Experienced Attorney and Judges to Provide Key Courtroom Tips (and Refreshers) to Attorneys and Law Students at USD School of Law in Upcoming MCLE Program

On September 15, 2018, three seasoned judges with varying backgrounds in the civil, family and juvenile law arenas will give presentations to law students and attorneys alike on such topics as motion practice, civility in the courtroom, and making and responding to evidentiary objections. These three discussions will be presented by Hon. Eddie C. Sturgeon, Hon. Tilisha T. Martin, and Hon. William Howatt (Ret.). In addition, Attorney Mark Krasner, a founding partner of the La Jolla firm, Blanchard, Krasner & French, will be presenting a talk entitled “Things They Didn’t Teach You in Law School”. The Saturday seminar, which is approved for four hours of general MCLE credit, will be held at the University of San Diego School of Law, Warren Hall, and will last from 9 a.m. to 3 p.m. Although the seminar will have portions which are geared to assist newer practitioners, attorneys from all experience levels are strongly encouraged to attend.

This event will be unique, because it will have law students, newly-admitted attorneys, and seasoned litigators all participating in the same MCLE seminar, which will be good for a total of four credits. The event will also offer one hour for networking and socializing and will include a full, catered lunch.
Continued from Page 1…

Law students and attorneys interested in attending should complete their online RSVP by no later than September 7, 2018. Tickets will be discounted for law students and attorneys practicing for less than two years, at $35.00 and $40.00, respectively. Attorneys practicing for two years or more must pay $75.00.

“The Foothills Bar Association board of directors decided to hold this type of event, because our bar association wants to be set apart as being that group where up-and-coming attorneys can turn to network, find opportunities and be mentored by more seasoned practitioners. This MCLE will allow for those connections to take place,” said William Hannosh, president of the board.

California Supreme Court Rules that Indigent Litigants are Entitled to Court Reporters

By William A. Hannosh, Esq.

On July 5, 2018, the California Supreme Court held that people of modest means (legally referred to in Latin as “in forma pauperis”) are entitled to official court reporters in civil cases if they request them. Jameson v. Desta is a local case filed under San Diego County Superior Court Number GIS9465. In April 2002, the plaintiff, Barry Jameson, brought a medical malpractice action against defendant, Dr. Taddese Desta, for allegedly mis-prescribing interferon to treat his hepatitis. Mr. Jameson had been treated by the doctor while incarcerated at Donovan Correctional Facility. It is also alleged that the interferon prescribed by Dr. Desta caused irreversible damage to the prisoner’s eyesight. Among other causes of action, Mr. Jameson sued Dr. Desta for negligence and breach of fiduciary duty (for allegedly not obtaining the patient’s required consent).

Over a span of ten years, Mr. Jameson’s suit had been dismissed by the trial court on three separate occasions, only to be reversed by the appellate court each time. The record reveals that each dismissal was made solely on procedural grounds. Mr. Jameson had been granted a fee waiver. His trial was finally set in 2014, but he was denied a court reporter, even though a fee waiver had been issued in his favor.

While Mr. Jameson was unable to afford a court reporter, Dr. Desta merely chose not to pay for one. Dr. Desta moved the court for nonsuit, and this was granted after the delivery of his opening statement. The plaintiff then appealed. No court reporter was present at these proceedings.
Due to the absence of a transcript, the Court of Appeal never considered the merits of Mr. Jameson’s case and denied his appeal, outright.

The state’s high court stated in its opinion, “. . .We conclude that, as applied to in forma pauperis litigants who are entitled to a waiver of official court reporter fees, the San Diego Superior Court’s general policy of not providing official court reporters in most civil trials while permitting privately retained court reporters for parties who can afford to pay for such reporters is inconsistent with the general teaching of prior California in forma pauperis judicial decisions and the public policy of facilitating equal access to the courts embodied in [Government Code] §68630(a).”

In deciding that the trial court’s decision to deny a court reporter to indigent litigants cannot be found harmless, the Court stated, “Accordingly, we conclude that the court policy in question is invalid as applied to plaintiff and other fee waiver recipients, and that an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to in forma pauperis litigants upon request.”

