



NEWSLETTER

Foothills Bar Association Come One! Come All!

By Glen Honig, Esq., FBA President

The Foothills Bar Association is ending 2016 with its annual Holiday Mixer and Toy Drive event and beginning 2017 with its Annual Hard-To-Get Seminar and Annual Dinner. The Foothills Bar Association encourages your participation in all of these exciting events!

Mark the evening of **Thursday, December 15, 2016** on your calendar for our Toy Drive and Holiday Mixer at Hooley's Irish Pub in Grossmont Center, La Mesa, from 5:00 to 7:00. The Foothills Bar Association is pleased to collect donated toys for the Salvation Army, which will distribute them to local families in need. A flyer is included with this newsletter. Bring your new, unwrapped gift and receive a drink ticket (limit one ticket per person). Delicious buffet-style food is included. We look forward to seeing our members there!

On **Wednesday, January 18, 2017**, the Foothills Bar Association will present its Annual "Hard-To-Get" Seminar. Once again, we will be at the La Mesa Community Center located at 4975 Memorial Drive. Dinner and beverages will be included. Registration begins at 5:00 p.m. with our first speaker scheduled to start at 5:30 p.m. We will conclude the program at 9:00 p.m., and offer one hour of continuing legal education credits for each of the legal ethics, elimination of bias in the legal profession and competence issues categories. We've lined up an excellent panel of speakers, including Edward McIntyre, Esq. and Michele Macosky, Esq.

Pre-registration fees are \$70.00 for FBA members and \$80.00 for non-members, with each category of fees increasing by \$10.00 on the day of the event. You may register and pay through the FBA's website, www.foothillsbar.org, or by mailing your check to the FBA at P.O. Box 1077, El Cajon, CA 92022. Be sure to indicate on the check that it is for the "Hard To Get" seminar and the name of the attendee.

Upcoming Events Calendar

December 8

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: International Beneficiaries

Speaker: Daryl Golemb, CPA

December 15

Foothills Bar Association's Holiday Mixer and Toy Drive

5:00 - 7:00 p.m.

Hooley's Irish Pub in Grossmont Center, La Mesa

December 20

Family Law Section

12:00 - 1:15 p.m.

East County Court, Dept. 5

250 E. Main Street, El Cajon

Annual Holiday Cookie Mixer

December 26 - Christmas Day (observed)

State and Federal Courts Closed

January 2 - New Year's Day (observed)

State and Federal Courts Closed

January 18, 2017

Foothills Bar Association

"Hard to Get" MCLE Seminar

5:00 - 9:00 p.m.

La Mesa, Community Center

4975 Memorial Drive, La Mesa

January 27, 2017

Foothills Bar Association Annual Dinner & Installation of Board of Directors

Mission Trails Regional Park Visitor Center

One Father Junipero Serra Trail, San Diego

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Then, on **Friday, January 27, 2017**, the Foothills Bar Association will hold its Annual Dinner and Installation of Officers and Directors. This event will again be held at the Mission Trails Regional Park Visitor Center, a beautiful and unique venue. The evening will include music and fun festivities. Registration information will be provided soon.

Duel Over Dual Capacity By Broker and Its Agents

By Keith A. Jones, Esq.

California real estate agents may represent sellers or buyers separately, or both parties under a dual agency relationship. Under California law, residential and commercial real estate agents to are required to provide mandatory written disclosure forms to the parties in such transactions identifying the roles that the agents are serving with very specific explanations about the nature of each role.

The end result of the disclosures is that regardless of who the agent represents, the fiduciary duty encompasses one of *"utmost care, integrity, honesty, and loyalty"* in the dealings with the parties. Like attorneys representing multiple clients in a matter, real estate agents are exposed to potential conflicts when serving in the dual capacity.

The California Supreme Court recently addressed an issue in a dual agency relationship, namely when both the seller's residential real estate agent and the buyer's real estate agent worked for the same real estate broker. After buying a luxury home, the buyer discovered the seller's agent made misrepresentations regarding the square footage, prompting the buyer to sue the seller's agent and the real estate broker, but not the buyer's agent, for breach of fiduciary duty.

The trial court granted a motion for nonsuit in favor of the seller's agent, finding that he did not owe a fiduciary duty to the buyer who had his own agent. The trial court instructed the jury that the real estate broker could liable if it could find an agent of the real estate broker other than the seller's agent or the buyer's agent breached the fiduciary duty owed to the buyer. Since no such agent existed, the jury ruled in favor of the real estate broker.

