Update from the President

By Traci Hoppes, CFLS, FBA President

On June 29, 2017, the Foothills Bar Association held its annual membership drive mixer at Hooley's at Grossmont Center in La Mesa. Approximately 40 attorneys and members were present to enjoy a fun time of camaraderie, food and spirits. Many new members were in attendance, including several who were enjoying their first FBA social event. This was a great opportunity to catch up with old friends, meet new colleagues and exchange ideas about future CLE programs and social events.

For those of you who have not yet renewed your membership, the time is now! Please do so at: http://foothillsbar.org/membership. The cost is only $65. Your valuable membership benefits include excellent MCLE programs, subscription to the monthly newsletter, networking opportunities, inclusion in the FBA membership directory (on-line and printed versions) fun social events and more.

Photos from June 29 Membership Drive & Mixer at Hooley’s

Upcoming Events Calendar

July 5
Criminal Law Section
12:00 - 1:10 p.m.
East County Court, Dept. 4
250 East Main Street, El Cajon
Topic: Drug Court
Speakers: Hon. Frank Birchak and Roxie Walnum
of Mental Health Services

July 11
Civil Litigation Section
12:00 - 1:15 p.m.
BJ’s Restaurant, Grossmont Center, La Mesa
Topic: Warning Signs of Potential Employment
Lawsuits
Speaker: Michael Freeland, Esq

July 13
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: Ethical Consideration in Estate Planning
for Foreign Nationals & New Immigrants

July 18
Family Law Section
12:00 - 1:15 p.m.
East County Court, Dept. 6
250 E. Main Street, El Cajon
Speaker: David Ruegg, Esq.
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More Photos from June 29 Membership Drive & Mixer at Hooley’s
The Wild Wild Web
By Deena Mayne, Freebird Media

Just like in the wild, predators look for vulnerabilities and weakness where they can find it. In the area of business and technology, the current vulnerability is generally through outdated software, a virus contacted through an email or online link, &/or insecure lines of communication.

As the webmaster for the Foothills Bar Association, when cyber-attacks happen, I immediately think about my clients. Are they protected? Is all of their software up to date? I take care of these things for the FBA website, but for all of you out there in your business offices I would like to make sure you are safe there also.

The FBA and I are setting up a talk for September to go over Data Security for your Law Practices in detail, but for now let me leave you with a few things to make sure at least your basics are covered:

1) PASSWORDS: You can write these down in a book and keep them in a safe or keep them on a flash drive that should also be kept in a secure location. Please do not keep them in any type of file on your computer.

2) ROUTER & MODEM: Do not use the passwords written on the hardware (the passwords that come with the units). Many do not know that these passwords for most routers and modems are available online to hackers. They just run through the list of default codes and boom they are in your data. If you currently are using a default password on your equipment, please change your passwords to a unique high-level password.

3) SOFTWARE: Many business owners do not update their company software on a regular basis. Is your software up-to-date? Software includes: browsers, operating system (windows), Microsoft office, software you have installed for your business, JavaScript, etc.

4) VIRUS & MALWARE PROTECTION: Make sure you have good software which protects against both virus and malware attacks. If you are using more than one type of protection software, make sure that they work well together. For a private practice firm, for example, a combination of Avast Software (anti-virus software) & Malware Bytes (anti-malware software) work well together. If you use these two together make sure no other default security (McAfee or Norton, for example) is currently installed.

If you have any questions or concerns about security of your business data prior to the September talk, please let me know. Hoping you all have the basics covered and are safe and secure!
Social Security & the Family Law Practitioner

By Koryn K. Sheppard, Esq. P.M.P

Social security can come up as an issue for consideration in at least four instances: bifurcation, support, property division, and paternity. This article will deal with Social Security Retirement (SS), Social Security Disability (SSDI), and Supplemental Security Income (SSI). This article will briefly highlight some tips related to social security for the family law practitioner.

Bifurcation:

Former spouses may be eligible for derivative benefits based upon the working spouse’s work record if they were married for 10 years (measured from date of marriage to the date the marriage status is dissolved). That may be a reason not to agree to an early termination of marital status - be sure to advise the client if it’s close. Failure to do so may be considered malpractice. Consider requesting a delay in entry of judgment to allow for the tenth anniversary of the marriage.

Paternity:

Where a child’s parents are not married, the child will not be entitled to survivor benefits arising from father’s death unless a judgment of paternity is entered prior to death or the father was living with or contributing to the support of the child at the time of the death (Casserino v. Sullivan).

Division of Property:

Social Security benefits are NOT a divisible property interest (Marriage of Nizenkoff and Flemming v. Nestor and IRMO Kelley). The rationale is that SS is insurance rather than deferred compensation for past labor.

However, a former spouse may receive his or her own benefit OR up to 50 % of the ex’s benefit without reducing the beneficiary’s receipt if the following conditions are met:
- Must have been married for 10 years;
- Former spouse must not remarry prior to age 60 (a remarriage before 60 terminates the right to derivative benefits. If the second marriage does not last 10 years, the former spouse cannot collect benefits from either spouse. If they do not have a sufficient work record, they may not receive any benefits);
- Former spouse must be age 62;
- Former spouse gets a benefit only if their own benefit is lower (not equal to or greater) than the worker benefit or if the former spouse is eligible for greater benefits via someone else’s work record; and
- Derivative benefits are available if the former spouse qualifies for SSDI or retirement SS benefits. However, SSI benefits are not available to former spouses because SSI is needs-based (means test used), not based on a work record.

