the Annual Installation of Officers on January 21st, and to hold the event later this year. We look forward to celebrating with you at that time. Please look for additional updates and details from Anita Martinez, Executive Director of the FCBA, in the weeks ahead.

My article this month was inspired by a recent experience I had while at the Courthouse and the words of Justice Sandra Day O'Connor, who said, "Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure." 78 Or.L.Rev. 385, 391 (1999).

In mid-December 2021, I arrived early for my morning hearing and approached the B.F. Sisk Courthouse to stand in line with others waiting for the 8 o'clock hour when the deputies open the front doors. It was extremely cold that morning! As I stood shivering outside, trying to gather my thoughts about arguments I would make to the Judge that morning and decompress from my morning chaos which involved getting the kids dressed, fed, and to school on time before arriving at Court, I took a moment to observe my surroundings. I was saddened by what I saw. On the ledge outside the courthouse to my right, I observed a woman bundled up in a blanket who was chattering words to herself only she could understand. Across the street by the water tower, I observed a person asleep in a sleeping bag on the cement trying to stay warm. In front of the parking lot area, there was a person in shorts and sandals with a shopping cart which was being used to house her belongings. Seeing this, made me pause and recognize how grateful I am for everything I have been blessed with, but it also made me more aware of the need that exists within our own community, and the importance of promoting FCBA's Mission, "To Assist the Community, It Serves." Martin Luther King Jr. said, "Life's persistent and most urgent question is, 'What are you doing for others?'" While the thought of adding one (1) more "To Do" to your "To Do List" may seem like an impossibility when you consider your professional responsibilities coupled with those of your home and family life, I invite you to consider getting involved and giving back to our community if you are not already doing so. Our profession provides us with so many opportunities to give back. To some, your interests may be in giving back to the homeless. Others may prefer giving back to U.S. Veterans, victims of domestic violence at the Marjaree Mason Center, to provide pro bono legal services to an indigent party, to help local children with Mock Trial or Moot Court Competitions, to volunteer your time as a mentor to a new attorney or to the Fresno County Superior Court as a Judge Pro Tempore, or simply by donating money. The opportunities are endless.

On December 18, 2021, the FCBA Board (present and former members), our FCBA team, Anita and Angelica, and their families took part in a gift-wrapping event at the Poverello House. For those of you who don't know, the Poverello House is located in downtown Fresno. It provides "three meals a day, 365 days a year to men, women, and families along with services that improve people's quality of life. These services include, clothing distribution, emergency food bags, a medical clinic, the Men's Resident Rehabilitation program, temporary overnight shelter for men and women, and social services for individuals seeking to end their

Continued on page 2

Superior Court Judge Ana de Alba Nominated to the Federal Bench

By Missy Mckai Cartier, PIO SJCL



Ana de Alba being sworn in to the Fresno County Superior Court by Associate Justice Kathleen Meehan on December 13, 2018. Photo courtesy Howard K. Watkins.

President Joe Biden has announced his intent to nominate Fresno County Superior Court Judge Ana de Alba to the U. S. District Court for the Eastern District of California. It's a court that has long suffered from a shortage of judges, to the point where judicial officials halted all new civil cases last year in that

court due to the backlog. In December, some relief came with the confirmation of Federal Magistrate Judge Jennifer Thurston to the U. S. District Court. She had previously been assigned as a magistrate judge in Bakersfield.

Continued on page 2

MARK YOUR CALENDARS!!!

POSTPONED
FCBA'S 140TH ANNUAL BANQUET & INSTALLATION
DATE TO BE DETERMINED

FCBA'S FEBRUARY LUNCHEON

WEDNESDAY, FEBRUARY 16, 2022;

12:00 P.M. – 1:15 P.M.

AT HOLY TRINITY CHURCH

2226 VENTURA AVE, FRESNO, CA 93721

PRESENTED BY FEDERAL MAGISTRATE
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OF THE EASTERN DISTRICT OF CALIFORNIA,
JUDGE JEFFREY HAMILTON OF FRESNO
COUNTY SUPERIOR COURT, AND CASEY VAN VEEN
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FCBA PRESIDENT

