



# NEWSLETTER

## From the President

By Glen J. Honig, Esq., FBA President

On **June 23, 2016**, the Foothills Bar Association held its annual membership drive mixer at Hooley's at Grossmont Center in La Mesa. More than 20 attorneys and members were present to enjoy a time of camaraderie, food and spirits, along with entertainment by Tom Hoppes playing a variety of classical and pop tunes on his guitar. With the resurgence of the Foothill Bar Association's criminal law section, there was also a showing by some local criminal defense attorneys. New members were present and ideas were exchanged regarding future networking opportunities and seminars.

To promote this year's membership drive, the FBA reached out to the law schools of Thomas Jefferson, Cal Western and University of San Diego and offered newly-licensed attorneys free membership for one year. This was done with a motivation to let new attorneys (either within or outside of East San Diego County) know about the benefits and perks offered by the Foothills Bar Association, which include free and informative monthly MCLEs in a variety of legal disciplines; the annual 'Hard-to-Get' (Credits) MCLE Seminar; this newsletter; and the ongoing opportunity to network and associate with other attorneys at various events and mixers traditionally held by the FBA throughout the year.

We expect the outreach to the local law schools to be an ongoing effort which will enhance opportunities for new attorneys to create contacts in the legal community, to seek a mentor in a particular practice area, and create opportunities for our members to bring young attorneys into their practice.

As usual, we are now receiving membership renewals from our current members, and in the past two weeks, three new members have joined and expressed interest in being involved at varying levels with the Foothills Bar Association. If you have not already renewed your membership for the 2016-2017 year, please do so at: <http://foothillsbar.org/membership>.

## Upcoming Events Calendar

**July 12**

**Civil Litigation Section**

**12:00 – 1:15 p.m.**

BJ's Restaurant, Grossmont Center, La Mesa

Topic: Recent Developments in Tax Law

Speaker: Mark Krasner, Esq., CPA

**July 14**

**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: TBA

Speaker: TBA

**July 19**

**Family Law Section**

**12:00 - 1:15 p.m.**

East County Court, Dept. 7  
250 E. Main Street, El Cajon

Topic: When the Cost of a Psych Eval is Too Much

Speaker: Dr. Debra Dupree, LMFT

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On **June 24, 2016**, the Foothills Bar Association held the first seminar for the newly reconstituted Criminal Law Section. The seminar on the Veteran's Pre-Trial Diversion Program was presented by the Honorable Roger W. Krauel in the Jury Lounge of the East County Court. Attendance was outstanding - we had 25 attorneys attend this highly informative and interesting MCLE seminar. All those in attendance were provided written materials to coincide with the presentation by Judge Krauel. Daniel Cohen, the chair of our Criminal Law Section, along with Andrea Schneider are working on setting up the next seminar as soon as possible. Rumor has it that it may be on the use of psychologists or psychological reports in criminal law matters. We will send out an e-mail blast as soon as the topic, date and time have been confirmed so stay tuned.

## Written Words Speak Louder than Action

By Keith A. Jones, Esq.

Commercial landlords many times find themselves between a rock and a hard place when addressing maintenance and repair issues. The landlords' major remodeling and parking lot activities disrupt tenants' businesses, affecting one form of quiet enjoyment. However, landlords must also complete remodeling and major parking lot repairs in order to remain competitive and minimize potential safety hazards, or risk tenants claiming their landlords are in breach.

A recent California appellate decision delved into a dispute between a landlord and a tenant. The tenant successfully obtained a temporary restraining order limiting the landlord's decibel levels for demolishing and constructing premises in an adjoining section of the building. The tenant also complained that the landlord blocked parking spaces which further interfered with the tenant's business, and that the landlord acted unreasonably in inspecting the premises and serving default notices during the construction.

The tenant sued the landlord for breach of the lease and for defamation. Why defamation? Because of suspicious Yelp reviews claiming tenant's business had the "*worse service*," was "*unfriendly*," and warned potential customers to "*watch out for the angry Lady that works there*." The trial court granted the landlord's motion in limine excluding the Yelp reviews on the grounds that they could not be authenticated to be attributed to the landlord. A jury found in favor of the landlord even though it found that the landlord had breached the lease, concluding that the tenant didn't establish damages.

On appeal, the tenant challenged the exclusion of the Yelp reviews. The tenant had subpoenaed records concerning the computer IP addresses associated with the Yelp reviews. The trial court excluded the evidence, finding lack of authentication as a preliminary fact as a trial court may do under the Evidence Code. The trial court wanted the tenant to prove that the landlord posted the Yelp reviews before he would allow the evidence to be admitted.

The appellate court ruled that the trial court erred because it treated the proffered evidence like a motion for nonsuit which challenged the sufficiency of the evidence. As such, the jury had been deprived of an opportunity to consider the evidence and draw any reasonable inferences as to whether the landlord could be held responsible for the unfavorable Yelp reviews. In other words, the trial court resolved reasonable inferences against the tenant by a motion in limine which inferences, if they existed, should have been determined by the jury.

