Data Security and Your Law Practice

By Cheryl L. Stengel, Esq.,

On September 28, 2017, the Foothills Bar Association’s Civil Litigation Section hosted the MCLE program "Data Security and Your Law Practice”, with speakers, Deena Mayne and James Mal. Ms. Mayne, the principal of Freebird Media, is a website developer and business technology consultant. Mr. Mal is a business technology and data security specialist with DaaSle, Inc., a technology consulting and management firm. This was an excellent discussion of topics including best practices for data safety, Ransomware and technology available to improve business data safety.

In 1999, the American Bar Association (“ABA”) issued its first Formal Opinion on e-mail, stating that a lawyer “may transmit information relating to the representation of a client by unencrypted e-mail... because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint” (Formal Op. 99-413). We’ve come a long way since then … In 2012, the ABA formally approved a change to the Model Rules of Professional Conduct to make it clear that attorneys have a duty to be competent in technology. Also that year, the ABA created the Cybersecurity Legal Task Force to help attorneys deal with the legal challenges created by changing technology. In 2015, the California State Bar issued a formal ethics opinion requiring attorneys who represent clients in litigation to be competent in e-discovery or to associate with others who are.

Upcoming Events Calendar

October 9 – Columbus Day
State and Federal Courts Closed

October 12
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: Take Good Care: The Law & Art of Spotting Prohibited Gifts to Caregivers
Speaker: Alexandra T. Webber, Esq.

October 17
Family Law Section
12:00 - 1:15 p.m.
East County Court, Dept. 6
250 E. Main Street, El Cajon
Topic: Bud’s Blockbusters: Latest Family Law Cases, Statutes and Updates and Rules and Procedures
Speaker: Attorney Garrison “Bud” Klueck, CFLS

October 18
Civil Litigation Section
12:00 – 1:15 p.m.
BJ’s Restaurant, Grossmont Center, La Mesa
Topic: How to Impress Your Judge
Speakers: Hon. Eddie Sturgeon and Hon. Kenneth Medel
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Maintaining learning and skill consistent with an attorney’s duty of competence includes “keeping abreast of changes in the law and its practice, including the benefits and risks associated with technology.” (Formal Op. No. 2015-193).

In 2017, the ABA issued a new opinion, Formal Op. 477, providing guidance to attorneys in how to protect client confidentiality in electronic communications. Attorneys must be aware of the sensitivity of the information and the available safeguards. While “unencrypted routine e-mails generally remain an acceptable method of lawyer-client communications,” the following factors must be considered:

- Understand the nature of the threat.
- Understand how client confidential information is transmitted and where it’s stored.
- Understand and use reasonable electronic security measures.
- Determine how electronic communications about clients should be protected.
- Label client confidential information.
- Train lawyers and nonlawyer assistants in technology and information security.
- Conduct due diligence on vendors providing communication technology.

Cybersecurity should be a grave concern for all of us. As lawyers, we are in possession of vast amounts of confidential financial and transactional information on behalf of clients, including trade secrets and technical information, business strategies, financial data, and personally identifiable information, which is of great value to cybercriminals. TruShield, an IT security company, reported in 2015 that the legal industry was the second most targeted sector for a cyberattack. Even more alarming, the 2016 report revealed that small law firms were now the most targeted. ABA Journal, March 2017, “Law Firms Must Manage Cybersecurity Risks.”

Best practices to avoid becoming a victim include: password security; protecting against vulnerabilities by maintaining current updates and patches for firewalls and operating systems; maintaining social awareness, especially in e-mail phishing attacks; using encryption; and backing up your files. A recommended book is the ABA Cybersecurity Handbook. The 2nd edition will be available in November 2017.
FBA Civil Litigation Section MCLE Update

By Mark Raftery, Esq., Co-Chair

The Civil Litigation Section of the Foothills Bar Association is pleased to welcome the Hon. Eddie Sturgeon and Hon. Kenneth Medel, to discuss “How to Impress Your Judges”. The CLE program will be held on Wednesday, October 18, 2017 from 12:00 to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

Want to know what Judge Sturgeon and Judge Medel expect in their departments (Civil Depts. 67 and 66)? Would you like to avoid the all too common problems that these judges see in the pleadings they review and in the trials and oral arguments they hear? Then come to this program. The Judges will present an informative and interactive program on their respective departments, what they expect, common problems they see and, most importantly, how to avoid them.