After the holding, San Diego Superior Court Presiding Judge Peter Deddeh stated: “We are currently reviewing the Supreme Court’s decision and will take all steps to implement it. Due to severe budget cuts over the past several years, our court was forced to make the difficult decision to remove court reporters from cases where their services were not legally mandated. In light of this decision, we will begin the process of reinstituting court reporting services as directed.”

“The right of appeal cannot lie in that discriminatory morass in which it is accessible to the rich and denied to the poor. Whatever hardship poverty may cause in the society generally, the judicial process must make itself available to the indigent; Preston v. Municipal Court (1961) 188 Cal.App.2d 76, 87-88
TIME TO PARTITION – NOT SO FAST!

By Keith Jones, Esq.

Co-owners of a parcel of property usually start their relationship as tenants in common with mutual goals for the property, whether it be development, shared use, or shared income. There may come at time, however, when their goals diverge. The parties may have executed an agreement governing their tenancy in common which may include what happens if they have a change of heart. Terms may include buy-out provisions or a procedure when a party dies. After all, neither co-owner wants to forced into an arrangement with a deadbeat heir of the other.

Not surprising, many co-tenancies are not documented by a written agreement leaving the disputing parties to pursue a partition action to have a court decide how to divide the property. Any co-owner can determine when it's time to file a partition action. The court is then faced with a variety of questions, such as which parties own what percentages, whether percentages should be adjusted based on monetary contributions and/or occupancy by a party during the co-tenancy period, and whether the parcel can be in some fashion divided between the parties. If it can't be divided, then a court has the power to order that the property be sold with the proceeds to be distributed amongst the co-owners depending upon their respective interests.

While a court may have the power to order the sale, parties must be aware that the timing for the sale is also limited as demonstrated in a recent appellate decision. Co-tenants for an investment property in San Francisco disputed the percentage of ownership interests, prompting one co-tenant to file a partition action against the other two owners. Other matters in dispute included the responsibility for expenses and sharing of income. The two defendants filed a cross-complaint alleging similar claims. Partition actions frequently include a cause of action for an accounting to address the income and expense issues.

The plaintiff filed a motion for summary adjudication of issues and requested that the property be ordered sold and proceeds held in escrow pending a determination of the percentages of interest and resolution of the accounting issues. The trial court ruled to partition the property by having it sold, to pay all liens, to appoint a referee, and to hold remaining proceeds in escrow pending a determination of the other issues.

On appeal, the two defendants argued that the sale was premature because the parties' respective ownership issues had not yet been established. Their reasoning included the argument that selling the property before the court decided their ownership interests would result in a huge waste because the parties would lose rental income generated by the property.
Continued from Page 4…

The appellate court, after disposing of a procedural issue, focused on the Code of Civil Procedure which states if a court finds a plaintiff is entitled to partition, then it shall make an interlocutory judgment determining the interests of the parties and ordering the partition of the property, whether by physical division or by sale. While the trial court had determined that the plaintiff and both defendants owned the property, it did not make a determination of the percentage of ownership interests in ordering the property sold. Thus, the trial court's timing for the sale of the property was premature, and the appellate court reversed the trial court's ruling.

While parties are anxious to conclude litigation in record time, in certain circumstances they may want to apply the brakes to be sure the court complies with the timing requirements. In this case, the defendants opted for a 'not so fast' posture to benefit from the property's income rather than rely on interest income that the sales proceeds may have earned while awaiting distribution from a court-ordered escrow.

Have you checked your Foothills Bar Association Online Directory Listing Lately? Has your office recently moved? Does your attorney bio need an update?

Check your online profile here, under your Area of Practice:
http://foothillsbar.org/attorney-finder/sd-licensed-specialty-attorneys/

Then if something needs an update, please submit the updated information, bio or photo here:
http://foothillsbar.org/membership/directory-submission/

Notice to Members

If you have not renewed your membership for the 2018 – 2019 year, 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.
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 second Tuesday of each month. The next meeting will be on August 14, 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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