&

NIKOLE CUNNINGHAM, FCBA BOARD MEMBER

SEE INSERT

**CHECK CALENDAR INSIDE
THIS ISSUE FOR
ADDITIONAL EVENTS
OR OUR WEBSITE:
www.fresnocountybar.org**

“CRISTINA’S COMMENTARY”,
(Continued from page 1)

homelessness situation.” The FCBA Board has participated in this event for several years, and prior to COVID had also included other FCBA members who were interested in participating and/or in donating gifts. Each year, FCBA spends approximately two (2) hours of our time wrapping gifts which have been donated for children in our community. While this may seem insignificant to some, these gifts can be extremely meaningful to parents who are otherwise unable to afford to give their child a gift on Christmas, and for the child who may not otherwise receive a gift at the holidays. Admittedly, some of our FCBA Members are more skilled at gift wrapping than others, but the time we spend together for the benefit of these children and families within our community truly brings out the magical spirit of the Christmas Season in each and every one of us. Please let me know if you are interested in participating in this event in December 2022 or if you have any other suggestions I can present to the Board about how FCBA and its members can get more involved in giving back to our community. While I am grateful for those that participated in this event with me, I believe FCBA can collectively do more to assist the community we serve and give back to those in need. I hope you will join me and the FCBA in promoting this part of our Mission and following the advice of Justice O’Connor noted above.

Coincidentally, Random Act of Kindness Day falls on February 17, 2022, this year. The idea behind this Day is to cultivate feelings of kindness and brighten up someone’s day. Every small act of kindness is significant. For those of you wanting change within our community, it all starts from one act of kindness which can lead to more positive outcomes. I encourage you on all days, but especially on February 17th this year, to be the reason someone smiles. In closing, I leave you this month with the words of Jan Grace who said, “Everyone can experience the joy and blessing of generosity; because everyone has something to give.”



**FRESNO COUNTY
BAR BULLETIN**

www.fresnocountybar.org

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The editorial board solicits your comments and contributions. The **March issue** of *The Bar Bulletin* will be published in **early March, 2022**. Articles and materials for that issue must be submitted, via email, to Anita Martinez (anitamartinez@fresnocountybar.org) or Dean B. Gordon (dean@deangordonlaw.com), c/o Fresno County Bar Assn., 2444 Main Street, Suite 125, Fresno, 93721 in Word or Word Perfect format **no later than Feb. 15, 2022**. If you are interested in contributing to the forthcoming issue or any future issues of *The Bar Bulletin*, please call any member of the editorial board to make the necessary arrangements before preparing materials for publication.

SUPERIOR COURT JUDGE ANN DE ALBA...,
(Continued from page 1)

U.S. District Judge Lawrence O’Neill frequently decried the lack of judges and the “crushing caseload” of the court. In 2019 he sent a letter to CA. Senators Dianne Feinstein and Kamala Harris saying, in part, “I write this letter out of concern for some 8.5 million people who live in the Eastern District of California, with my intention to prevent an impending, acute, and judicial catastrophe.” When Judge O’Neill retired in 2020, the Fresno Division of the Federal Court was left with only one active Article III judge and one senior Article III judge. At the time, each of the court’s district judges was handling about 900 cases at any given time, compared to a national average of 425 cases. O’Neill projected that would jump to approximately 1,350 per judge with his and another judge’s imminent retirement.

de Alba has been a Fresno County Superior Court Judge since her appointment by then-Gov. Jerry Brown in 2018. She

was up for reelection in 2020, but did not draw an opponent, retaining her seat by default. She currently handles juvenile justice cases. Before her elevation to the bench, de Alba was a partner at Lang Richet & Patch where she focused on employment, business, tort, and construction litigation. Judge de Alba received her J.D. from the University of California, Berkeley, School of Law in 2007 and her B.A. from the University of California, Berkeley in 2002.

de Alba was one of eight new federal judicial nominees announced by the White House on January 19th. As the Bar Bulletin heads to press, de Alba is awaiting both the official nomination from the President and a hearing before the Senate Judiciary Committee.

If approved by the Senate, the 42-year-old will become the first Latina ever to serve on the Eastern District of California Court and the second Hispanic judge actively serving on that court.

