



# NEWSLETTER

## State Bar Increases Attorney MCLE Compliance Audits

By Cheryl L. Stengel, Esq.

The State Bar of California recently announced that it sent letters to approximately 5,200 attorneys to ensure compliance with Minimum Continuing Legal Education (MCLE) requirements. This is the fifth year that the State Bar has conducted audits that could potentially result in disciplinary action. The sample represents about 10% of the attorneys in MCLE group 2 (last names begin with the letters H through M) who reported compliance with MCLE requirements this cycle. By comparison, in 2011, only about 1% of attorneys were audited.

The audit will include lawyers who had to make up missing hours as a result of being audited in 2012. In addition, it will include a higher proportion of those with other risk factors for doing poorly on the audit, such as a history of administrative actions or late filing of MCLE compliance. The remaining roughly 2,000 were chosen at random from attorneys whose last names begin with the letters H through M. Attorneys will be asked to provide certificates of course completion or prove they are statutorily exempt. The State Bar requires active attorneys to take 25 hours of continuing education courses every three years. Lawyers must keep their documentation for at least one year after their compliance is due.

There are two components to the audit, administrative and disciplinary. Those who do not respond to the audit or do not bring themselves into compliance by October 30 will be administratively suspended on October 31. In addition, those who appear to have falsely declared they were compliant will be referred to the Office of Chief Trial Counsel for possible disciplinary action. As of mid-June, 60 attorneys had been disciplined in connection with the MCLE audits, and three had resigned with charges pending.

## Upcoming Events Calendar

**September 7, 2015 – Labor Day**  
State and Federal Courts Closed

**September 10**  
**Estate Planning and Probate Section**  
**12:15 - 1:15 p.m.**  
Law Offices of Nancy Kaupp Ewin, Esq.  
8166 La Mesa Blvd., La Mesa  
Topic: TBA  
Speaker: TBA

**September 15**  
**Family Law Section**  
**12:00 - 1:15 p.m.**  
East County Court, Dept. 7  
250 E. Main Street, El Cajon  
Topic: High Conflict Co-Parenting  
Speaker: Dr. Deena Stacer

**September 22**  
**Civil Litigation Section**  
**12:00 - 1:15 p.m.**  
BJ's Restaurant  
Grossmont Center, La Mesa  
Topic: Your Client Found Mold, Now What?  
Speaker: Rebecca Lack, Esq.

## Continued from Page 1...

With the State Bar stepping up its efforts to ensure attorneys are meeting their continuing education requirements, we must be ever vigilant in documenting our MCLE activities, properly reporting compliance to the State Bar at the end of the three-year compliance period and preventing problems from arising in the event of an audit.

If your compliance with the MCLE requirement is audited, the following must be provided:

1. The certificates of attendance given to you by providers or other proof of attendance;
2. Your record of self-study activities including, as appropriate, the title, provider, time spent in the activity, subject matter of the activity, and the date on which you engaged in the activity; and
3. Proof of Exempt status, if applicable.

Maintain the records listed above for at least one year from the time compliance is reported. You can download a fillable Personal MCLE Log form you can use to keep track of your credit hours at [mcle.calbar.ca.gov/Portals/7/documents/MCLE-Personal-Log\\_ADA.pdf](http://mcle.calbar.ca.gov/Portals/7/documents/MCLE-Personal-Log_ADA.pdf).

If you are audited, discipline defense attorneys who represent lawyers in State Bar Court agree that the best tactic, short of completing your MCLE requirements in the first place, is honesty. Lying about having done so may lead to a much more damaging moral turpitude charge. For attorneys who have not met their MCLE requirements by the deadline, a late fee may be paid with an additional 60 days obtained to comply with the MCLE requirements.

## FBA Civil Litigation Section MCLE Program Update

By Mark Raftery, Esq.

The Civil Litigation Section of the Foothills Bar Association will present the MCLE program "Your Client Found Mold, Now What?" with noted San Diego attorney (and former CASD President) Rebecca Lack on Tuesday, September 22, 2015 from 12:00 to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa. For this program, Rebecca has prepared a helpful outline to assist you in analyzing a potential mold contamination case.

Reported mold contamination cases have been in the news for some time. These types of cases frequently involve negligence, breach of contract, breach of habitability, and other theories and often require the services of various expert witnesses. Rebecca has successfully pursued a number of these cases and will discuss the various legal theories that injured tenants may pursue, the typical defenses asserted by owners and management companies, the types of expert witnesses that should be retained as early as possible to help investigate the case, and how plaintiff's counsel can successfully establish a viable mold contamination case.

