



NEWSLETTER

FBA Asks “What Do You Want”

To: Foothills Bar Association Members

**From: Keith A. Jones, Esq.,
President of the Foothills Bar Association**

Subject: Members’ Benefits

The Foothills Bar Association has served its members for over fifty years. Over the last few years, we have strived to give members even more value for their annual dues. The Family Law, Estate Planning and Civil Litigation sections sponsor MCLE programs which members can attend for free as part of their membership benefits. We have established a video library of several of the events (except for Family Law due to court restrictions) in case you missed one.

The FBA hosts an annual Hard-To-Get MCLE seminar which has reduced costs for its members and includes dinner for the three hour program. We celebrate our achievements and progress at the Annual Dinner in January, again with members receiving a discount. Speaking of MCLE, members enjoy a 20% discount with Attorney Credits which offers credits through its website at www.attorneycredits.com.

The FBA’s website allows members to create an on-line profile available through the Internet to supplement the members’ list which includes both alphabetical and areas of practice search capabilities. Have you prepared your profile or updated your listing? If you haven’t, why not?

Other FBA annual events include the membership drive each summer, and the toy drive in December. The FBA hosts these events at Hooleys Irish Pub in Grossmont Center, offering members an opportunity to socialize. You’ll soon be receiving an announcement for the membership drive. Members receive a free drink ticket and hosted appetizers. We look forward to seeing you at Hooleys!

Upcoming Events Calendar

May 8
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

May 20
Family Law Section
12:00 - 1:15 p.m.
East County Court, Dept. 7
250 E. Main Street, El Cajon
Topic: Tips and Advice for Working with
Department of Child Support Services
Speaker: Dionne Mochon, DCSS Attorney

May 28
Civil Litigation Section
12:00m- 1:15 p.m.
BJ’s Restaurant, Grossmont Center, La Mesa
Topic: Litigating a Civil Case in San Diego
Superior Court
Speaker: Hon. Eddie C. Sturgeon and
Hon. Joel M. Pressman

June 25
Foothills Bar Association Membership
Drive and Mixer
5:00 – 7:00 p.m.
Hooley’s Irish Pub and Grill
5500 Grossmont Center Drive, La Mesa

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Our newsletter, e-mailed to our members, has had remarkable improvements over the last few years. We emphatically encourage members to write articles. After all, we are attorneys and we write. Maybe you want to contribute an article about a current topic in your area of the law. Or perhaps you have another interesting subject or a recent experience to share with the members. Where's your article?

What else can the FBA do for you? More social events? More content for the newsletters? Another photo contest? Anything else? What do you as FBA members want for our organization? I encourage you to let us know how we can improve the FBA.

We welcome your input, so please, send me your thoughts and ideas. Include "FBA" in the subject line and send them to me at kjones9001@gmail.com. We want to hear from you!

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Preparing for an Appeal: Pre-Trial Consideration

By: Richard I. Kohn, Esq.

When you litigate cases, it's never too early, win or lose, to start thinking about a possible appeal. It all starts with the pleadings. As the plaintiff, it's crucial to include in the complaint every legal theory that potentially and legitimately applies to the case, and as the defendant, you must assert every legitimate affirmative defense. The reason is that, as an appellant, you generally will not be permitted to change your position and put forward a new and different legal theory in the appeal. See *Jones v. Dutra Constr. Co.* (1997) 57 CA 4th 871, 67 CR 2d 411; 9 Witkin California Procedure, *Appeal* §407 (5th ed 2008). This doctrine is generally based on principles of waiver and estoppel. See Witkin, *supra*, §400.

In addition to the prohibition on raising new legal theories in the appeal, the Court of Appeal will also generally not consider new issues raised for the first time on appeal. See *Bihun v. AT&T Info. Sys.* (1993) 13 CA 4th 976, 998, 16 CR 2d 787. But while it's important for both sides is to raise all issues during the trial, there is an exception to the principle set forth in *Bihun*: the appellant may raise a legal issue for the first time on appeal if it is a pure issue of law on undisputed facts. See *Shaw v. Regents of Univ. of Cal.* (1997) 58 CA 4th 44,51, 67 CR 2d 850. This exception does not apply, however, if the new theory contemplates controverted facts not initially in issue. See *Strasberg v. Odyssey Group* (1996) 51 CA 4th 906,920, 59 CR 2d 474.

A matter that can arise well after the pleading stage is a desire to disqualify the judge. If you move to disqualify the judge before trial, you'll want to carefully review CCP §170.1-170.7 for the substantive and procedural requirements and keep in mind that any grounds for disqualification not raised at the trial level are waived. See *San Joaquin Drainage Dist. v. Jarvis* (1959) 51 C2d 799, 336 P2d 530. If your motion is denied, review is by writ of mandate, not appeal, which has a much shorter filing deadline than an appeal. See CEB, California Civil Appellate Practice, 3d ed., §413.