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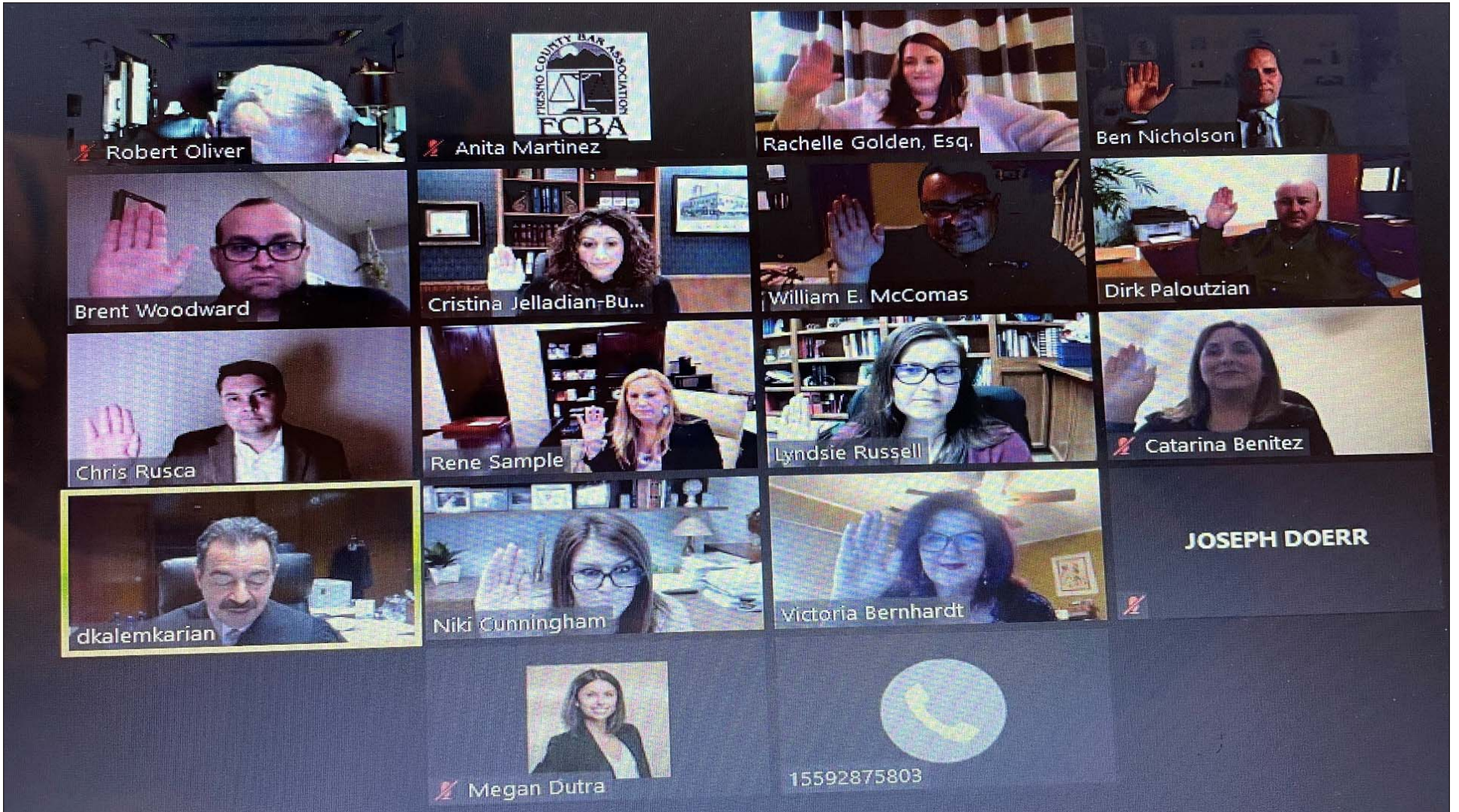
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209 329 5694



FCBA BOARD OF DIRECTORS 2022



Presiding Judge David Kalemkarian administering the Oath and Installation of Offices via zoom on January 19, 2022. FCBA welcomes our new Board of Directors Megan Dutra, Ben Nicholson, Christopher Rusca, Rene Sample, we also welcome back Lyndsie Russell.

Also pictured is Ret. Hon. Robert Oliver, Rachelle Golden, Brent Woodward, Cristina Jelladian-Buchner, William McComas, Dirk Paloutzian, Catarina Benitez, Nicole Cunningham, Victoria Bernhardt and Joseph Doerr.

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2021 George Hopper Scholarship Recipient is Ana Dominguez



Fresno County Young Lawyers is pleased to announce the 2021 George Hopper Scholarship recipient is Ana Dominguez.

Ana Dominguez is a first-generation third-year law student at UC Davis School of Law (King Hall) and a native of the Central Valley. Ana grew up in the small agricultural town of Huron, CA. She graduated summa cum laude from Fresno State in 2019 with degrees in Political Science and Criminology and is set to

graduate from UC Davis' King Hall in May of 2022.