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The appellate court provided interesting insights into the IP address evidence, including that the Yelp reviews tied to the landlord's home and business network routers. While such connection did not mean that the landlord posted the reviews – in fact the landlord's attorney argued that anyone could have wirelessly accessed the landlord's routers and posted the reviews – it would have been possible for a jury to reasonably infer, and thus conclude, that the landlord posted them.

In reversing the entire judgment, the appellate court concluded that the exclusion of the Yelp evidence prevented the tenant from establishing defamation. It reasoned that the tenant would have recovered at least nominal damages had it prevailed on the defamation cause of action. If a jury found in favor of the tenant on the defamation claim, then it could have affected the jury's view of the evidence and damages on the breach of contract claims.

On the first go around, the landlord's noise generated by its remodeling and repair actions wasn't loud enough to cause a jury to find the landlord caused the tenant to suffer damages. However, the appellate court remanded the case for a determination as to whether the written words in the negative reviews – if the landlord had posted them – were loud enough to enable the tenant to recover defamation damages, and more.

## “Hey Siri, Where Can I Find an East San Diego County Attorney?”

By Deena Mayne, Foothills Bar's Webmaster

Most consumers of legal services start their search for attorneys using online resources. But, many law firms still don't have a website, much less are maximizing their online marketing exposure.

The online competitive landscape is quickly changing. Voice Search using either Apple's Siri or Google Voice are the latest search tools people are utilizing in increased daily numbers. For attorneys, online directories are an ideal and simple location to increase online search visibility. Many may not know that Siri scouts Q & A's and online directories to find the answers for search questions. "Hey Siri, where can I find an East San Diego County attorney?" Would Siri be able to find you?

If you are a current FBA member and have not yet taken advantage of the free online attorney directory listing, we invite you to do this now. It's never been easier. We currently have opened the online directory submission form (*no current login required. Though only current active member listings will be posted.*) It's never been more important to be listed in reputable profession-specific online directories! In addition to your general attorney listing, all member directory listings are also cross-listed under your areas of practice, languages spoken, &/or other states licensed to practice. These features allow you even more exposure for your private or firm's practice and are included in your annual membership. (More FBA member features are currently in the works to increase the current directory indexing even more!)

**Members - Get your FBA Online Attorney Directory Listing today!**

<http://foothillsbar.org/membership/directory-submission/>

## Family Law Section MCLE Update

On Tuesday, July 19, 2016, the Family Law Section will present the MCLE program, "When the Cost of a Psych Eval is Too Much", with speaker Dr. Debra Dupree, LMFT. The program will be from noon - 1:15 p.m. in Dept. 5 of the El Cajon Courthouse.

The reality of many families being able to afford a psychological evaluation for custody cases for when they really need it is pretty far-fetched. Yet the need for such evaluations remains strong when the stability and general well-being of the children of divorce are involved. And as many in the family law arena know, the vast majority of claims and accusations referred to mental health professionals during divorce cases are unsubstantiated by psychological evaluation.

Dr. Dupree examines options available to families in divorce to make it more affordable when custody decisions must be made. She also explores today's alternatives when working with mental health professionals in evaluations as well as discusses the traditional psychological evaluation process.

This program has been approved for 1.0 hour of MCLE general credit by the State Bar of California. If you have any questions about the program, please contact Family Law Section chairperson, Traci Hoppes, Esq. at [tracihoppes@yahoo.com](mailto:tracihoppes@yahoo.com).



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It's time to renew your Foothills Bar Association membership for the 2016-2017 year. Membership renewal for existing members or sign up for new members may be done on-line at: <http://foothillsbar.org/membership>

The membership application is also provided with the newsletter.  
<http://foothillsbar.org/membership>

Please renew promptly so your membership benefits are not interrupted.

# 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 Mark Raftery at [mark@markrafterylaw.com](mailto:mark@markrafterylaw.com) or Elizabeth Smith-Chavez at [liz@smithchavezlaw.com](mailto:liz@smithchavezlaw.com).**

**Foothills Bar Association Notice of Board Meeting:**

**The Foothills Bar Association Board of Directors meets on the third Tuesday of each month. The next meeting will be on July 19, 2016 at the Kriger Law Firm, 8220 University Avenue, 2<sup>nd</sup> Floor conference room, La Mesa, CA. The meeting will begin 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](mailto:Kelly.Fabros@SDCourt.CA.Gov).

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### SECTIONS

<b>FAMILY LAW:</b>	<b>Chair: Traci Hoppes</b>
<b>CIVIL LITIGATION:</b>	<b>Chairs: Cheryl Stengel, Mark R. Raftery &amp; Elizabeth Smith-Chavez</b>
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<b>NEWSLETTER</b>	<b>Chair: Cheryl Stengel</b>

**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](mailto:bschuber@krigerlawfirm.com)

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