A person may have multiple former spouses as long as the test above is met. This does not lower the benefit of the working spouse or any of the other former spouses. If the working spouse has not applied for retirement benefits, but can qualify for them, the former spouse can receive derivative benefits on their record if they have been divorced for at least two years. If worker spouse dies, a former spouse receives 100% of the benefits of the worker spouse as a “surviving spouse”. This also applies to every qualifying former spouse.
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Child and Spousal Support:
Is it Income for Support?

1. Yes, if SS or SSDI.

Family Code section 4058 includes SS benefits as income for child support. While spousal support does not have a parallel definition of income, it is applied the same way for temporary spousal support orders. Disability/retirement/survivor benefits are income for calculating support. 

*Marriage of Nizenkoff:* Both primary and derivative benefits are includable for the purposes of determining spousal support.

2) No if SSI.

SSI: Not income for child support because SSI is a means-based test (like welfare) (Family Code section 17516; *Elsenheimer v. Elsenheimer*). For the same reason, SSI is generally not considered income available for support when calculating spousal support.

Is it Taxable?

Social Security income should generally be put in as “other non-taxable income” in the Dissomaster. However, social security retirement income is sometimes taxable so this should be verified. SSI and SSDI are non-taxable income.

Disabled parent:

If the disabled parent is the obligor for child support, the benefit is a credit against the child support obligation. (Family Code section 4504; *IRM0 Denney*).

Excess of social security derivative benefits over current support may be applied to arrearages (*IRM0 Hall and Frencher*). This is a complete departure from the prior rule articulated in *IRM0 Robinson*. *CCP* section 695.211 provides guidance on the order of preference related to payment of outstanding obligations.

Child’s Benefits:

Children may be eligible for their own benefits (if disabled) or derivative benefits from a parent.

If the custodial parent or other child support obligee refuses to cooperate or apply for benefits when the child(ren) are otherwise eligible, the noncustodial parent is entitled to a credit against child support in the amount of the benefit the children would have received (subject to proof). A custodial parent may receive benefits on behalf of a child they provide care for are for (age 0-16) if they are a child of the spouse or ex-spouse who qualifies for SSDI.

Adult disabled child: before age 22 may be eligible for child's benefits if a parent is deceased or starts receiving retirement or disability benefits. This is considered a "child's" benefit because it is paid on a parent's Social Security earnings record.
Foothills Bar Association’s Young/New Lawyers Committee Hosts Its First Mixer at Johnny B’s in La Mesa Village

By Will Hannosh, Esq.

On June 15, 2017, the newly founded Young/New Lawyers Committee of the Foothills Bar Association held its first ever networking mixer. The event, attended by approximately 20 attorneys, was held at Johnny B’s, a diner in the heart of La Mesa Village. Newly licensed attorneys were also in attendance. Keeping with the purpose for the committee’s creation, the event allowed for the opportunity for more seasoned attorneys to interact with newly licensed attorneys. As a result of the committee’s creation, there has already been an influx of new membership applications made by newly-licensed attorneys who are interested in serving in the Foothills Bar Association, in one capacity or another. Glen Honig, a Foothills Bar Association board member, said that the recent interest in membership and active service by new attorneys was encouraging, since the association’s future essentially depends on it. To promote that goal, the board of the Foothills Bar Association recently voted to give one free year of membership to any recent Bar-passer or attorney still in his or her first year of practice.

One of the objectives of the Young/New Lawyers Committee is to host specifically-tailored MCLE presentations that will help support the growth and development of newer attorneys (meaning attorneys who have practiced law for six years or less). Another committee objective, which is already coming to pass in some instances, is to connect more experienced or seasoned practitioners to the “newbie” attorneys who are looking for a mentor to help guide them in this practice of law.

San Diego Superior Court’s move to the new Central Courthouse has been delayed – Please see attached press release for more information.

UPCOMING MCLE ANNOUNCEMENT:

I am sure most of you have heard about the "WannaCry" cyber-attacks last month, and most currently the "Not Petya" attacks this last week, with the DLA Piper Law Firm being one of this week’s victims. You may be asking yourself, "Should I be protecting my business data & client's electronic files better?". If so, please join us for an information packed CLE event this September (date to be announced). Deena Mayne of Freebird Media, your friendly Foothills Bar webmaster, will be speaking on best practices in the office related to cyber security and James Mal of DaaSle, Inc., business cyber security specialist, will be speaking on the latest options for data backup and cyber security dependent on the size of your business and industry compliance regulations. The details will be announced soon.
San Diego Superior Court
Delays Move to New Central Courthouse
*Postponement Allows More Time for Fire-Safety Testing*

The San Diego Superior Court has announced it will not start moving staff and services into the New Central Courthouse in mid-July as originally announced. The Court was set to open its doors for Jury Services, Family and Probate operations on July 17th with more services moving over in continual weeks. The decision to delay the move was made because of the need for additional testing of the fire-life system in the 71-courtroom, 704,000 square foot facility.

“The building’s fire alarm and sprinkler systems have been tested and approved. However, it was necessary to reprogram the fire control panel. Because of that reprogramming, the State Fire Marshal wants us to re-test the building’s smoke dampers. This is a time-consuming process as there are 1,100 dampers in the smoke exhaust system and each test takes between 15 to 20 minutes each. The prudent approach to ensure proper testing is to delay the move,” says Presiding Judge Jeffrey B. Barton.

No set date has been given to restart the move process although it’s estimated operations can begin transferring services in early Fall. In the meantime, Court is working on ways to redirect those who come to the new Central Courthouse in July.

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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 Cheryl Stengel clstengel@outlook.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 July 18, 2017 at the Law & Mediation Firm of Klueck & Hoppes, APC, 7777 Alvarado Road, Suite 413, La Mesa, CA 91942, beginning 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.
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