



# NEWSLETTER

## Will Prometheus Please Take the Stand?

By Keith A. Jones, Esq.

Foothills Bar Association President

Past editions of the Foothills Bar Association newsletter have included pithy quotes from decisions published by the California Supreme and Appellate Courts. I'm sure you have found memorable passages in your research. You may have also found your research projects have been prompted by unique legal arguments offered by self-represented litigants.

Courts continue to experience an increase in individuals representing themselves in a wide variety of lawsuits, mainly attributed to the burdens of the economic climate. Self-represented litigants have been known to offer theories without legal grounds, extending their challenges beyond the trial court level. These circumstances are not new as I found in the Fifth Appellate District decision of Goshgarian v. George (1984) 161 Cal.App.3d 1214.

The self-represented litigant argued that he had the right to drain his "mosquito infested swimming pool effluent" utilizing the County of Fresno's storm drain easement. Associate Justice Kenneth Andreen stated as follows in ruling against the party's contention:

*"Only a mind unburdened by the ephemeral shackles of legal training and gloriously free of the stultifying pomposities of precedent and stare decisis could have formulated the epiphanous principle that what the public may do as an entity, so may individual members of the public do, acting in their individual capacities. . . . Not so. Cross-defendant Mr. George is on the wave front of the expanding legal universe, Prometheus unbound by the strictures of logic and reason that constrain lawyers and judges in their quotidian professional functions,"* Id., at 1223.

You will note that I didn't reference part of Justice Andreen's holding. He included an observation about appellate counsel, stating in the midst of this memorable passage:

## Upcoming Events Calendar

**July 10**

**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

**July 15**

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

East County Court, Dept. 7  
250 E. Main Street, El Cajon  
Topic: The Impact of Bankruptcy on  
Divorce  
Speaker: David Britton, Esq., CLS-B

**August 12**

**Civil Litigation Section  
12:00m- 1:15 p.m.**

BJ's Restaurant, Grossmont Center, La Mesa  
Topic: Social Media for Lawyers  
Speaker: Viveca Hess, CEO at HessConnect

**NOTE: Please take notice that the Civil Litigation Section MCLE program, "Social Media for Lawyers" previously scheduled for July 9, has been rescheduled for August 12, 2014.**

Continued from Page 1:

*“Appellate counsel for cross-complainants, with an imagination dulled by years of legal training, evidently lacked the audacity to appreciate cross-defendants' argument and misinterpreted (and diminished) it as a mundane attack upon the sufficiency of evidence to support the jury's finding of trespass.”* Id., at 1223.

Please beware that you could find yourself lulled into a sense of victory if you don't appreciate or misinterpret an opposing argument, whether offered by able legal counsel or an inventive self-represented litigant. On the other hand, don't overreach as the losing party did in Goshgarian.

Have you uncovered any memorable quotes or passages in your legal research, or have any thoughts to share with the Foothills Bar Association members? If so, I encourage you to write an article for the Foothills Bar Association newsletter. Please e-mail your submissions to: [clstengel@outlook.com](mailto:clstengel@outlook.com).

## Preparing for an Appeal: Considerations During Trial

By: Richard I. Kohn, Esq.

During trial, the primary issues that will impact a potential appeal relate to objections to evidence, various motions, and jury instructions.

Every trial attorney knows that if objections are not made during trial, they are forfeited on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287.) The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. (*Id.*) This basic rule has several aspects. First, the objection must be made promptly, i.e., before the answer is given. (Evid.C. §353.) If you delay the objection and then move to strike the answer, your motion may be denied if the judge believes you wanted to hear the answer before making an objection. The objection must also appear on the record, which excludes unreported sidebar or chambers discussions, for which trial counsel should put the objection and ruling on the record immediately after the unreported proceedings. (See *American Modern Home Ins. Co. v. Fahmian* (2011) 194 CA4th 162, 170,—debate on appeal whether objection was asserted below (and not waived) “could and should have been avoided if the trial court and counsel had put the objection and ruling on the record immediately after the [unreported] chambers conference” (brackets added).) Failing this, your best hope to make the objection part of the appeal is its inclusion in a settled statement or agreed statement on appeal, neither of which is ideal, because a settled statement requires the trial judge to resolve disputes between the parties as to what was said, and an agreed statement relies on an agreement between the parties what was said. (See CEB, California Civil Appellate Practice, 3<sup>rd</sup> ed. (hereafter “CEB”) §9.58 et seq and §9.52 et seq.) Finally, the objection must be made on the proper ground for the Court of Appeal to consider whether the evidence was improperly admitted, and an objection made on one ground will not preserve other grounds for appeal. “An objection to evidence must generally be preserved by specific objection at the time the evidence is introduced; the opponent cannot make a “placeholder” objection stating general or incorrect grounds (e.g., “relevance”) and revise the objection later in a motion to strike stating specific or different grounds.” (*People v. Demetrulias* 2006 39 Cal.4th 1, 22. )