The seminar is free to members of the Foothills Bar Association and only \$10.00 for nonmembers. You may order lunch from BJ's menu, but do not have to. Walk in registrants will be accommodated as space allows.

You may RSVP to [markraftery@cox.net](mailto:markraftery@cox.net) or fax to 619.698.7628. This program has been approved for 1.0 hour of MCLE general credit by the State Bar of California.

## Get It In Writing

By Keith Jones, Esq.

How many times in your practice have you advised clients to “Get it in writing?” Maybe you did so because a written contract can be crucial, although not irrefutable, evidence should the parties’ agreement transform into a dispute. Or maybe you did so because the nature of the contract required it to be in writing under California’s statute of frauds.

Originally codified in 1872, California Civil Code Section 1624 is the statutory version of the statute of frauds. But the California Supreme Court recognized its importance over two decades before its enactment, finding its place as a legal necessity in June 1850.

In the case in question, the defendant had verbally retained an agent to sell real property located in San Francisco. The agent agreed to sell the property to the plaintiff for \$6,500, but did not commit the agreement to paper, nor did the agent deliver title deeds or give possession to the plaintiff.

The next day, the defendant, who had not been contacted by his agent about the sale, sold the property to another buyer for \$6,000. The plaintiff attempted to tender payment to the agent who refused, and then to the defendant who also refused. At trial, the plaintiff succeeded in proving that the property was worth at least \$8,000 to \$9,000, and the trial court awarded the plaintiff \$1,500, i.e. the difference of the amount the plaintiff agreed to pay and the value of the property.

The California Supreme Court reversed the trial court’s judgment notwithstanding the plaintiff’s argument that a law for the statute of frauds was not then in effect in California. The Supreme Court found that “*under any system of laws,*” a verbal understanding between an agent who lacked written authorization and a buyer who didn’t take possession and pay the purchase money couldn’t be enforced if the seller repudiated the deal. Chief Justice S. C. Hastings found that there was “*not the shadow of equity*” in the plaintiff’s favor. Harris v. Brown (1850) 1 Cal. 98, 100.

The decision suggested that the outcome might have been different had the plaintiff promptly advised the defendant of the transaction. But the plaintiff didn’t do so and couldn’t hold the defendant responsible since he had not been advised that the agent had sold the property to the plaintiff.

Civil Code Section 1624(a)(3) seems directed right at this early California Supreme Court decision. It states that a contract, or some note or memorandum thereof, needs to be in writing if it is for the sale of real property, and if the agreement is made by an agent of the party to be charged, then the agent’s authority is invalid unless the agent’s authority is in writing.

Next time you advise a client to “Get it in writing,” be mindful that the California Supreme Court echoed this sentiment via equitable principles over 165 years ago.



Foothills Bar Association members cheer on the Padres as they beat the Reds at Petco Park on August 11.

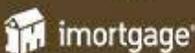
**SAVE THE DATE!**

The Foothills Bar Association's annual "Hard to Get" MCLE program will be January 13, 2016 at the La Mesa Community Center. This program will feature excellent speakers on legal ethics, competence issues and elimination of bias. Food and beverages will be provided. Details to follow soon.

**Certified Divorce Lending Professional**



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## REMINDER:

It's time to renew your Foothills Bar Association membership for the 2015-2016 year. Membership renewal for existing members or sign up for new members may be done on-line at:

<http://foothillsbar.org/membership/>.

The membership application is also provided with the newsletter.

<http://foothillsbar.org/membership>.

Law Office of Patrick F. O'Connor  
Civil Litigation Only  
Serious Personal Injury  
Employment  
Defamation  
AV-Rated. One of San Diego Magazine's TOP LAWYERS of 2015.  
Tele. 619-463-4284  
E-mail: [patrick@pfoloaw.com](mailto:patrick@pfoloaw.com)

**Looking for Speakers for Future FBA Civil Litigation Section Meetings:**

**If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at [mraftery@epsten.com](mailto:mraftery@epsten.com) or Elizabeth Smith-Chavez at [liz@smithchavezlaw.com](mailto:liz@smithchavezlaw.com).**

**Newsletter Advertising Rates****Business Card Size****\$25.00 for two months****\$125.00 for twelve months**

The Foothills Bar Association seeks a chairperson for the criminal law section. Responsibilities will involve scheduling speakers for lunch time MCLE programs on topics of interest and providing Section meeting status reports to the Foothills Board of Directors. Interested attorneys should contact Glen Honig at [honigesq@gmail.com](mailto:honigesq@gmail.com) or (619) 315-9962.

