President’s Message to Foothills Bar Association’s General Membership
By William Hannosh, Esq., President

As the president of the Foothills Bar Association for 2018, I wanted to extend my deepest thanksgiving to those who have entrusted me to lead the Association this year. For those who were unable to attend our annual dinner and installation of the newly elected board members at Babylon Palace in El Cajon on January 26, 2018, one of my stated objectives is to set ourselves apart from the rest of the local bar associations by letting our newer attorneys or “new swear-ins” know that they can obtain mentorship from the more seasoned, veteran attorneys. Newer attorneys, whether practicing in East County or not, should know that they have a place to network and meet with members of the bench. In 2017, our vice president, Koryn Sheppard, was monumental in helping to create the Young/New Lawyers Division of the Foothills Bar Association, and that group has already organized mixers, in addition to being present at the last two swearing-in ceremonies for Bar exam passers. As a co-founder of this group, it is my intention to ensure that the Foothills Bar Association is present at each swearing-in ceremony held in San Diego in the future. We are the first (and so far, only) bar association to offer one year of free membership to attorneys who have been practicing for one year or less.

With our decision to increase the number of board members from nine to fifteen, it is also my hope that the Association’s sphere of influence would become that much wider and pronounced. We would like to also remain inclusive.

Upcoming Events Calendar

March 8
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

March 20
Family & Criminal Law Sections
12:00 – 1:15 p.m.
East County Court, Dept. 5
250 E. Main Street, El Cajon
Topic: The Sanchez Decision and its Effects on Family Law
Speaker: Hon. Frank Birchak
*Please note this is a joint program by the Family and Criminal Law Sections and may also be of interest to civil litigation practitioners as the topic involves use of expert testimony -- attendance at this highly informative MCLE is encouraged.

March 30 – Cesar Chavez Day
State Courts Closed
Continued from Page 1…

The five new additional board members, who come from varying practice areas and backgrounds, are: Steven Banks, Jeremy Elias, Christopher Hayes, Kate Iwanami, and Mark Krasner. The nine individuals who were on the board last year and returned this year, are: Dan Cohen, George De La Flor, Glen Honig, Traci Hoppes, Garrison “Bud” Klueck, Andrea Schneider, Koryn Sheppard and myself.

There is an active and vibrant Criminal Law Section at the Foothills Bar Association this year. In 2017, the three board members who really helped to resurrect this section are Mr. Honig, Ms. Schneider and Mr. Cohen (the last two being criminal defense practitioners). The Hon. Roger W. Krauel, Hon. Gary Bubis, and Hon. Daniel G. Lamborn have been extremely supportive and instrumental in helping to make sure that this section has a venue where it can regularly hold its MCLE seminars.

Although not a Foothills Bar Association program, this year, the El Cajon Legal Clinic has re-opened, with the help and support of the El Cajon City Council and Thomas Jefferson School of Law Center for Solo Practitioners. I am proud to say that some of our Association’s newer attorneys have already been spotted giving of their time by offering legal advice and helpful guidance to the clinic’s clients. The El Cajon Legal Clinic just recently opened and will be held each Wednesday, from 1:30 p.m. to 3:30 p.m., at the San Diego County Library in El Cajon on Douglas Avenue.

The Civil Litigation Section will continue to hold its regular MCLE presentations. This year, the Section’s co-chairs will be Mr. Banks and Mr. Hayes, both of whom are civil litigators. Mr. Banks is with the Kriger Law Firm in La Mesa, with his practice is in real estate matters, while Mr. Hayes is an employment attorney. They will be announcing future MCLE seminars, to take place at either BJ’s Grill or Claim Jumper’s in La Mesa, depending on availability.

As part of my vision to expand the Association’s realm of influence in San Diego county, we will be reaching out to the local bar associations for the purpose of holding joint events and networking mixers. Also, not to sound repetitive, but I am sincerely calling on new attorneys (for the purposes of this article, “new attorney” means anyone who has been practicing for three years or less) to join me in helping to create a medium by which they can interact with the more seasoned lawyers, so that either more mentorship can take place, or better yet, employment opportunities could come to pass.
Continued from Page 2…

As we do every year, our Association will be holding its membership drive in June and its Holiday Mixer and Toy Drive at Hooley’s in December, while the Young/New Lawyers Division will also be holding a couple mixers in beautiful, downtown La Mesa Village. However, among the various sections, I also understand that we will be offering some pretty interesting and in-depth MCLE presentations. Stay on the lookout for our announcements. I trust that it is going to be an exciting and dynamic year for our Association’s various sections, and I am hoping you will lend your support and participate in our events throughout the year.