Continued from Page 2:

Some problems arise due to mere inattention of counsel. If the trial judge overrules your evidentiary objection subject to a later motion to strike if the court ultimately decides the evidence is inadmissible (i.e., a conditional ruling on the evidence), you must remember to move to strike, or else your objection may be waived. (*Ault v. International Harvester Co.* (1974) 13 Cal.3d 113.) Another potential pitfall concerns continuing objections to a line of questioning, which are often appropriate to facilitate the flow of the trial and to avoid annoying the judge in a bench trial. Remember, though, that a ground must be stated for a continuing objection, and the stated ground will not preserve an objection to evidence based on a different or additional ground. (*Smith v. County of Los Angeles* (1989) 214 CA 3d 266,285.) Also, it is trial counsel's responsibility to make sure the record is clear as to when the continuing objection is operating and when it is not. Merely asking for a "running" or "standing" objection "to this whole area," rather than directing the objection to "a particular, identifiable body of evidence, . . . does not preserve the issue for appeal." (Evid.C. §353; *Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1676, & fn. 20)

Motions also present issues regarding appeal. If a motion to continue the trial is denied and you seek review, you must show the appellate court the motion was made promptly, and you must show good cause and also demonstrate you couldn't have reasonably foreseen the need for a continuance. Review can be by way of appealing the judgment or by immediately filing a writ of mandate. CEB §2A.46, §4.25. Motions for nonsuit or directed verdict must state all grounds with particularity, and new grounds will not be considered for the first time on appeal. CEB §4.26.

Offers of proof can be vital in preserving the record for appeal. When evidence is excluded under a motion in limine, the proponent of the evidence should make an offer of proof during the trial to preserve the record. While there are exceptions, the safe course makes the offer of proof. CEB §4.24. Further, if the court reserves ruling on a motion in limine, the moving party should object again during the trial or risk waiving the objection. CEB §4.21.

Jury instructions can create problems when they aren't taken directly from CACI. A jury instruction based on a statute should quote the code section exactly, since paraphrasing it may cause reversible error. CEB §4.31. Even instructions that quote directly from an appellate opinion may constitute reversible error because "an extract may be inappropriate if the facts underlying the opinion are different from those presented in the new case." (See *Drake v. Dean* (1993) 15 Cal.App.4th 915, 924; See also, *Ernest W. Hahn, Inc. v. Sunshield Insulation Co.* (1977) 68 CA 3d 1018.) If you are claiming instructional error on appeal, do not be misled by the characterization of jury instructions as "optional" components of the clerk's transcript under California Rule of Court, Rule 8.122 . Appellants arguing instructional error must ensure that the record includes instructions given and refused (and the court's ruling on proposed instructions). Unless the record shows which party requested an erroneous instruction, the appellate court must presume that *appellant* requested it and consequently the appellant cannot challenge it on appeal. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 678–679, 71 CR3d 775, 793–794.)

Litigation can be demanding and stressful, and it's easy to become absorbed in the moment-to-moment workings of a trial. But much like trying to hear the subtleties in a piece of classical music, if you train your ear to listen to matters which may impact an appeal, you will better serve your client.

Richard I. Kohn can be reached at: Telephone 619.885.3002  
RK@RichardKohnAppeals.com  
www.RichardKohnAppeals.com  
"Civil Appeals-- Affordable Fees"

## Foothills Bar Association's 2014 Membership Mixer

The Foothills Bar Association's membership mixer was a great success! Members and prospective members enjoyed drinks, hosted hors d'oeuvres and socializing at Hooleys Irish Pub in Grossmont Center. Special thanks to board members Kathy Mills and Bradley Schuber for their work in organizing this event. We look forward to another successful year for the Foothills Bar Association.