While at King Hall, Ana has been involved in a number of organizations. She has served on the boards of the Latinx Law Students Association, the First-Generation Advocates organization and is a symposium editor for King Hall's Immigration and Nationality Law Review. She was also a founding board member for the Central Valley Coalition, an organization that focuses on the unique legal needs and the issues faced by the Central Valley. As the mom of a five-year-old, Ana also got involved in Parent Legal Society, a group of student-parents at King Hall. Ana is also currently enrolled in the UC Davis Immigration Law Clinic where, under attorney supervision, she is tasked with representing clients facing distinct immigration issues.

Upon graduation, Ana is set to return to the Central Valley where she plans to practice employment law at a local Fresno-based firm.

CCLS Pro Bono Opportunities

Submitted by CCLS Pro Bono Program

The mission of the Central California Legal Services' Pro Bono Program is to improve the quality of life of low-income residents in the Central Valley by ensuring ready access to a panel of skilled volunteer attorneys to resolve serious legal problems.

CCLS Pro Bono Program invites FCBA members to give back to the most vulnerable populations in our community by volunteering at one of our upcoming virtual clinics and trainings. Please consider attending one of the following monthly legal services clinics. Advanced training and registration are required.

- **Unlawful Detainer Clinic:** Volunteer attorneys to meet one-on-one with tenants and provide legal information and brief services such as preparing an answer. Join us on Tuesdays and Thursdays from 2pm - 4pm via Zoom, to register email udclinic@centralcallegal.org.
- **Workers' Rights Clinic:** Volunteer attorneys can provide free legal information to low-wage workers in the Central Valley. The monthly clinic is held on the third Tuesday from 5:30pm - 7:30pm via Zoom and phone. To register, please email to probono@centralcallegal.org.
- **Know Your Rights Web Series:** CCLS offers virtual legal information or "Know Your Rights" topics via YouTube on a variety of topics. Volunteer attorneys are needed to present on topics in English, Spanish, Hmong, Punjabi, etc. You may sign up by emailing probono@centralcallegal.org.

Please visit the CCLS website <https://www.centralcallegal.org/volunteers/> to learn more about the volunteer opportunities and how you can lend assistance.

OFFICE SPACE AVAILABLE

We have an office located at 1233 W. Shaw Ave., Suite 100, Fresno with space available for an attorney and 1-2 staff members. The space will include a common reception area, conference rooms, telephone system, copier/fax, and receptionist, together with sharing other common expenses and a lunchroom. The attorneys in the suite are: Tom Tusan, Stan Teixeira, Bryan Pinion, Russ Cook, and Kathleen Talens. If you are interested, please call 225-2510 and ask to speak to Tom Tusan or email him at tom@tusanlaw.com.



Russell D. Cook Phone: 559 225 2510
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 Child Support Attorney II: \$77,298.00 to \$93,964.00
 Child Support Attorney III: \$92,768.00 to \$112,762.00

The Fresno County Department of Child Support Services is offering an exceptional career opportunity for individuals interested in the position of Child Support Attorney I/II/III. To review the job flyer, please visit our website: <https://fresnocountyjobs.com>.

Remote Work Availability: This position allows for partial remote work opportunities. Some exceptions to remote work apply and may include court appearances and necessary in-office work.

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- Child Support Attorney II
- Child Support Attorney III

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Applications for this recruitment must be submitted via e-mail only. Please email a Comprehensive Resume (Include State Bar License Number) to DCSSAttorneyApp@fresnocountyca.gov.

ADDITIONAL INFORMATION:

For additional information, please contact Kari Gilbert, Director of the Department of Child Support Services by calling (559) 600-2500 or emailing DCSSAttorneyApp@fresnocountyca.gov.

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End of the Roll

(Things you might have missed. Possibly intentionally)

By Kilroy



At least Judge Judy Sheindlin is a former Manhattan Court Judge. You know, law school and passing the New York State Bar? The People's Court's Judge Joseph Wapner was the same in California, and his successor is retired Florida Circuit Court Judge Marilyn Milian. But their heir apparent has a slightly different background. Steve Harvey has been a boxer, an autoworker, an insurance salesman, a carpet cleaner, a mailman, a television and radio presenter, actor, author, businessman, and former stand-up comedian. And now, the ruler in the latest arbitration-based reality court show. We're just not sure about the "reality" aspect of that definition.

U.S. News and World Report has just re-ranked "attorney" as the ninth best job to have in America, after years of being close to a bottom-dweller on its list. Attorneys are ranked higher than pediatricians, dentists, fashion designers, and computer systems analysts. Also, higher than boxer, autoworker, insurance salesman, carpet cleaner, mailman, television and radio presenter, actor, author, businessman, and former stand-up comedian, so there's that.