The appellate court reversed the decision, finding the real estate broker acted as a dual agent for the seller and buyer. Since the seller's agent signed the disclosure form for the real estate broker, the seller's agent owed the fiduciary duty of utmost care, integrity, honesty, and loyalty to the buyer in a dual capacity.

The Supreme Court agreed with the appellate court, providing a detailed historical analysis of dual agency representation in the real estate profession. The parties argued about the affect of two sentences in Civil Code Section 2079.13 related to a licensee's duty owed to a principal. The first sentence states that the broker bears responsibilities for those acting under its license. The second states that the when a licensee owes a duty to any principal, then that duty is equivalent to the duty owed by the broker.

Defendants argued that these two sentences combined to clarify that broker's responsibility included only whatever duty its licensee's assumed. They argued that the licensee represented only the seller whose fiduciary obligation flowed to the seller and not the buyer. The Supreme Court rejected this argument, agreeing with the buyer that licensee's duty was that of the broker which had taken on representation in a dual capacity since it employed both agents.

The Supreme Court reasoned that a licensee cannot act except as the representative under a broker's license. The licensee does not have an independent relationship with the seller or buyer. Rather, the licensee's ability to represent a client exists because of the agency relationship between the broker and the client. This analysis supported the Supreme Court's conclusion that: *"that the associate licensee owes the parties to that transaction the same duties as the broker on whose behalf he or she acts."*

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In this case, the broker employed both the seller's agent and the buyer's agent, and thus owed a fiduciary duty to the seller and the buyer in a dual agency capacity. Therefore, the seller's agent owed the buyer the same fiduciary duty as owed by the broker serving as a dual agent. Such relationship required the seller's agent to investigate and respond to the buyer's inquiry regarding the accurate square footage and to disclose what he knew. Whether he did so remained to be determined by a new trial.

Foothills Bar Association Notice of General Membership Meeting and Board of Directors Election

Members,

On December 15, 2016, the Foothills Bar Association will hold its general membership meeting at 4:45 p.m. at Hooley's Irish Pub & Grill in Grossmont Center, La Mesa. At that meeting, members will have an opportunity to vote to elect the Board of Directors for the upcoming 2017 calendar year.

The Board has open positions. If you are interested in serving on the Board or would like to nominate someone to serve, please send nominations (self or others) via e-mail to "Nomination Committee" at bar@foothillsbar.org by **Monday, December 12, 2016**. To be eligible, a nominee must have been a member of the Foothills Bar Association for at least one year and maintain his or her residence or principal office in San Diego County. We will send out the slate of nominated directors and current directors for your consideration prior to the general meeting.



SAVE THE DATE
The Foothills Bar Association's 54th Annual Dinner and Installation of the Board of Directors will be held on January 27, 2017 at Mission Trails Regional Park Visitor Center. More information will be coming soon.

Reminder:

The Foothills Bar Association's annual "Hard to Get" MCLE program will be January 18, 2017 beginning at 5:00 p.m. at the La Mesa Community Center. The program will feature excellent speakers on legal ethics, competence issues and elimination of bias. Food and beverages will be provided. Please RSVP as space is limited. You may register and pay via the FBA website at: www.foothillsbar.org.

Please see attached flyer with additional details.

MCLE



FOOTHILLS BAR ASSOCIATION OF SAN DIEGO COUNTY

Service, Professionalism, Collegiality

**ATTORNEYS, LAW OFFICE STAFF AND COURT EMPLOYEES:
PLEASE JOIN THE FOOTHILLS BAR ASSOCIATION FOR OUR
HOLIDAY TOY DRIVE AND MIXER**

**HOOLEYS IRISH PUB & GRILL – GROSSMONT CENTER, LA MESA
THURSDAY, DECEMBER 15, 2016 FROM 5:00 PM to 7:00 PM**

**PLEASE BRING A NEW UNWRAPPED TOY TO BENEFIT THE
SALVATION ARMY TOY DRIVE. TOYS WILL BE DISTRIBUTED BY THE
SALVATION ARMY TO LOCAL FAMILIES. ENJOY HOSTED APPETIZERS
AND RECEIVE ONE DRINK TICKET WITH YOUR TOY DONATION.**