## Reminder:

It is time to renew your Foothills Bar Association membership for the 2014 – 2015 year.

The membership application is provided with this newsletter or can be accessed at:

<http://foothillsbar.org/membership>

### La Mesa Office Space Available

Deluxe full service office suite available in prime La Mesa class "A" building near Grossmont Center. Includes full reception services, conference room, signing room, document assembly area, copy and fax and shredder, kitchen, and fantastic office mates. Large "partner" office with ample staff area. Adjacent "associate" office also available as is smaller support room. For details and tour, call Bill Fischbeck (619)464-1200.

### Newsletter Advertising Rates

#### Business Card Size

\$25.00 for two months

\$125.00 for twelve months

The Foothills Bar Association seeks a chairperson for the criminal law section. Responsibilities will involve scheduling speakers for lunch time MCLE programs on topics of interest and providing Section meeting status reports to the Foothills Board of Directors. Interested attorneys should contact Cheryl Stengel at [clstengel@outlook.com](mailto:clstengel@outlook.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 15, 2014 at the Kriger Law Firm, 8220 University Avenue, 2<sup>nd</sup> Floor conference room, La Mesa, CA 91942 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).



# FOOTHILLS BAR ASSOCIATION OF SAN DIEGO COUNTY

Service, Professionalism, Collegiality

## FOOTHILLS BAR ASSOCIATION FAMILY LAW SECTION MEETING

Tuesday, July 15, 2014  
12:00 pm - 1:15 pm

### THE IMPACT OF BANKRUPTCY ON DIVORCE

- *Fundamentals of Bankruptcy as relates to Family Law*
  - *What is and what is not dischargeable*
  - *Tips on handling the financial plan*
    - *How to preserve your fees*
    - *Mistakes to avoid*

#### SPEAKER:

Attorney David Britton,  
Certified Specialist in Bankruptcy

#### LOCATION:

East County Court House - Department 7  
250 East Main Street, El Cajon, CA 92020

#### COSTS:

Free for members of the Foothills Bar Association  
\$10 for Non-Members and Guests (*payable at the door*)

*This presentation qualifies for one unit (1.0 credit hour) toward California Minimum Continuing Legal Education (MCLE).*

For questions, please contact Traci Hoppes at (619) 448-6500 or  
[traci hoppes@yahoo.com](mailto:traci hoppes@yahoo.com)

# E-FILING & E-SERVICE IN SAN DIEGO SUPERIOR COURT

**DATE**  
July 2, 2014

**TIME**  
12 - 1 pm

**LOCATION**  
1105 Front St  
San Diego  
CA  
92101

**COST**  
Free

**About the Program:**

This session walks you through all the steps necessary to E-File your documents in San Diego Superior Court.

You will learn:

- How to register a new user to your account.
- How to place a San Diego electronic court filing order for a new or an existing case.
- How court filing fees are paid.
- How to set up and effect E-Service (time permitting).

After you have attended this course, you'll be able to submit your E- Filings more quickly and efficiently

**Speaker info:**

Brooke Greene is the Southern California Product Training & Research Coordinator for One Legal. Her areas of training expertise include E-Filing, court filing, process serving, and One Legal products and services.

**MCLE:** 1 hour General Participatory MCLE credit available

**More Information and Registration:**

<https://efiling2july2014.eventbrite.com> or call (619) 531-3900



## REDUCING DISCOVERY COSTS & RISKS THROUGH LITIGATION READINESS

DATE  
July 23, 2014

TIME  
12 - 1 pm

LOCATION  
Downtown  
1105 Front St  
San Diego  
92101

COST  
FREE For FBA  
Members.  
Use promo  
code:  
discovery

Sponsored by

**DTI**



### About the Program:

### Recommended For Business Owners and General Counsels

The Federal Rules of Civil Procedure require that companies be prepared to discuss the location and accessibility of potentially relevant information shortly after litigation begins. Discovery rules and recent case law require the quick and effective imposition of a litigation hold once a triggering event occurs. This session will address how to reduce discovery costs and risks through litigation readiness, including the development of an effective litigation discovery response plan, the creation of a targeted data map, and a review of email and records retention policies (in and out of the cloud), schedules and backups.