Meanwhile, the Bureau of Labor Statistics projects 8.9 percent employment growth for lawyers between 2020 and 2030. So that means an extra 71,500 jobs. Might explain why they had to bring in Steve Harvey as TV's Arbitrator in Chief. Can't spare any actual attorneys.

Lastly, Happy New Year (but not as belated as it sounds)! The year of the Tiger began February 1st. While 2020 (Year of the Rat) was about survival and 2021 (Year of the Ox) was about adjusting to our new reality, the Year of the Tiger is a lot more high-strung. We're talking big changes, fired-up risk-taking and adventure. Some folks will soar, others will crash. On the bright side, either way, you are out of your rut.



WATKINS PHOTO CORNER

On the next page are 12 photographs taken 20 years ago this month. All of the photographs are now on the Watkins Photo Archive Project website, at www.watkinsphotoarchive.com. Simply go to "PHOTOGRAPHS," then to February of 2022 and click on the first album to view and individually download any desired photograph.

A reminder that the more than 210,000 photographs taken by Howard K. Watkins since September 2007 are also on the website. The Bar-related photographs are periodically added to the FCBA's website at <http://www.fresnocountybar.org/resources/photos>. Over 50,000 of the photographs in the collection represent the photographic history of our legal community for over 48 years.

Howard thanks everyone in the legal community and beyond for supporting his Photo Archive Project. He will now be focusing his time on making the 100,000 photographs he took between 1973 and 2007 accessible to the public. He also thanks the Central Valley Community Foundation for their support in helping raise the funding needed to allow Howard's Photo Archive Project to move forward. For more information, call or e-mail Howard directly at (559) 355-7040; howardkwatkins@gmail.com. Also, please note his new address of 964 Palo Verde Avenue, Long Beach, CA 90815. He and his wife moved there and to be near family (and to free up Howard's time to actually work on making his photo collection publicly accessible).



20 YEARS AGO FROM THE WATKINS PHOTO ARCHIVES

(Photos by Howard K. Watkins; www.watkinsphotoarchive.com)



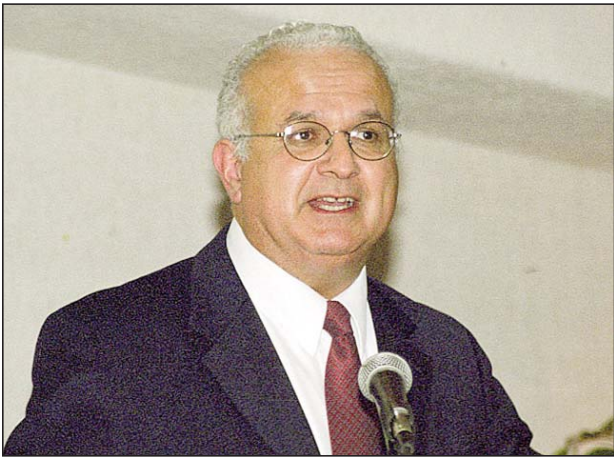
Judge Robert Oliver honored with the Fresno Chamber of Commerce's Leon S. Peters Award. Pictured with the Judge are Business Journal publisher Gordon Webster, Jr. and luncheon chair Brad Fischer.



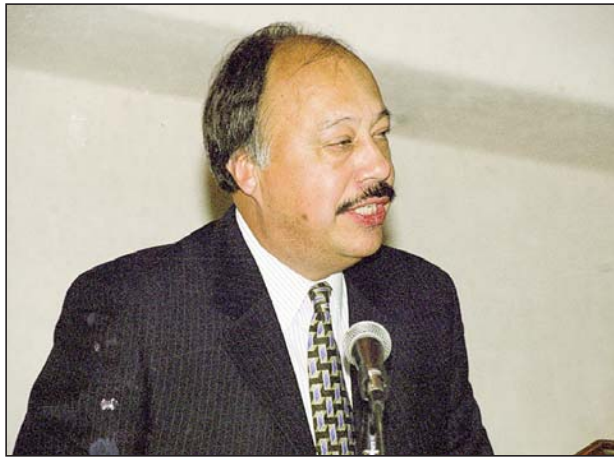
The Annual Bar Picnic Committee. Seated: Judge Dale Ikeda, Tom Georgouses, Rachel Hill & Chair Richard Berman. Standing: Charlene Bullock, Sat Franco, Kim Gaab, Howard Watkins, Melissa White, Beth Stratton & Vicki Savaria. Not pictured: Ken Taniguchi, Michael Slater & Dan Rowley.