**GET IN THE HOLIDAY SPIRIT OF GIVING AND SHARE GOOD TIDINGS
WITH FELLOW MEMBERS**

(Limit of one drink ticket per person will be distributed)



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

THE FOOTHILLS BAR ASSOCIATION PRESENTS ITS ANNUAL:
“HARD TO GET” MCLE PROGRAM

Speakers:

5:30-6:30: Edward McIntyre, Esq. – Legal Ethics

6:40-7:40: Michele Macosky, Esq. – Recognition & Elimination of Bias

7:50-8:50: Timothy Casey, Esq. – Competence Issues

Wednesday, January 18, 2017 from 5:00 p.m. – 9:00 p.m.

La Mesa Community Center, 4975 Memorial Drive, La Mesa

This activity is approved for a total of 3.0 hours of MCLE credit by the State Bar of California (1 hour legal ethics, 1 hour recognition and elimination of bias, and 1 hour competence issues). The FBA certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing mandatory minimum continuing legal education. Sign in and registration is from 5:00 – 5:30 p.m. with the first presentation starting at 5:30 p.m.

Registration fee includes dinner. **PLEASE RSVP.** We encourage early registration so that we can have sufficient food and beverages available for all attendees. Please call Keith A. Jones, Esq., at (619) 462-6220 if you have any questions.

REGISTRATION FOR “HARD TO GET” MCLE ON JANUARY 18, 2017, 5:00 p.m. – 9:00 p.m.

Complete this form and mail with your check to: Foothills Bar Association
P.O. Box 1077
El Cajon CA 92022

You may register and pay through the FBA website at www.foothillsbar.org.

Name: _____

Bar No. _____

Telephone: _____

Pre-event registration: FBA Members \$70.00; Non-members \$80.00

Day of Event (by cash or check only): FBA Members \$80.00; Non-members \$90.00

Notices

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 mark@markrafterylaw.com or Elizabeth Smith-Chavez at liz@smithchavezlaw.com.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the third Tuesday of each month. The next meeting will be on December 15, 2016 at Hooley's Irish Pub in Grossmont Center, La Mesa, prior to the holiday mixer and toy drive. The meeting will begin at 4:00 p.m., followed by the general membership meeting and board of directors election at 4:45 p.m. Board meetings are open to the membership. 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.

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OFFICERS

President	Glen Honig	glen@FamilyLawSanDiego.com	619-315-9962
Vice President	Traci Hoppes	traci@FamiLawSanDiego.com	619-448-6500
Treasurer	George de la Flor	gldelaflor@cs.com	619-246-9544
Secretary	Will Hannosh	will@FamilyLawSanDiego.com	619-579-4200
Immediate Past President: Cheryl Stengel			619-269-2126

DIRECTORS

Keith Jones	kjones9001@gmail.com	619-462-6220
Dan Cohen	cohencohenlaw@gmail.com	619-697-0333
Garrison Klueck	Garrison@FamilyLawSanDiego.com	619-448-6500
Mark R. Raftery	mark@markrafterylaw.com	858-527-0111
Elizabeth Smith-Chavez	liz@smithchavezlaw.com	619-800-2092
Bradley Schuber	bschuber@krigerlawfirm.com	619-589-8800

REPRESENTATIVES

Dan Bacal, SDCBA	619-588-2064
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SECTIONS

FAMILY LAW:	Chair: Traci Hoppes
CIVIL LITIGATION:	Chairs: Cheryl Stengel, Mark R. Raftery & Elizabeth Smith-Chavez
CRIMINAL LAW:	Chairs: Daniel Cohen, Glen Honig & Andrea Schneider
ESTATE PLANNING:	Chair: Nancy Kaupp Ewin

COMMITTEES

ADVERTISING	Chair: Cheryl Stengel
LAW DAY	Chair: George de la Flor
HARD-TO-GET	Chairs: Keith Jones, Garrison Klueck & Elizabeth Smith-Chavez
CREDITS SEMINAR	
MEMBERSHIP	Chair: Bradley Schuber & George de la Flor
ADDRESS CHANGES	Chair: Bradley Schuber
SPECIAL EVENTS	Chair: Garrison "Bud" Klueck
NEWSLETTER	Chair: Cheryl Stengel

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

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

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