**Foothills Bar Association Notice of Board Meeting:**

**The Foothills Bar Association Board of Directors meets on the third Tuesday of each month. The next meeting will be on September 15, 2015 at the Kriger Law Firm, 8220 University Avenue, 2<sup>nd</sup> Floor conference room, La Mesa, CA 91942. The meeting will begin at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.**

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or [Kelly.Fabros@SDCourt.CA.Gov](mailto:Kelly.Fabros@SDCourt.CA.Gov).

## 2015 FBA OFFICERS, DIRECTORS, SECTION CHAIRS & COMMITTEES

### OFFICERS

<b>President</b>	Cheryl L. Stengel	<a href="mailto:clstengel@outlook.com">clstengel@outlook.com</a>	619-269-2126
<b>Vice President</b>	Glen Honig	<a href="mailto:Glen@FamilyLawSanDiego.com">Glen@FamilyLawSanDiego.com</a>	619-315-9962
<b>Treasurer</b>	Bradley Schuber	<a href="mailto:bschuber@krigerlawfirm.com">bschuber@krigerlawfirm.com</a>	619-589-8800
<b>Secretary</b>	Traci Hoppes	<a href="mailto:Traci@FamiyLawSanDiego.com">Traci@FamiyLawSanDiego.com</a>	619-448-6500
<b>Immediate Past President</b>	Keith Jones	<a href="mailto:kjones9001@gmail.com">kjones9001@gmail.com</a>	619-462-6220

### DIRECTORS

Carolyn R. Brock	<a href="mailto:carolyn@crbrocklaw.com">carolyn@crbrocklaw.com</a>	619-741-0233
Kim Marie Staron	<a href="mailto:kstaron@lawinsandiego.com">kstaron@lawinsandiego.com</a>	619-574-8000
Nancy Kaupp Ewin	<a href="mailto:nancy@nkewinlaw.com">nancy@nkewinlaw.com</a>	619-698-1788
Garrison Klueck	<a href="mailto:Garrison@FamilyLawSanDiego.com">Garrison@FamilyLawSanDiego.com</a>	619-448-6500
Mark R. Raftery	<a href="mailto:mraftery@epsten.com">mraftery@epsten.com</a>	858-527-0111
Elizabeth Smith-Chavez	<a href="mailto:liz@smithchavezlaw.com">liz@smithchavezlaw.com</a>	619-800-2092
George de la Flor	<a href="mailto:gldelaflor@cs.com">gldelaflor@cs.com</a>	619-246-9544

### REPRESENTATIVES

Dan Bacal, SDCBA	619-588-2064
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### SECTION CHAIRS/MEMBERS

<b>FAMILY LAW:</b>	Traci Hoppes
<b>CIVIL LITIGATION:</b>	Cheryl Stengel, Mark R. Raftery & Elizabeth Smith-Chavez
<b>ESTATE PLANNING:</b>	Nancy Kaupp Ewin, Carolyn R. Brock

### COMMITTEES

<b>ADVERTISING</b>	Chair: Nancy Kaupp Ewin
<b>LAW DAY</b>	Chair: Carolyn R. Brock & George de la Flor
<b>HARD-TO-GET</b>	Chair: Keith Jones, Garrison Klueck & Elizabeth Smith-Chavez
<b>CREDITS SEMINAR</b>	
<b>MEMBERSHIP</b>	Chair: Bradley Schuber & George de la Flor
<b>ADDRESS CHANGES</b>	Chair: Bradley Schuber

**SUBMISSIONS**

Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at [clstengel@outlook.com](mailto:clstengel@outlook.com).

**ADDRESS CHANGES**

Send change of address or telephone number to Bradley Schuber at [bschuber@krigerlawfirm.com](mailto:bschuber@krigerlawfirm.com)

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**Foothills Bar Association  
P.O. Box 1077  
El Cajon, CA 92022**

**Addressee Name  
4321 First Street  
Anytown, State 54321**



**FOOTHILLS BAR ASSOCIATION  
OF SAN DIEGO COUNTY**  
Service, Professionalism, Collegiality

THE CIVIL LITIGATION SECTION OF  
THE FOOTHILLS BAR ASSOCIATION PRESENTS:

**“YOUR CLIENT FOUND MOLD, NOW WHAT?”**

**Speaker**

**Rebecca Lack, Esq.**

**Tuesday, September 22, 2015 – Noon to 1:15 p.m.  
BJ’s Restaurant, Grossmont Center, La Mesa**

The seminar is free for members of FBA and only \$10.00 for non-members. Walk in registrants will be accommodated as space allows.