### Speaker info:

Jeff Jacobs is the General Counsel and Senior Consultant for DTI, where for the past five years he has advised clients on litigation readiness, email and records retention, and the planning and execution of electronic discovery matters.

**MCLE:** 1 hour General Participatory MCLE credit available

### More Information and Registration:

<http://discovery23july2014.eventbrite.com> or call 619-531-3900



# LINDLEY LECTURE ON LAW & COMICS



## LAW & COMICS 2014 CREATIVE NIGHTMARE: Creator's Rights, Licensing, and Work for Hire

DATE  
July 22, 2014

TIME  
12:00—1:00 pm

LOCATION  
Downtown  
1105 Front St  
San Diego, CA  
92101

COST  
\$10

### About the Program:

Comic creators and publishers are creating some of the most valuable intellectual property in the entertainment field. How does a creator navigate the opportunities? How does a company work with talented creators and license intellectual property to create new works?

### Speakers:

**Alé Garza** is comic artist who has worked for major comics publishers on titles such as Teen Titans, Deadpool, Super Girl, Gen 13, and Fathom.

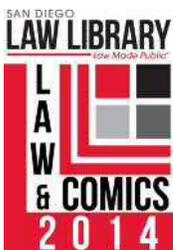
**Greg Goldstein** is the President and COO of IDW Publishing where he plays a lead role in acquiring and launching new brands. He won an Eisner award in 2011 for his work editing *Archie* newspaper comic strip reprints.

**Stu Rees** is an attorney and cartoonist. As an attorney, he specializes in representing artist in newspaper and other cartoon syndication contracts.



**MCLE:** 1 hour General Participatory MCLE credit available

**Registration:** [comics22July2014.eventbrite.com](http://comics22July2014.eventbrite.com),  
call 619-531-3900, or scan



**Foothills Bar Association  
Of San Diego County**

P.O. Box 1077  
El Cajon, CA 92020

**Membership Application**

The FBA Membership year is July 1 – June 30

**\*\*Dues are waived for first-time applicants who have been a member  
of the CA State Bar for less than one (1) year\*\***

***Please Print or Type:***

*Required fields \*\**

New    Renew with changes as noted    Renew with No changes

**\*\* Name:** \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Office Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*(I understand that by providing my fax number and email address, I hereby consent to receive faxes and email messages by  
or on behalf of the Foothills Bar Association)*

I agree that my professional contact information may be published on the Foothills Bar Association website  
and in the annual Foothills Bar Association Attorney Directory.

If you DO NOT want your professional information published in the directory or on the website, please initial  
here: \_\_\_\_\_

Foreign Languages Spoken: \_\_\_\_\_

I am a member in good standing of the State Bar(s) of: \_\_\_\_\_

CA Bar #: \_\_\_\_\_ Year admitted to Practice: \_\_\_\_\_

Are you interested in becoming actively involved? *(please check one)*

Yes, I would like to become actively involved, and have time to devote.

Yes, I would like to become actively involved, but have limited time to devote.

No, I do not wish to be actively involved, but do wish to take advantage of FBA  
membership benefits.

If you would like to be actively involved and have time to devote would you like to hold a  
position? *(Please circle one)*    yes or    No

If you answered yes, what committee and/or position are you interested in?

\_\_\_\_\_  
Please choose a section:    Family Law    Estate Planning    Civil Litigation    Criminal

Please choose a committee: Advertising Annual Dinner Golf Tournament  
Hard-to-Get Seminar Law Day MCLE Membership Monthly Newsletter Website

\*\* Date: \_\_\_\_\_ \*\*Applicant Signature: \_\_\_\_\_

*Please return the completed Membership Application, together with your check for \$65.00 or with a check made payable to: **Foothills Bar Association** and mail to:*

*Foothills Bar Association  
P.O. Box 1077  
El Cajon, CA 92020  
[www.foothillsbar.org](http://www.foothillsbar.org)*

Credit Card Number: \_\_\_\_\_ Security Code: \_\_\_\_\_

Type of Card (i.e. MasterCard, VISA, American Express): \_\_\_\_\_

Name on Credit Card: \_\_\_\_\_

Expiration month/year: \_\_\_\_\_

**Check all areas of practice to be included in the Foothills Bar Association Telephone Directory and on the Foothills Bar Website:**

