



NEWSLETTER

Join Us for the Foothills Bar Association's Annual Membership Drive

By William Hannosh, Esq., FBA President

The Foothills Bar Association will host its fun Summer tradition, the Annual Membership Drive and Mixer, at Hooleys Irish Pub & Grill in the Grossmont Shopping Center on **Thursday, June 28, 2018 starting at 5:00 p.m.** This is the perfect occasion to renew your membership for the 2018-19 term and to catch up with friends and colleagues while enjoying the hosted appetizers and a beverage. For over 54 years, the Foothills Bar Association has been dedicated to fostering a close working relationship between the bench and bar in East County. While our organization is composed primarily of attorneys, judges and other professionals who live or work in East County, we also have many members outside of East County who take advantage of our membership benefits.

Some of the many reasons to join or renew your membership in the Foothills Bar Association include:

- Excellent monthly MCLE programs presented through our various sections: Family, Civil Litigation, Estate Planning/Probate and Criminal Law, which are free to members.
- "Hard to Get" Seminar usually presented in January that provides three 1-hour credits in Legal Ethics, Recognition and Elimination of Bias, and Competence Issues for a reasonable fee.

Upcoming Events Calendar

June 13

Civil Litigation Section

12:15 – 1:15 p.m.

BJ's Restaurant

Grossmont Center, La Mesa

Topic: Unlawful Detainer Trials

Speaker: Richard Callahan, Esq. of
San Diego Evictions

June 14

Estate Planning and Probate Section

12:15 – 1:15 p.m.

Law Office of Nancy Kaupp Ewin, Esq.

8166 La Mesa Blvd., La Mesa

Topic: TBA

Speaker: TBA

June 28

FBA Membership Drive and Mixer

5:00 - 7:00 p.m.

Hooley's Irish Pub & Grill

Grossmont Center, La Mesa

July 4 – Independence Day

State and Federal Courts Closed

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- Subscription to the Foothills Bar Association's monthly Newsletter, which provides articles on topics of interest, Court news and updates on section MCLE programs and events. Submissions from members are encouraged.
- Networking opportunities, mixers and fun social events.
- Opportunities to expand your recognition in the legal community by writing articles of interest for the monthly newsletter and presenting seminars in your particular field of expertise.
- Opportunities to become active in the Foothills Bar Association, and chair a section committee in your field of expertise, or another area you would like to become more involved with in your practice of law.
- Inclusion in the FBA membership directory (on-line and printed versions).
- Invitation to the Annual Awards Dinner and Installation of the Board.
- Participation in the Annual Toy Drive to support local families.
- Annual membership only costs \$65 per year.
- Membership for new attorneys (practicing two years or less) is free.

If you are not currently a member, I encourage you to join to take advantage of these benefits. If you are currently a member, please remember to renew your membership, and consider encouraging your friends from the legal community to also become members and attend our event at Hooley's on June 28th. If you have any questions regarding membership or about the Foothills Bar Association in general, please visit our website at www.foothillsbar.org or contact me at Will@familylawsandiego.com. See you at Hooleys on **June 28** for the Membership Drive and **bring a friend!**

FBA Civil Litigation Section MCLE Update

By Steven Banks, Esq., Co-Chair

The Civil Litigation Section of the Foothills Bar Association is pleased to host the MCLE program “Unlawful Detainer Trials” presented by Rachael Callahan, Esq. of San Diego Evictions on **Wednesday, June 13, 2018** from 12:00 to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

This program will outline what to expect in the trial of unlawful detainer matters on behalf of landlords and tenants. The discussion topics will cover common pitfalls encountered by practitioners in such matters, including important notice, pleading, and evidentiary issues.

Ms. Callahan, a third generation San Diego native, owns and operates San Diego Evictions. She has handled over 1,000 unlawful detainer trials and has argued countless other dispositive motions in both state and federal court. Attendees will benefit from her years of experience in litigating real estate related disputes on behalf of landlords, tenants, investors, and financial institutions.

The seminar is free to all attendees, so please feel free to invite colleagues to attend. FBA members will earn one hour of MCLE credit.

Attendees are encouraged to order lunch from BJ's menu at their own expense, but are not required to do so. Walk-in registrants will be accommodated as space allows.

Please RSVP to bar@foothillsbar.org.

Mandatory Arbitration: Not So Fast

By Keith Jones, Esq.

California, like other states, maintains a strong public policy to enforce contractual arbitration clauses. California trial courts typically order the parties to arbitration if requested by one of the parties. However, being ordered to arbitration does not necessarily deprive the trial court of jurisdiction. For example, a court may retain jurisdiction to monitor the progress of an arbitration or to enter a judgment if a losing party refuses to pay the arbitration award.