Mark Raftery, Cheryl Stengel, and Elizabeth Smith-Chavez,

Co-Chairs

The Foothills Bar Association certifies that this activity has been approved by the State Bar of California for 1.0 hour General MCLE credit

**Registration for the Program on September 22, 2015**

Name \_\_\_\_\_ Number Attending \_\_\_\_\_

Telephone \_\_\_\_\_

Fax registration to Mark Raftery at (619) 698-7628 or email to  
[markraftery@cox.net](mailto:markraftery@cox.net) by September 17, 2015

**Foothills Bar Association  
Of San Diego County**

P.O. Box 1077  
El Cajon, CA 92020

**Membership Application**

The FBA Membership year is July 1 – June 30

**\$65.00 Membership Fee**

**\*\*Dues are waived for first-time applicants who have been a member  
of the CA State Bar for less than one (1) year\*\***

***Please Print or Type:***

*Required fields \*\**

New  Renew with changes as noted  Renew with No changes

**\*\* Name:** \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Office Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*(I understand that by providing my fax number and email address, I hereby consent to receive faxes and email messages by  
or on behalf of the Foothills Bar Association)*

I agree that my professional contact information may be published on the Foothills Bar Association website  
and in the annual Foothills Bar Association Attorney Directory.

If you DO NOT want your professional information published in the directory or on the website, please initial  
here: \_\_\_\_\_

Foreign Languages Spoken: \_\_\_\_\_

I am a member in good standing of the State Bar(s) of: \_\_\_\_\_

CA Bar #: \_\_\_\_\_ Year admitted to Practice: \_\_\_\_\_

Are you interested in becoming actively involved? *(please check one)*

- Yes, I would like to become actively involved, and have time to devote.  
 Yes, I would like to become actively involved, but have limited time to devote.  
 No, I do not wish to be actively involved, but do wish to take advantage of FBA  
membership benefits.

If you would like to be actively involved and have time to devote would you like to hold a  
position? *(Please circle one)*  yes or  No

If you answered yes, what committee and/or position are you interested in?

\_\_\_\_\_

Please choose a section:  Family Law  Estate Planning  Civil Litigation  Criminal

Please choose a committee:  Advertising  Annual Dinner  Golf Tournament

Hard-to-Get  Seminar Law Day  MCLE  Membership  Monthly Newsletter  Website

**Check all areas of practice to be included in the Foothills Bar Association Telephone Directory  
and on the Foothills Bar Website:**

Administrative	Internal Revenue Service/ Tax
Adoptions	Insurance
Appellate	Intellectual Properties
Aviation	Juvenile
Banking	Landlord/ Tenant
Bankruptcy	Legal Malpractice
Business/ Corporate	Mechanic's Liens
Civil Litigation	Medi-Cal
Collections/ Consumer	Mediation
Commercial/ Construction	Medical Malpractice
Conservatorship	Military
Criminal	Municipal
Dental malpractice	Personal Injury
Elder	Probate
Eminent Domain	Public Defender
Employment	Real Estate/ Land Use/ Environment
Estate Planning/ Wills/ Trusts	School
Family/ Domestic	Securities
General	Sports/ Entertainment
Guardianship	Social Security
Home Owners Association	Worker's Compensation
Immigration	<b>List all areas of Certified Specialization:</b>

\*\* Date: \_\_\_\_\_ \*\*Applicant Signature: \_\_\_\_\_

*Please return the completed Membership Application, together with your check  
for **\$65.00** made payable to: **Foothills Bar Association** and mail to:*

*Foothills Bar Association  
P.O. Box 1077  
El Cajon, CA 92020  
[www.foothillsbar.org](http://www.foothillsbar.org)*

*If you wish to pay the membership fee by credit card, please complete the credit card information on the  
following page. Your credit card information will be not be retained after processing.*

*For payments by credit card:*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ Security Code: \_\_\_\_\_

Type of Card (i.e. MasterCard, VISA, American Express): \_\_\_\_\_

Name on Credit Card: \_\_\_\_\_

Expiration month/year: \_\_\_\_\_

**Please note: This information will be not retained after processing.**