Administrative	Internal Revenue Service/ Tax
Adoptions	Insurance
Appellate	Intellectual Properties
Aviation	Juvenile
Banking	Landlord/ Tenant
Bankruptcy	Legal Malpractice
Business/ Corporate	Mechanic's Liens
Civil Litigation	Medi-Cal
Collections/ Consumer	Mediation
Commercial/ Construction	Medical Malpractice
Conservatorship	Military
Criminal	Municipal
Dental malpractice	Personal Injury
Elder	Probate
Eminent Domain	Public Defender
Employment	Real Estate/ Land Use/ Environment
Estate Planning/ Wills/ Trusts	School
Family/ Domestic	Securities
General	Sports/ Entertainment
Guardianship	Social Security
Home Owners Association	Worker's Compensation
Immigration	<b>List all areas of Certified Specialization:</b>

# 2014 FBA OFFICERS, DIRECTORS, SECTION CHAIRS & COMMITTEES

## OFFICERS

<b>President</b>	<b>Keith Jones</b>	<a href="mailto:kjones9001@gmail.com">kjones9001@gmail.com</a>	<b>619-462-6220</b>
<b>Vice President</b>	<b>Cheryl L. Stengel</b>	<a href="mailto:clstengel@outlook.com">clstengel@outlook.com</a>	<b>619-269-2126</b>
<b>Treasurer</b>	<b>Carolyn R. Brock</b>	<a href="mailto:carolyn@crbrocklaw.com">carolyn@crbrocklaw.com</a>	<b>619-741-0233</b>
<b>Secretary</b>	<b>Kim Marie Staron</b>	<a href="mailto:kstaron@lawinsandiego.com">kstaron@lawinsandiego.com</a>	<b>619-574-8000</b>
<b>Immediate Past President</b>	<b>Bradley Schuber</b>	<a href="mailto:bschuber@krigerlawfirm.com">bschuber@krigerlawfirm.com</a>	<b>619-589-8800</b>

## DIRECTORS

<b>Traci Hoppes</b>	<a href="mailto:tracihoppes@yahoo.com">tracihoppes@yahoo.com</a>	<b>619-448-6500</b>
<b>Glen J. Honig</b>	<a href="mailto:honigesq@gmail.com">honigesq@gmail.com</a>	<b>619-315-9962</b>
<b>Nancy Kaupp Ewin</b>	<a href="mailto:nancy@nkewinlaw.com">nancy@nkewinlaw.com</a>	<b>619-698-1788</b>
<b>Garrison Klueck</b>	<a href="mailto:garrisonklueck@yahoo.com">garrisonklueck@yahoo.com</a>	<b>619-448-6500</b>
<b>Mark R. Raftery</b>	<a href="mailto:mraftery@epsten.com">mraftery@epsten.com</a>	<b>858-527-0111</b>
<b>Kathy Mills</b>	<a href="mailto:kmills@krigerlawfirm.com">kmills@krigerlawfirm.com</a>	<b>619-589-8800</b>

## REPRESENTATIVES

<b>Dan Bacal, SDCBA</b>	<b>619-588-2064</b>
-------------------------	---------------------

## SECTION CHAIRS/MEMBERS

<b>FAMILY LAW:</b>	<b>Traci Hoppes</b>
<b>CIVIL LITIGATION:</b>	<b>Cheryl Stengel, Mark R. Raftery</b>
<b>ESTATE PLANNING:</b>	<b>Nancy Kaupp Ewin, Carolyn R. Brock</b>

## COMMITTEES

<b>ADVERTISING</b>	<b>Chair: Nancy Kaupp Ewin</b>
<b>LAW DAY HARD- TO-GET</b>	<b>Chair: Carolyn R. Brock</b>
<b>CREDITS SEMINAR</b>	<b>Chair: Keith Jones &amp; Garrison Klueck</b>
<b>MEMBERSHIP</b>	<b>Chair: Kathy Mills, Bradley Schuber</b>
<b>ADDRESS CHANGES</b>	<b>Chair: Kathy Mills, Bradley Schuber</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 Kathy Mills at [kmills@krigerlawfirm.com](mailto:kmills@krigerlawfirm.com).

---

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

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