Foothills Bar Association’s On-Line Member Directory

As a benefit to members, the Foothills Bar Association’s website includes an on-line member directory. If you haven't yet taken the opportunity to submit for a directory page, please do so. This is a great opportunity to have a web presence, especially for those of you without a website. The on-line directory page list contains: your photo (if submitted), your area of practice, including an additional selection if you are a Certified Specialist in an area of practice, and contact information. You will be cross-indexed on-line by: 1) name, 2) area(s) of practice, 3) specialty (if you have one), 4) languages spoken, and 5) additional states licensed to practice outside California. Please don't miss this FREE opportunity for current Foothills Bar members to have an on-line presence.

If you have an existing on-line attorney directory page and would like your information updated, please follow the same process as for a new submission. You can fill in boxes you don't want to change with "same" so the website developer knows certain information is unchanged.

To submit or update your information for the On-line Attorney Directory:

1) Go to the online directory page. Fill out and submit the on-line form: http://foothillsbar.org/membership/directory-submission
Note: only new and/or existing active member listings will be posted or changed.

Your directory listing using the content information you submit will generally be posted 3-5 business days after your submission. Please note: only information submitted through this form is accessible to the website developer, so if you would like something added, please submit it on the form.

If you have any questions regarding this process, please contact the FBA’s webmaster, Deena Mayne, at freebirdmedia@gmail.com.
11th Circuit Court: “We Really Did Mean It. And We Still Do.”

By Keith Jones, Esq.

Trial court judges occasionally express their frustrations with attorneys' conduct in their courtrooms. A judge's frustrations may result in admonishing the offending counsel to cease or risk sanctions or may be made obvious by visual cues to warn the attorney.

Appellate justices have limited exposure to trial antics in oral arguments, but they can express their frustration with attorney's conduct as demonstrated in a recent 11th Circuit Court decision regarding a grocery store's exclusive use rights in several dozen commercial shopping center leases. An earlier appellate decision had remanded the case to the district court with specific instructions as to how the issue would be handled on retrial. The district court nonetheless didn't follow the instructions at the overzealous insistence of one of the defendant's attorneys.

The appellate justices didn't hold back their frustration as evidenced by the opening paragraph:

"After we have remanded a case with specific instructions, attorneys rarely attempt to have the district court defy our mandate. . . . This is one of those rare cases where attorneys representing one side successfully urged the district court to act contrary to our mandate."

The decision is littered with comments that clearly express the appellate court's dismay that its specific instructions had not been followed. Take this passage as an example:

"Needless to say (or maybe not), a district court cannot amend, alter, or refuse to apply an appellate court's mandate simply because an attorney persuades the court that the decision giving rise to the mandate is wrong, misguided, or unjust. A district court can, of course, wax eloquent about how wrong the appellate court is, but after the waxing wanes the mandate must be followed."

The appellate court added that its prior decision was not vague or ambiguous, and that it hadn't created confusion or genuine doubt as to what the district court needed to do on remand. The opinion continues a couple of paragraphs later:

"There is no imprecision to those instructions, no room for evasive interpretation, in short no legitimate basis for applying what we said only to a subset of the 41 Florida stores. We don't know what else we could have said other than, perhaps, 'and we really mean it.' Well, we really did mean it. And we still do."
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A portion of the opinion cites the district court record in which the defense attorney successfully argued that the mandate did not apply to a set of older leases. The appellate court found that the defense attorney mischaracterized the mandate issued in the original appellate decision in convincing the district court to disregard the directive.

Although the appellate court felt the instructions in the original decision were clear, it added that the defendant's attorney could have requested a rehearing in the original appeal to clarify the issue. The appellate bench did not take kindly to the defense tactics, calling out the defense's questionable strategy by stating:

"Apparently, their idea of a good strategy is not to fire all of one's shots in the court of appeals but to save a couple of rounds to shoot down the appellate decision after we send the case back to the district court for our decision to be carried out. That is not a strategy that will or should work."

The new decision notes that no judge on its current panel served on the original appellate panel. Its final statement of decision includes capitalized and bold words:

"We REVERSE the district court's decision as to the Dollar General and Big Lots stores in Florida and REMAND with instructions for the court to apply to those stores, which had leases before February 20, 2002, the same definitions of 'groceries' and 'sales area' that it applied to the Florida stores with leases dated after February 20, 2002."

Hopefully on remand the defense attorney to whom the appellate bench has aimed its acerbic words will fully understand on remand that the appellate court "really did mean it" the first time. And to be clear, it still really does mean it.
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 March 20, 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 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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Garrison “Bud” Klueck, SDCBA, East County Liaison, San Diego County Bar Association  
Garrison@FamilyLawSanDiego.com  
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Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at clstengel@outook.com.

ADDRESS CHANGES
Send change of address or telephone number to Bradley Schuber at bschuber@krigerlawfirm.com

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