The California appellate court faced a question of how to proceed when a plaintiff, who had not opposed a motion to compel arbitration, sought declaratory relief to either compel the defendant to pay for the arbitration or have the matter tried in the trial court.

The plaintiff sued her real estate broker for breach of fiduciary duty, negligent misrepresentation and elder abuse. In 2006, the broker convinced the plaintiff and her husband to buy property that was ground leased to Red Robin in Texas for \$4.1 million as part of a 1031 exchange. For the next seven years, Red Robin proved to be a less than stellar tenant, becoming delinquent in rent and refusing to pay property taxes. After losing over \$600,000 in income, the plaintiff sold the property for \$2 million.

The contracts between the plaintiff and the broker included arbitration provisions that designated the American Arbitration Association (AAA) as the arbitrator. The defendant succeeded in enforcing a rule which required the arbitration proceeding to be heard by a panel of three arbitrators at \$1,450 per hour rather than one arbitrator as the plaintiff had argued. Arbitration progressed slowly for three years during which time the plaintiff alleged that the defendant engaged in '*scorched earth*' tactics that rendered her unable to afford to pay for the arbitration.

She filed a motion with the AAA seeking to compel the defendant to pay the arbitration expenses or alternatively have the case tried in court. The arbitrators determined it was beyond their jurisdiction to decide and recommended that the plaintiff to pursue declaratory relief. Plaintiff's declaratory relief action sought to compel the defendant to pay the arbitration costs, or to have the defendant deemed to have waived arbitration so that the matter could be remanded to the trial court. The defendant succeeded by summary judgment motion in the declaratory relief action, arguing that the arbitration clause wasn't unconscionable because the plaintiff could afford arbitration when the parties signed the contracts.

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In a 2013 California appellate decision, the court held that the plaintiffs could not be forced to pursue claim via contractually-obligated arbitration if they lacked the financial means to do so. The public policy ensuring litigants access to the justice system to resolve grievances without regards to financial ability outweighed requiring parties to either pay their share of expenses for arbitration or abandon their claims when they couldn't afford arbitration.

Based on the public policy from the 2013 decision, the appellate court ruled that the time to determine whether a party who has agreed to arbitration can afford the arbitration is during the arbitration process, and not when the contract is signed. The court reasoned that the plaintiff's claimed financial inability arose due to the defendant's alleged misconduct, invoking basic contract law that a party's performance of a contract is excused if the inability to comply is due to the other party's conduct.

Whether the arbitration provision was unconscionable was not the issue. Rather, the appellate court wished to avoid circumstances where justice would prevail for those who can afford it, i.e. parties with unlimited funds who could drive arbitration expenses beyond the financial means of their opponents. A Ninth Circuit decision, which reached a similar result in a case that involved the termination of an AAA proceeding when a party couldn't afford it, bolstered this rationale.

The California appellate court ruled that a party desiring to remain in arbitration could preserve the right by paying the arbitration expenses if the other party demonstrated financial inability. Alternatively, an arbitrator could order a party to pay the arbitration costs if the other party can't afford it. If neither of those situations occurred, then the parties could proceed to have their dispute decided in the court system. Attorneys need to counsel clients that just because a contract contains an arbitration provision doesn't mean a party can exercise its financial might in its legal battle for success.



FOOTHILLS BAR ASSOCIATION OF SAN DIEGO COUNTY

Service, Professionalism, Collegiality

FOOTHILLS BAR ASSOCIATION EAST COUNTY ATTORNEY MIXER 2018 Membership Drive

Thursday, June 28, 2018, 5:00 pm to 7:00 pm

at Hooleys Irish Pub & Grill

Bring an attorney
friend!



Let's increase our
membership!

*Please join the Foothills Bar Association at Hooleys Irish Pub & Grill
Located at 5500 Grossmont Center Drive #277, La Mesa, CA 91942
Thursday, June 28, 2018, from 5:00 pm to 7:00 pm*



ENJOY A COMPLIMENTARY BEVERAGE AND HORS D'OEUVRES
SHARE A GOOD TIME WITH YOUR FELLOW BAR MEMBERS
& JOIN OR RENEW YOUR MEMBERSHIP WITH THE FBA

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 Steven Banks at: sbanks@krigerlawfirm.com or 619-589-8800, or Christopher Hayes at cjhayes@cox.net or 619-846-0183.

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 June 12, 2018 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 event 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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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

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