



NEWSLETTER

Foothills Bar Association Board of Director Opportunities in 2019

By William Hannosh, Attorney/FBA President

The Foothills Bar Association of San Diego County will soon celebrate its 56th anniversary. To continue going strong, it is essential to have the participation and vibrant creativity of its directors. At our December General Meeting, we will be voting to elect the Foothills Bar Association's Board of Directors who will serve for 2019. There are many great reasons to volunteer your time and energy as a member of the board. These include:

1. Supporting the East County legal community;
2. Meeting and networking with attorneys in your practice area or other fields, who may be able to provide practical guidance by answering questions on a case or legal matter;
3. Fostering and promoting the name and goodwill of the Foothills Bar Association throughout East County and beyond;
4. Helping to plan and organize important MCLE programs on various topic areas;
5. Enjoying camaraderie and some free time to socialize with your peers over snacks at the monthly board meetings;

Upcoming Events Calendar

**November 12 – Veterans Day (Observed)
State and Federal Courts Closed**

**November 20 - Family Law Section
12:00 – 1:15 p.m.**

East County Court, Dept. 5
250 East Main Street, El Cajon
Topic: Judgment Enforcement
Speaker: Atty Richard Davis, Fickel & Davis

**November 22 – Thanksgiving
State and Federal Courts Closed
(State Courts also closed November 23)**

**December 13 – Family Law and
Estate Planning & Probate Sections
12:00 – 1:15 p.m.**

East County Court, Dept. 5
250 East Main Street, El Cajon
Topic: Crossover Issues in Family Law and
Estate Planning
Speaker: Atty Jeff Fritz, Basie & Fritz

**December 20 – Foothills Bar Association's
Holiday Mixer and Toy Drive
5:00 – 7:00 p.m.
Hooley's Irish Pub in Grossmont Center,
La Mesa**

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6. Helping with making Foothills Bar Association a long-time fixture to continue into perpetuity; and
7. Raising your professional profile in the local, legal community.

Our bar association is now soliciting nominations for the 2019 Board of Directors (see the *Notice* enclosed with this newsletter). There are several open board positions, and nominees are encouraged to throw their names in the hat. The elections will be held on **December 20, 2018 at 5 p.m.**, prior to our scheduled holiday mixer at Hooleys Irish Pub at Grossmont Center in La Mesa. If you are interested in serving on the board, or would like to nominate someone to serve, or, you would like to become an officer, then please send nominations (for yourself or others) via e-mail to bar@foothillsbar.org by **December 14, 2018 at 12:00 p.m.** Please be sure to write in “Nomination Committee” in the subject line. For more information or details on becoming a board member (either director or officer), please call (619) 448-6500 or e-mail whannosh@gmail.com.

The Passing of a Dear Friend, Christopher Hayes

On October 4, 2018, our world was rocked by the death of Christopher Hayes, who died in a tragic motorcycle accident near his home. Chris was a devoted and loving husband, brother, son-in-law, as well as a wonderful friend and colleague. He is survived by his wife, Melissa, his two sisters, Kim and Kyle Hayes, and his brother, Rick Rinshed.

Chris was a great lawyer, with a huge heart, committed to representing people who were mistreated in the workplace. He was very passionate about his calling and dedicated his life to helping others.

At the time of his untimely passing, he had been training to compete in a 620-mile bike ride to benefit the Challenged Athletes Foundation, whose mission is to provide those with physical challenges opportunities to find success through athletics, support, community and mentorship. Sadly, the ride took place two weeks after his passing.

Though he had many accomplishments, Chris was one of the most humble people you could ever know. He had great compassion and an incredible spirit. We will always remember him for this, as well as his great humility and his incredible sense of humor, but mostly we will remember his sweetness.

Chris, we love you forever. You will be missed.

Family Court Judicial Shuffle

By Koryn K. Sheppard, CLFS

Changes are afoot in the Family Court ...

In East County, we are pleased to announce that Department 8 will open as an additional Family Court department. Judge Saba Sheibani will preside over Department 8. All three judicial officers in East County will continue in their assignments.

In North County, Judge Weinreb is leaving the Family Court. Judge Mangione will preside over Department 16.

In South County, there are no changes.