The monthly FCBA luncheon featured candidates for District Attorney. L to R: Emcee Warren Armstrong with candidates Gordon Panzak, Elizabeth Egan, Dennis Cooper, Jeff Hamilton & Colin Kooyumjian, and FCBA President Beth Stratton.



California Supreme Court Justice Carlos Moreno giving the keynote address at the La Raza Lawyers' Mario G. Olmos Memorial Scholarship Dinner.



Tomas Olmos, brother of the late Judge Mario Olmos, speaking at the dinner.



Justice Carlos Moreno, Judge Gary Orozco and Justice Cruz Reynoso at the dinner.



Justice Carlos Moreno, Judge (& future Justice) Rosendo Pena, and Justice Rebecca Wiseman at the dinner.



Justice Marvin Baxter, Judge Ralph Nunez, Justice Cruz Reynoso, Judge Armando Rodriguez, Justices Carlos Moreno & Rebecca Wiseman and Judge Vincent McGraw at the dinner.



Juan Ramirez with Justices Carlos Moreno and Cruz Reynoso at the dinner.



The ground has been cleared for the building of the Robert E. Coyle Federal District Courthouse.



The building of the downtown Grizzlies Baseball Stadium nearing completion. Opened May 1, 2002.



Construction of the expansion to the Fresno County Jail to include Criminal Court Departments 95 & 96.



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FEE ARBITRATION

The FCBA is in need of panel members to serve as arbitrators. The fee arbitration program was established to provide arbitration assistance to attorneys and clients regarding conflicts over billings. The process serves as a communicative link between attorney and client in a period of distress. It is designed to foster better relations and to provide an informal forum for the resolution of disputes. The program is aided by the voluntary efforts of FCBA members.

If you are interested in becoming an attorney arbitrator, please call the FCBA office at (559) 264-2619 or email angelicanunez@fresnocountybar.org for more information.



Attorney Referral & Information Service of the Fresno County Bar Association

We are in need to grow our list of panel attorneys in this program. The FCBA Attorney Referral Service is a public service which currently serves Fresno, Madera, Kings, & Tulare counties in providing the public with up to 1/2 hour consultation for legal advice.

The prospect for a panel attorney is a mix of fee-producing and consultation only cases in at least 30 practice areas. The ARS office charges a \$45 administrative fee to the potential client, which covers the office or telephonic consultation with the attorney. **This service is not provided to the public on a low income or pro-bono basis** and the panel attorney determines whether to accept the client for representation at their regular hourly rate.

If you are interested in becoming an attorney panel member, please email angelicanunez@fresnocountybar.org or call the FCBA office at (559) 264-2619 for more information.



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In Honor of Black History Month

After graduation from what is now Berkeley Law in 1929, Annie Virginia Stephens Coker became the first African-American woman to pass the Bar in CA. In 1939, she joined the CA State Office of Legislative Counsel, where she practiced until she retired in 1966. Throughout her career, she compiled state codes, indexed bills pending before the State Legislature, and rendered legal opinion about proposed legislation.



Annie Virginia Stephens Coker



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TO: ALL MEMBERS OF THE FRESNO COUNTY BAR ASSOCIATION

Any publication requires new thoughts, new views, and new participants to interest its readers. With this in mind, we want voices that counsel and comment, commend and complain, or why not, confound and condemn.

Why not satisfy your creative urge by putting in writing happenings of interest in your law practice? Newsworthy items are not only welcome, but invited, as are review and analysis of court decisions, problem situations encountered in court; articles with a humorous turn; or anything pertaining to law or government you want to get off your chest.

At a more mundane level, let us know if you are moving, or a new practitioner has been added to your staff. A profile description of a freshman lawyer is an excellent way of introducing him/her to the members of our Bar Association.

Send all material to

Anita Martinez
Fresno County Bar Association
2444 Main St., Suite 125
Fresno, CA 93721

Material by e-mail can be sent to: anitamartinez@fresnocountybar.org.

**Arrivals
 And
 Departures**

Please advise the Clerk's Office of the Superior Court, in writing, of your change of address so they can update records for purpose of service.

CHANGE OF STATUS:

From: Michael J. Seng, U.S. Magistrate Judge, Retired
To: MSeng@Seng-adr.com, semi-retired arbitrator, mediator, discovery referee."

