



NEWSLETTER

“Anything Goes” in Settlement Negotiations, Right? Not Exactly . . .

By Cheryl L. Stengel, Esq.

It is a popular misconception among attorneys that there are essentially “no limits” on what we may say when engaging in settlement negotiations on behalf of a client. After all, these negotiations are generally confidential and often informal and it is our sacred duty to zealously advocate for our clients. Well, the State Bar’s Standing Committee on Professional Responsibility and Conduct recently issued Formal Opinion No. 2015-194 on this topic.

The Opinion states that representations made by counsel during settlement negotiations are subject to the rules prohibiting an attorney from engaging in dishonesty, deceit or collusion. Thus, it is improper for an attorney to make false statements of fact or implicit misrepresentations of material fact during negotiations.

The Rules of Professional Conduct and the Business and Professions Code require, among other things, that an attorney “employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth.” (Business and Professions Code §6068(d)). Acts of moral turpitude, which are prohibited by Business and Professions Code §6106, “include concealment as well as affirmative misrepresentations . . .” That prohibition extends to making affirmative representations with the intent to deceive your opposing counsel. (Business and Professions Code §§6106, 6128(a), and 6068(d)); *Scofield v. State Bar*, 62 Cal.2d 624, 628 (1965).

Further, attorneys must “maintain the respect due to the courts of justice and judicial officers,” and cannot “seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.” (Business and Professions Code §6068(b) and (d); see also Rule 5-200(B)). If a judicial officer was presiding over a settlement conference, these rules would apply.

Upcoming Events Calendar

March 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
Speaker: TBA

March 15
Family Law Section
12:00 - 1:15 p.m.
East County Court, Dept. 7
250 E. Main Street, El Cajon
Topic: Practical Tips and Advice on
Avoiding Mistakes with QDRO’s
Speaker: Tracy Lyon, L.D.A.

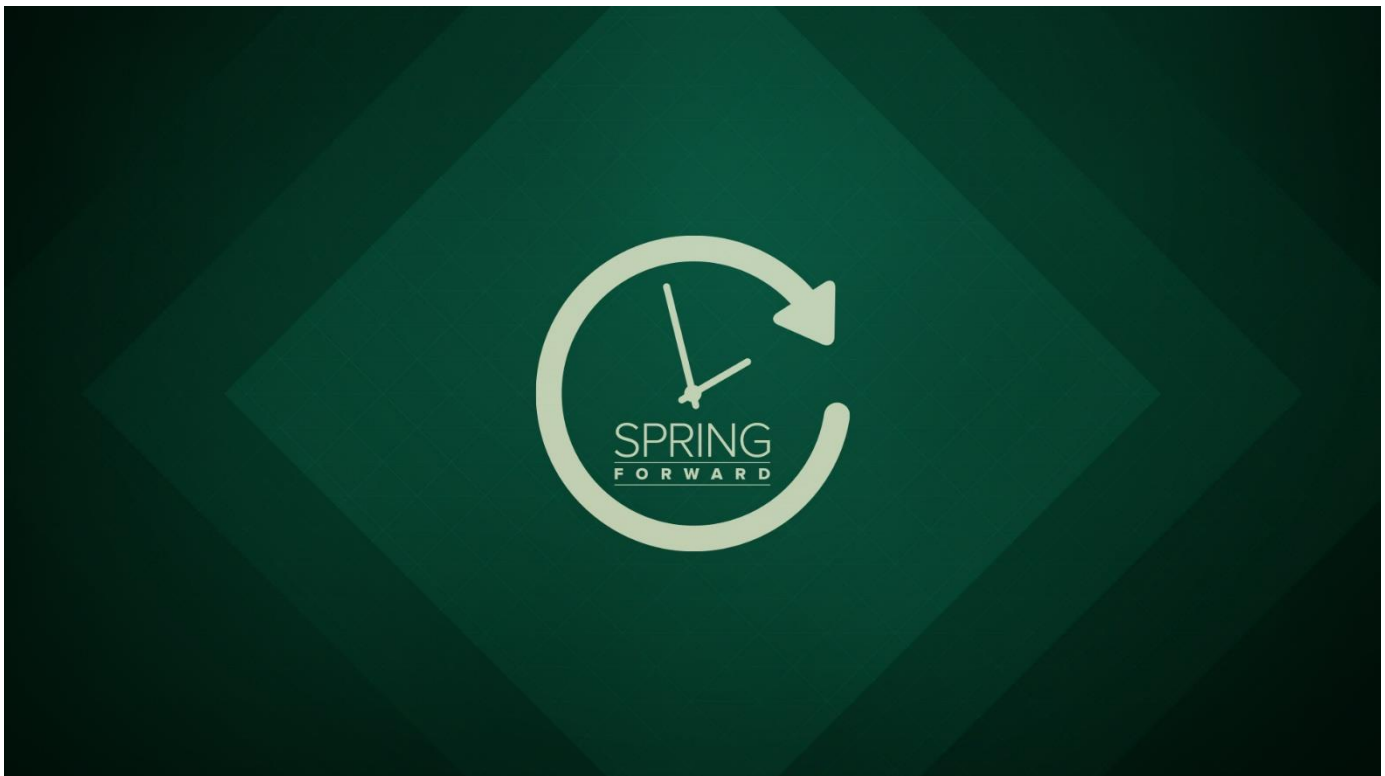
March 31
Cesar Chavez Day
State Courts Closed