In Central, there are several changes. Judges Parker, Mangione, Braner, and Jessop will be leaving Family Court. The newly assigned judges to Family Court are as follows:

- Dept. 602 – Judge Marcella O. McLaughlin
- Dept. 701 – Judge Loren G. Freestone
- Dept. 702 – Judge Truc T. Do
- Dept. 704 – Judge Daniel S. Belsky
- Dept. 902 – Judge Margo Lewis-Hoy (Long Cause)

Additionally, Judge Margo Lewis-Hoy has been appointed the Assistant Supervising Family Court Judge.

Family Law Update: “Bud’s Blockbusters” MCLE Program

By Katie Cadiente, Esq.

On October 16, 2018, the Honorable Judge Tilisha T. Martin hosted October’s lunchtime MCLE in her courtroom in East County Superior Court. This month’s MCLE speaker was Garrison Klueck, CFLS of the Law & Mediation Firm of Klueck & Hoppes, APC. As with every October, Mr. Klueck presented his annual “Bud’s Blockbusters MCLE,” a brief lecture highlighting the most significant family law decisions originating out of San Diego County in the last twelve months. This year’s Bud’s Blockbusters also included noteworthy statutory changes and an interesting case from Riverside County.

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Accompanying Judge Martin in the audience were two other familiar faces: Honorable Judge Selena D. Epley and the Honorable Judge Frank Birchak. Judge Martin also introduced the soon-to-be-familiar face, the Honorable Judge Saba Sheibani, East County's newest family law judge, who will be presiding in Department 8.

Mr. Klueck started the MCLE discussing two amendments that change the way courts address domestic violence when handling child custody and visitation and spousal support. One of those amendments was Amendment 2044, which expands the scope of Family Code Section 3044 subdivision (a). Previously, Family Code Section 3044 findings only applied in instances where a parent perpetrated domestic violence against the other party, the child, or the child's siblings. Amendment 2044 broadens these findings to include instances of domestic violence between the parent and a current spouse or cohabitant or a person with whom the parent or person seeking custody has a dating or engagement relationship.

The second amendment Mr. Klueck highlighted gave courts additional factors to consider when ordering spousal support. Before Amendment 929, Family Code Section 4320 subdivision (i) provided that courts may consider "Documented evidence, including a plea of nolo contendere, of any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party." Amendment 929 allows the court to now also consider the issuance of a protective order after a hearing and any court finding that the spouse committed domestic violence during the pendency of a divorce, separation, or child custody proceeding.

The final amendment of this year's Bud's Blockbusters added an entirely new section to the Evidence Code. Amendment 954 creates Evidence Code Section 1129, which requires attorneys representing parties in mediation to provide their clients with written disclosures outlining the confidentiality terms contained in Evidence Code Section 1119. This code new code section also provides attorneys with specific instructions on how the disclosure should be formatted and what information it must include. Mr. Klueck, who has acted as both a mediator and an attorney representing a party attending mediation, noted that although the practice of providing written disclosure was nothing new, code section 1129 solidifies it as a uniform standard to further protect client interests.

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Mr. Klueck's presentation also touched upon six family law cases, five of which were decided by San Diego County justices. The first San Diego case, *In re Marriage of Steiner* (2018) 17 Cal. App. 5th 1165, discussed military benefits and federal preemption. In this case, the parties entered into a stipulated order in which Husband agreed to maintain Wife as the beneficiary to all of his current active duty and/or death benefits pending further court order. Nonetheless, Husband changed the beneficiary of his life insurance policy to his sister. When Husband died, his sister filed a request for order asking the court to grant her entitlement to Husband's life insurance policy proceeds, which Temporary Judge, Honorable Judge Thomas Ashworth III, granted. The appellate court affirmed Judge Ashworth's decision, finding that the federal law, SGLIA preempts the parties' stipulated order. Under SGLIA, in identifying life insurance policy beneficiaries, first priority is given to the beneficiary identified by the service member in writing prior to the service member's death.