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.

Please RSVP to mark@thelawcorp.com or 619.238.5344.

This program has been approved for 1.0 hour of MCLE general credit by the State Bar of California.
What Service Dogs and Attorneys Have in Common

By Keith A. Jones, Esq.

Remember law school? Professors instructing classes about the law. About how to think like a lawyer. About how to be a lawyer. It turns out that lawyers and service dogs have something in common as demonstrated in a recent California appellate decision.

A twenty year old disabled man with an intellectual disability, autism and an IQ between 50 and 75, accompanied by his service dog, entered a supermarket with his stepfather. An employee stopped them almost immediately and advised them that they could not bring the dog into the store. Not to be deterred from their intention to purchase seafood, they went to another store in the same chain, only to be denied entry again.

The disabled man's lawsuit against the supermarket included claims for violations of California's Unruh Civil Rights Act, the Disabled Persons Act ("DPA"), and intentional infliction of emotional distress. After conducting discovery, the supermarket successfully moved for summary judgment on issues related to the status of the service dog's training.

California's Unruh Act outlaws discrimination in public accommodations, including discrimination based on disabilities. The 1992 amendments to the Unruh Act incorporate the federal American with Disabilities Act ("ADA"). Thus, a violation of the ADA is a per se violation of the Unruh Act.

Similarly, the DPA incorporates the ADA and guarantees disabled persons equal rights access to public places and buildings. The DPA also expressly addresses service animals, including guide dogs for the blind, signal dogs for the deaf, and service dogs for other disabled persons that are "especially trained" for their purpose.

During discovery, the supermarket learned that the plaintiff's service dog had only basic obedience training. The plaintiff's stepfather argued that he had brought the dog into the market as part of a service dog training program. However, the defendant demonstrated that the stepfather lacked qualifications to train the dog as a service animal, and the law only allows credentialed persons via education and experience to take prospective service dogs into public areas to facilitate training. Please note that service dogs are a separate category from emotional support animals, and thus treated differently under California law.

The appellate court upheld the summary judgment in favor of the defendant because the plaintiff had a service dog that had not been fully trained and which was not accompanied by a qualified trainer. The appellate court further agreed that the actions of the supermarket's employees did not intend to cause emotional distress and that their conduct was not extreme and outrageous since it did not violate the Unruh Act or DPA.
In law school, we experienced training programs that allowed students to provide legal representation to clients under the tutelage of law professors and attorneys as part of our legal education. As law students, we couldn't appear for clients in court or other proceedings without the proper guidance and direction of these qualified sponsors. Similarly, service dogs in training can't roam public accommodations with their owners until fully trained by qualified trainers to think like a service dog and be a service dog.

REMINDER TO MEMBERS

If you have not renewed your membership for the 2017 – 2018 year, your membership has now lapsed. The Foothills Bar Association’s 2018 Attorney Directory will soon be prepared, which will include all current members. The directory is a valuable resource for our members and potential clients. In addition to the Attorney Directory, Foothills Bar member benefits include the on-line member directory on the Association’s website. The online directory includes your area of practice and contact information, a short biography and photo (if submitted). To maintain your membership standing and be included in the Attorney Directory book and the on-line directory, you must renew your membership by October 31, 2017. Membership renewal or sign up for new members may be done on-line at http://foothillsbar.org/membership/.
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@thelawcorp.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 October 17, 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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Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at cistengel@outook.com.

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