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These duties are not only limited to clients, opposing counsel and judicial officers. Various California courts have found attorneys liable in tort for making, during the course of their representation of a client, false statements of material fact to third parties. In *Vega v. Jones, Day, Reavis & Pogue*, 121 Cal.App.4th 282, 291 (2004), that court held: “a lawyer communicating on behalf of a client with a nonclient may not knowingly make a false statement of material fact to the nonclient, and may be liable to the nonclient for fraudulent statements made during business negotiations.” The attorney owes a duty not to defraud anyone in negotiations, including opposing parties, counsel and third parties. *Cicone v. URS Corp.*, 183 Cal.App.3d 194, 202 (1986).

But, the usual “puffing and posturing” are generally permissible because they are not considered statements of fact. Whether a particular statement should be regarded as one of fact vs. puffery can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. For example, estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim will generally fall within this category.

Daylight Savings Time Begins Sunday, March 13, 2016



Coming to a Town Near You: Tour de France Cyclists

By Keith A. Jones, Esq.

The Amgen-sponsored Tour of California professional bicycle race begins in Mission Bay on Sunday, May 15, 2016 on its eight-day, nearly 800 mile, south to north route to Sacramento. Many cycling enthusiasts compare the race to the Tour de France even though it only spans eight days, partly because it attracts the highest caliber of international professional cyclists. In fact, Slovakian Peter Sagan, the current World Champion and winner of the coveted Green Sprinter's Jersey in the Tour de France for 2012, 2013, 2014 and 2015, won the 2015 Tour of California.

East San Diego County will factor significantly in this year's race. The First Stage is 106 miles and features 6,700 feet of climbing. The riders will travel from Mission Bay towards the Olympic Training Center in South Bay before speed along the winding road past the Otay Lakes. They will continue northeast towards San Diego's lower mountains, climbing between Jamul and Dulzura to reach part of San Diego's Great Western Loop, a popular local ride featuring nearly 3,100 feet of climbing and 42 miles of mountainous roads east of El Cajon. Chris Horner, a popular U.S. cyclist who won the 2011 Tour of California and Spain's three-week cycling race known as the Vuelta a Espana in 2013 at 41 years old, road the Great Western Loop for training a few years ago.

The Tour stage skirts the southern edge of Alpine before barreling down the hills to pass the Sycuan Golf Resort, formerly known as the Singing Hills Golf Course and the site of the Foothills Bar Association's past annual dinners. Next, the cyclists will zip through downtown El Cajon, including a two mile stretch on Main Street and by the court house before aiming north to Santee. Once in Santee, they travel west on Mission Gorge Road on their return to Mission Bay.

The riders are scheduled to leave Mission Bay around 11:30 a.m., which could have them arriving in El Cajon as early as 2:00 p.m. Yes, they will finish pedaling the 106 miles of San Diego County's roads in about four hours, weather permitting. The Amgen Tour of California began in 2006 and has been drawing bigger crowds and more television time. The pro teams have not announced their rosters yet, but we can expect Peter Sagan to try to win his second Tour of California in a row. Or perhaps U.S. cyclist Tejay van Garderen, who won the 2013, race will ride and try for another win.

East County residents will have an opportunity to watch the world-class cyclists up close since tour organizers encourage fans to line the streets where the riders pass within feet. In fact, recent cycling races have experienced a few unfortunate incidents with excited spectators leaning out to take selfies and causing minor accidents. Sometimes people aren't appreciative of just how fast these riders go, sometimes reaching 70 m.p.h. downhill and over 40 m.p.h. sprinting on level pavement!

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 or Elizabeth Smith-Chavez at 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 March 15, 2016 at the Kriger Law Firm, 8220 University Avenue, 2nd 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.

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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

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