Mr. Klueck also introduced two San Diego cases affecting spousal support. The first spousal support case was originally decided by the Honorable Judge Oberholtzer. In this case, *In re Marriage of Pearson*, (2018) 21 Cal.App.5th 218, Wife tried to argue that the term "bonus" in the parties' marital settlement agreement included restricted stock rights Husband received as part of a long-term incentive plan. The court of appeal affirmed Judge Oberholtzer's ruling, finding that the particularized meaning of "bonus" in the context of spousal support did not include stock or stock options and that there was substantial evidence to support Judge Oberholtzer's interpretation that the "bonus" referenced in the parties' marital settlement agreement did not include Husband's restricted stock rights. The second spousal support case is an unpublished case that originated in the Honorable Commissioner Patti C. Ratekin's courtroom. In *In re Marriage of Robbins*, SDSC Case No.: DN163804, Appellate Case No. D072592, the parties' marital settlement agreement had one provision for spousal support which contained a specified termination date and another provision for family support which did not contain any specified termination date. Wife appeared before Commissioner Ratekin requesting to extend spousal support beyond the specified termination date and Commissioner Ratekin granted Wife's request, finding that the spousal and family support provisions were contradictory and ambiguous as to whether spousal support can be extended beyond the specified termination date. The appellate court reversed Commissioner Ratekin's decision, finding that her interpretation of the marital settlement agreement was not reasonable and that the termination date was clearly provided for in the spousal support provision of the agreement.

Mr. Klueck also briefed attendees on *YH v. MH* (2018) 25 Cal. App. 5th 300, a San Diego Department of Child Support Services case. In this case, Father applied for SSDI for himself and derivative benefits for his daughter.

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Father was finally approved six years after applying. As a result of the delayed-pay out resulting from the long processing time, daughter (through Mother) received a lump sum payment of \$41,384. Commissioner Adam Werthheimer used this lump sum payment as a credit towards child support Father owed, even though Father was not in arrears. The appellate court affirmed, finding that the lump sum payment received by daughter constituted an advance of Father's support obligation.

One interesting case Mr. Klueck included as part of his talk was *SS v. SS, as Executor*, SDSC Case No.: D558418, Appellate Case No. DO72122, an unpublished opinion originating from the Honorable Judge Enrique Camarena's courtroom. In this case, the court was tasked with determining whether it had authority to make a paternity finding in an instance where the father is deceased and the child is an adult. Judge Camarena viewed the petition as more of an "emotional request" and that, without a probate request, the court did not have jurisdiction to make a finding. The appellate court disagreed, finding that the Court did have jurisdiction since Family Code Section 7630 allows any interested party to bring a paternity action.

The last and only non-San Diego case explored the interesting distinction of how to define the date of marriage in instances where the spouses entered a domestic partnership prior to marriage. In *In re Marriage of GC and RW* (2018) 232 Cal Rptr 3d 484, RW appeals the trial court determination setting the parties' date of marriage in 2009 instead of 2004, when they entered a domestic partnership under New Jersey law. RW also argued that the trial court used the incorrect formula when dividing the appreciation in value of the marital residence. The appellate court affirmed the trial court's ruling on the date of marriage but reversed the trial court's division of the appreciation in value of the marital residence. As Mr. Klueck explained, the appellate court found that the trial court was correct in finding that the parties' 2004 New Jersey domestic partnership was not "substantially equivalent" to a California domestic partnership under Family Code Section 299.2 to permit dissolution under section 299. As to the issue of asset division, the appellate court found that the trial court incorrectly divided the home's appreciation value in proportion to each party's respective separate property down payment on the residence. Mr. Klueck summarized the appellate court's reasoning that each party's respective Family Code Section 2640 reimbursement credit was not to include amounts attributable to the residence's appreciation.

At the end of the event, Mr. Klueck took questions from audience members, including some from the judicial officers present. It was a well-attended event that gave attendees a helpful toolkit of new statutes and cases, keeping them up to date on local landmark decisions and significant changes in family law.

Special Immigrant Juvenile State and the Important Role of State Courts

By Raul “Eddie” Maravilla, Attorney

There are various avenues by which a child can apply to become a permanent resident in the United States. One of the ways to become a permanent resident includes filing a Petition for Special Immigrant Juvenile Status (or “SIJS”). Although immigration issues are typically handled in federal Immigration Court, this special status requires an order from a state court before a person can even petition for such relief.

As a prerequisite to filing a Petition for Special Status, a person who is unmarried and under the age of 21 must seek a valid court order issued by a juvenile court which makes the following findings:

1. The child is a dependent of the Court, or, placed in the custody of a state agency or department or individual or entity appointed by the Court;
2. Reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law; and,
3. It would not be in the person’s best interest to be returned to their country of nationality or their last habitual residence.