Demurrers raise some interesting issues. If a demurrer is sustained without leave to amend, the order sustaining the demurrer is not what is appealable; rather, it is the order dismissing the action or the judgment of dismissal that is appealed from, so be sure to appeal from the correct order or judgment. Also, the prevailing party on the demurrer should make sure that requisite order or judgment is promptly entered so that the time to appeal will start running sooner rather than later. Another issue relating to demurrers involves judicial notice. If the party who demurs asks the court to take judicial notice of a document or declaration, it's important to clarify whether the court takes judicial notice simply of the document's existence or if the court rules that the content itself is admissible (see Evid C §450-460), since an order sustaining a demurrer based on improper judicial notice (e.g., relating to inadmissible evidence) may be subject to reversal. See CEB, California Civil Appellate Practice, 3d ed., §414.

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Finally, summary judgment motions present issues relating to appeals. While the key documents are the moving party's separate statement of undisputed material fact and the opponent's responsive statement of disputed facts, some trial judges, with the approval of some appellate courts, look beyond these statements and consider other evidence. But it is unwise to rely on a judge's discretion in doing so or to anticipate the appellate court's approval, and the separate statement should set forth all material facts and offer clear references to all evidentiary support. For the responding party, it is vital to list all disputed facts regardless of whether the moving party's evidentiary showing is objected to. And like everything else in the appellate world, if objections to the other side's evidence are not made in the papers or at the hearing, they are waived on appeal. See CEB, California Civil Appellate Practice, 3d ed., §415-417.

In "Alice in Wonderland," the queen declares, "Sentence first, verdict afterward!" An expert on jurisprudence she was not, but in litigation, she would rightly tell you, in her own backwards fashion, to start thinking about the appeal well before the trial starts.

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"Civil Appeals-- Affordable Fees"

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.

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 May 20, 2014 at the Kriger Law Firm, 8220 University Avenue, 2nd Floor conference room, La Mesa, CA 91942. Meetings begin at 4:45 p.m. and continue until business is completed. 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.

**Attorney Pat Grimm Meets His Match
Big Brothers Big Sisters of San Diego Sparks Lifelong Friendship
Between Attorney and Local High School Student
by Karla Mendoza**

In 2004, Pat Grimm, who is an Attorney, suddenly found himself in a new situation living alone in a small apartment, unsure about the direction of his life. “I came to realize that I could either withdraw into a pity party... [or] try to make the rest of my life something worthwhile,” Pat says.

With newfound time on his hands, Pat immersed himself in the game of golf—but remained unfulfilled. Then he remembered how much he had enjoyed coaching his now-grown daughter’s basketball team when she was in grade school. Looking for a similar opportunity to give back, Pat attended a Big Brothers Big Sisters of San Diego meeting for potential volunteers. A few months later, in February of 2005, Big Brothers Big Sisters facilitated a meeting between Pat and seven-year-old Joseph.

Joseph’s mother, Felicia, was raising Joseph on her own, and she worried about the impact that the absence of a father could have on her young son. In search of a positive male role model for Joseph, she had turned to Big Brothers Big Sisters of San Diego for help.

After the meeting, Felicia asked her son how he felt about his new Big Brother. In response, Joseph began to dance and sing a song about how much he liked Pat. The transformative impact of a safe, new friendship was already beginning to brighten young Joseph’s view of life.

Determined to exemplify reliability and punctuality for Joseph, Pat embraced his new role as Big Brother. During their meetings, Pat and Joseph played basketball and miniature golf, listened to music, watched movies, discussed their future goals, and developed an unbreakable friendship. Thanks to Joseph, Pat is now well-versed in contemporary culture, from popular music to the latest video games. “The most amazing thing about these [nine] years has been watching Joseph grow up,” Pat says.

Today, Joseph is a confident, outgoing sixteen-year-old who recently received his driver’s permit. Joseph and his mother are grateful for Pat’s impact on their lives. “To me, [Pat] is a true hero and I will never be able to express how much his involvement means to us,” says Felicia.

Perhaps best of all, Pat and Joseph have inspired each other to make the most of their lives, no matter their ages. “Joseph has taught me that age, in a way, is a state of mind. While we can’t stop the clock, we can ‘live young,’” Pat says.

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For more than fifty years, Big Brothers Big Sisters of San Diego has been pairing children of all ages (“Littles”) with screened volunteer mentors (“Bigs”) to monitor and support one-to-one mentoring matches that build safe, enduring relationships. These friendships help children achieve measurable positive outcomes, including educational success, avoidance of risky behaviors, higher aspirations, greater confidence, and healthier relationships. If you are interested in volunteering with Big Brothers Big Sisters of San Diego, please call (858) 536-4900 or visit www.SDBigs.org.

2014 FBA OFFICERS, DIRECTORS, SECTION CHAIRS & COMMITTEES

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SUBMISSIONS

Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at clstengel@outlook.com.

ADDRESS CHANGES

Send change of address or telephone number to Kathy Mills at kmills@krigerlawfirm.com.

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