CHANGE OF ADDRESS:

JOHN CADWALADER, ESQ.
 (559) 221-3111
 From: 1233 W. Shaw Ave, Suite 106
 Fresno, CA
To: Law Office of John W. Cadwalader
 555 W. Shaw Ave, Suite C1
 Fresno, CA 93704

**Welcome New
 Members**

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- ISELA WELZ
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CALENDAR

POSTPONED

FCBA'S 140TH ANNUAL BANQUET & INSTALLATION DATE TO BE DETERMINED

FEBRUARY

- 2 - **1HR MCLE - GENERAL** - FCBA Family Law Section Mtg. Via Zoom - **Time:** 12:00 p.m. - 1:00 p.m. - **Speaker:** Mr. James P. Braun, CPA/CFF, CGMA **Topic:** Valuation of a Closely Held Business - **Cost:** Free to FCBA Section Members or \$5 if **MCLE** is requested, \$25 for Non-Section Members & \$50 for Non-FCBA members. RSVP & questions to Brenda Hook at brendahookesq@gmail.com - Please forward \$5 MCLE payment to Fresno County Bar Association, 2444 Main Street Ste. 125, Fresno, CA 93721.
- 3 - **1HR MCLE - GENERAL** - FCBA Estate Planning Section Mtg. Via Zoom - **Time:** 12:00 p.m. - 1:00 p.m. - **Speaker:** Mark Poochigian with the Law Firm of Baker Manock & Jensen, and current TEXCOM Chair - **Topic:** "Depletion Analysis: How Long Will the Money Last", presented by Scott MacDonald, Managing Director/Senior Financial Advisor/Special Needs Team for Merrill Lynch and Emily Vierra, VP/Financial Advisor/Special Needs Team for Merrill Lynch. - **Cost:** Free to FCBA Section Members or \$5 if **MCLE** is requested, \$25 for Non-Section Members & \$50 for Non-FCBA members. RSVP & Questions to Christina Olson via email: christina@rje-law.com.
- 16 - **1HR MCLE - FCBA's February MCLE - In Person (tentative)**
Location: Holy Trinity Armenian Church, 2226 Ventura Ave, Fresno, CA 93721 - **Time:** 12:00 - 1:15 p.m. - **Speakers:** Federal Magistrate Judge Stanley Boone, Eastern District of California, Judge Jeffrey Hamilton, Fresno County Superior Court & Casey Van Veen, of Global eDiscovery Solutions.
Topic: Do's and Don'ts of E-Discovery, Expectations of the Bench and the Technology Available to Meet those Expectations.
Moderators: Cristina Jelladian-Buchner and Nikole Cunningham. - **Cost:** \$30 for FCBA Members; \$50 for non-FCBA Members. Includes MCLE RSVP to anitamartinez@fresnocountybar.org.

MARK YOUR CALENDARS !!!

MARCH

- 2 - **RESCHEDULED** - Federal Bar Association Virtual Night - RVSP by February 25, 2022 to Steven Vote at vote@wjhattor-neys.com. Free to attend and prize of \$100 gift cards to winning team. Individuals or teams of up to 4 are welcome.



Valley Verdicts

VENUE/CASE TYPE	INJURY	RESULT
FRESNO		
Labor & Employment	Monetary Damages - PAGA	\$.725,000
Vehicle Negligence	Catastrophic Injuries	\$.575,000
STANISLAUS		
Vehicle Negligence	Death	\$.5,000,000

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TRIALS DIGEST'S CASE OF THE MONTH

33 Trials Digest 24th 1, 2021 WL 3616362

MOTORIST ALLEGEDLY CROSSES CENTER LINE, CAUSES COLLISION

VEHICLE NEGLIGENCE - Motor Vehicle v. Motor Vehicle; Passenger; Centerline Violation; Excessive Speed; Permissive Use Vicarious Liability Wrongful Death - Adult

STANISLAUS COUNTY SUPERIOR COURT

Perkins v. Waterworks Industries Incorporated, Docket number: CV-18-003284. Judge: Sonny S. Sandhu. Trial type: Jury. Result date: May 26, 2021.