This means that prior to submitting an application for SIJS, the child, or their parent, must first petition a juvenile state court to make the requisite findings. It is important to understand that the findings made in state court *do not* give the child lawful immigrant status, as this is something that can only be granted by the U.S. Citizenship and Immigration Services (USCIS). However, this allows one to proceed with the application process.

For SIJS purposes, a juvenile court is considered a court located in the United States, having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. This means that a juvenile court can also be considered interchangeable with a family court or probate court, as far as terminology. Either a child can file the Petition for Special Immigrant Juvenile Status Findings with the state court, or a parent can file the petition, along with a petition for custody. If the petitioner is requesting the SIJS and he or she is above the age of 18, that person may be restricted to only applying for a guardianship, as custody of a person who has reached the age of majority would not be awarded to a parent in California family courts. Some states can consider a person who is over the age of 18 to still be deemed a juvenile or minor for SIJS purposes.

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The burden of proof with regards to the abuse, abandonment, neglect, or similar basis is low. There must be some evidence and a declaration by the child, or, a declaration by a parent who has personal knowledge of such acts. When making a determination as to whether it is in the child's best interest to return to their country of origin, the Court can use Family Code §3011.

Once the Court makes the requisite findings, the person then files his or her application with the USCIS and the federal court will then determine whether or not to grant the child special status.

**FOOTHILLS BAR ASSOCIATION
NOTICE OF GENERAL MEMBERSHIP MEETING AND
BOARD OF DIRECTORS 2019 ELECTIONS**

Dear Members:

On December 20, 2018, the Foothills Bar Association of San Diego County will hold its general membership meeting at 4:45 p.m. at Hooley's Irish Pub & Grill in Grossmont Center, La Mesa. At that meeting, paid members will have an opportunity to vote to elect the Board of Directors for 2019.

The board has open positions. If you are interested in serving on the board or would like to nominate someone else to serve, please send your nominations via e-mail to the "*Nomination Committee*" at bar@foothillsbar.org by no later than, **December 14, 2018 at 12 p.m.** To be eligible, a nominee must have been a member of the Foothills Bar Association for at least one year and must maintain his or her residence or principal office in San Diego County. We will send out the slate of nominated directors and current directors for your consideration prior to this general meeting.

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 Chair Steven Banks at: sbanks@krigerlawfirm.com or 619-589-8800.

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 November 13, 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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mschlissel.consultant@gmail.com

Fischbeck & Oberndorfer

A Professional Corporation

ATTORNEYS AT LAW

5464 Grossmont Center Drive, Suite 300

La Mesa, California 91942

Tel. (619) 464-1200 WLF@LaMesaLaw.com

Fax (619) 464-6471 RHO@LaMesaLaw.com

visit: www.LaMesaLaw.com

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Vice President	Koryn Sheppard	koryn@FamilyLawSanDiego.com	619-448-6500
Treasurer	Glen Honig	glen@FamilyLawSanDiego.com	619-315-9962
Secretary	Andrea Schneider	andreaattorney@gmail.com	619-518-0476
Immediate Past President:	Traci Hoppes	traci@FamilyLawSanDiego.com	619-448-6500

DIRECTORS

Mark Krasner	mkrasner@bkflaw.com	858-551-2440
Steven Banks	sbanks@krigerlawfirm.com	619-589-8800
Kate Iwanami	kmiwa2013@gmail.com	619-551-4900
Jeremy Elias	ESQ@JHElias.com	619-843-8546
George de la Flor (Alternate Director)	gldelaflor@cs.com	619-246-9544

REPRESENTATIVES

Garrison "Bud" Klueck, SDCBA, East County Liaison, San Diego County Bar Association
Garrison@FamilyLawSanDiego.com **619-588-2064**

SECTIONS

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ADDRESS CHANGES	Chair: Bradley Schuber
SPECIAL EVENTS	Chair: Garrison "Bud" Klueck
NEWSLETTER	Chair: Cheryl Stengel
YOUNG & NEW LAWYERS	Chairs: William Hannosh & Koryn Sheppard

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

**Foothills Bar Association
P.O. Box 1077
El Cajon, CA 92022**

**Addressee Name
4321 First Street
Anytown, State 54321**