RESULT: \$5,000,000

\$1,000,000 to plaintiff Perkins from defendants for past and future economic damages for spouse's wrongful death
\$3,500,000 to plaintiff Perkins from defendants for noneconomic damages for spouse's wrongful death
\$100,000 to plaintiff Perkins from defendants for past medical expenses in individual claims
\$400,000 to plaintiff Perkins from defendants for past personal injury, physical pain and mental suffering in individual claims

COUNSEL

Plaintiff: Kevin L. Elder, Penney & Associates, Rocklin, CA; Garrett M. Penney, Penney & Associates, Rocklin, CA
Defendant: Kenneth C. Ward, Severson & Werson, San Francisco, CA; Nandor Krause, Severson & Werson, San Francisco, CA; Jeremiah Harvey, Severson & Werson, San Francisco, CA

FACTS/CONTENTIONS

According to the plaintiffs' lawyer: Paul Perkins, a 64-year-old insurance estimator, his wife, plaintiff Rosemary Perkins, age 64, and their neighbor and friend, plaintiff Maria Rosas-Calderon, age 41, were traveling south on Terminal Avenue between Riverbank and Modesto March 1, 2017. Terminal Avenue is a 2-lane road without any adjacent improvements, lights or fog lines. Waterworks Industries Incorporated's employee, William Borges Jr., drove north in a 2011 Ford F-350 company-owned pick-up truck. The left front of defendant Borges' pick-up truck struck the left front of plaintiffs' pick-up truck at an estimated 125 miles per hour. Paul was killed instantly and Rosemary and Rosas-Calderon suffered injuries. Defendant Borges sustained a scratch to his finger. Data retrieved from defendants' pick-up truck reportedly showed that defendant Borges' speed at the time of impact was 70 miles per hour. The posted speed limit for the road was 55 miles per hour. The data also allegedly showed that there were no steering movements to avoid the impact or any braking during the 5 seconds before impact.

Plaintiffs brought claims alleging wrongful death and vehicle negligence. They argued defendants' vehicle crossed over the center line and into the southbound lane, causing the incident.

Defendants contested liability and argued Paul drove either on or over the skip-striped middle line. An independent witness who was traveling behind the Perkins vehicle reportedly testified that the Perkins vehicle was traveling southbound and either crossed or was near the center line during the moments before the impact.

Plaintiff Rosas-Calderon settled her case for a total of \$75,000.

The case proceeded to jury trial on plaintiff Perkins' wrongful death and individual claims.

Jurors found defendants 100 percent at fault.

CLAIMED INJURIES

According to the plaintiffs' lawyer: Plaintiff Perkins: Death of spouse; broken jaw wired shut for 60 days; tibial plateau fracture. Plaintiff Ross-Calderon: fractured sternum.

CLAIMED DAMAGES

Not reported.

SETTLEMENT DISCUSSIONS

According to the plaintiffs' lawyer: Demand: \$5,600,000. Offer: \$3 million, increased to \$3.25 million 30 days before trial. The parties attended a mediation before David Abbott, who suggested settlement of \$4,000,000.

EXPERTS

Plaintiff: Jeffrey Bonsall, Accident Reconstructionist, Momentum Engineering, Torrance, CA; Craig Enos, C.P.A., Economist, Enos Forensics, Folsom, CA; Jacob Barber, D.D.S., Oral/Maxillofacial Surgeon, Modesto, CA

Defendant: Rajeev Kelkar, Ph.D., Accident Reconstructionist, InSciTech Inc., Mountain View, CA; Laura Dolan, M.B.A., Economist, Dolan Xitco Consulting Group, San Diego, CA; Michael Klein, M.D., Orthopedics, MRK Medical Consultants, Gold River, CA

EXPERT TESTIMONY

According to the plaintiff's lawyer: Plaintiffs' expert Jeffrey Bonsall testified that based upon gouge marks in the roadway, the physical evidence to both vehicles and the data from defendants' truck, the impact occurred as much as 3 feet into plaintiffs' southbound lane. Defense expert Rajeev Kelkar, PhD, testified the impact occurred either on the center line or as much as 20 inches inside the southbound lane. He further testified defendant Borges was presented with a condition of imminent peril when he observed the headlights of plaintiffs' vehicle traveling in the northbound lane and across the center line which caused Borges to move his vehicle to the east side of the road, causing him to leave the roadway surface. When he attempted to get back onto the roadway surface, he temporarily lost control of his vehicle, causing him to travel across the northbound lane and into the southbound lane. Both experts agreed the impact occurred in the southbound lane.

COMMENTS

According to court documents: The complaint was filed Oct. 4, 2018. According to the plaintiffs' lawyer: The defendants maintained an auto liability policy issued by Liberty Mutual in the amount of \$1,000,000 and a general liability policy issued by Navigators/Hartford in the amount of \$5,000,000. According to the plaintiff's attorney, the trial lasted 9 days, the jury vote was unanimous, and deliberations lasted 2 hours and 20 minutes.

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Published by the Fresno
County Bar Association,
2444 Main St., Suite 125
Fresno, CA 93721-1720 (559) 264-2619

Production Assistant: Anita Martinez
Typographer: American Press

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