



NEWSLETTER

Law Week 2016 Local East County Attorneys Giving Back To the Community

By Glen J. Honig, Esq., FBA President

The San Diego Law Library (“SDLL”) is joining county law and public libraries throughout the state in celebrating Law Week, May 1 - May 6. First established in 1958 by President Dwight Eisenhower, Law Day is a day of national dedication to the principles of government under law. It is meant as a time to reflect on the role of law in the foundation of the country and to recognize its importance for society. Congress officially declared May 1 as Law Day in 1961. Law Week is an extended celebration of Law Day. In honor of Law Week, SDLL will host a series of events designed to increase access to justice. For more information on SDLL’s Law Week events, go to: sandiegolawlibrary.org/law-library-celebrates-law-week-2016.

For the Foothills Bar Association, Law Day reflects our tradition of community service. Some individuals in our community are unable to afford an attorney’s hourly rate and the annual Law Day event has been our way to donate a few hours of our time and expertise to someone in need of counsel.

This year, the FBA will again partner with SDLL for Law Week recognition and service. On May 2 at the El Cajon Public Library from 2:00 – 4:00, several of our FBA members will volunteer their time to assist the public by providing presentations and individual consultations on various legal topics, including family law and marital dissolution, landlord-tenant, probate and trusts, general civil and criminal matters. We appreciate the time and effort of these volunteers in continuing the FBA’s community service tradition.

Upcoming Events Calendar

May 12

**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

May 17

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

East County Court, Dept. 7
250 E. Main Street, El Cajon
Topic: Helping your Clients Get the Most Out of
Their Real Property
Speaker: Alan Kinzel,
Divorce Real Estate Specialist

May 20

**Criminal Law Section
12:15 – 1:15 p.m.**

East County Court Jury Lounge
250 E. Main Street, El Cajon
Topic: Veterans Pretrial Diversion Program
Speaker: Hon. Roger W. Krauel

May 30

**Memorial Day
State and Federal Courts Closed**

Criminal Law Section Update

On May 20, 2016, the Foothills Bar Association's Criminal Law section is pleased to present our first one hour CLE program for 2016 on the **Veterans Pretrial Diversion Program**, with speaker, Honorable Roger W. Krauel. The program will begin at 12:15 and run until 1:15 p.m. in the Jury Room of the East County Courthouse. The seminar will be free of charge to all attorneys to introduce our new Criminal Law section to the local legal community.

California Penal Code §1001.80, which went into effect in January 2015, authorizes a defendant who was or is a member of the U.S. Military to take part in "pretrial diversion" on misdemeanors. Successful completion results in dismissal without conviction if certain requirements are met. In this program, Judge Krauel will discuss the Diversion Program requirements for qualifying veterans, guidelines and procedures. As San Diego has a large military community, this program will be beneficial to all criminal law practitioners. If you have questions about this MCLE program, please contact Daniel Cohen, cohencohenlaw@gmail.com or Glen Honig, HonigEsq@Gmail.com.

Recent Developments in Family Law Regarding the Determination of the Date of Separation of Parties to a Dissolution of Marriage

By Koryn Sheppard, Esq. Certified P.M.P.
Law and Mediation Firm of Klueck & Hoppes

A recent case has affected the way family law practitioners have had deal with determining the proper "date of separation" in a divorce case. As family practitioners likely know, this is the already infamous *In re Marriage of Davis* case. This case, which was decided by the Supreme Court of California on June 20, 2015, has altered the working definition of the "date of separation".

Previously, the date of separation was more loosely defined as "whether the parties' conduct evidences a complete and final break in the marital relationship." *Marriage of Baragry* (1977) 73 Cal.App.3d 444. Additionally, it was defined as "that condition when spouses have come to a parting of the ways with no present intention of resuming marital relations." *Marriage of Imperato* (1975) 45 Cal.App.3d 432. In this inquiry, the court could consider a myriad of factors in determining the true date of separation, rather than follow a bright line rule.

Under *Davis* the Court has ruled that in order to be considered "living separate and apart," for purposes of Family Code Section 771(a) the spouses must actually be living physically separate and apart. And, as a first reaction, this may seem like a no-brainer.

The impact is more obvious when viewed through the lens of a family law practitioner who is dealing with families separating during one of our country's most economically difficult periods. Since California is a community property State, (with some exceptions) property acquired by the spouses during the marriage is presumed to be community property, owned jointly by the spouses.

Continued from Page 2 . . .

The date of separation becomes vital when determining both the character (community versus separate) and in valuing assets and debts. The date of separation can also have a significant impact on division of retirement benefits, especially as related to military benefits, in which direct pay is affected by the length of the marriage (Social Security is similarly affected). Likewise, spousal support may be greatly impacted by the length of the marriage.

Most family law practitioners will likely have had a case where the parties have considered themselves separated prior to actually moving out. In fact, it has been a fairly common occurrence that the parties would remain living under the same roof, at least for a time after filing divorce, but prior to deciding who would remain living in the marital residence. (This is a fairly common situation, as conventional wisdom seemed to suggest that once a party moved out, even temporarily, it would be more difficult to then get back into the residence- even on a motion for exclusive use and possession of the home.) Some couples would remain living in the same home but in separate rooms for years. This is either necessitated by the financial circumstances of the parties or wellbeing of the children.

The oddity created by *Davis* can be understood by examining the factors of *Davis* itself. For all intents and purposes, the Davises had stopped conducting themselves as a married couple nine years prior to the date that they actually moved away from one another. The court accepted as evidence that the parties had stopped sharing a bedroom, traveled to their children's events separately, established separate bank accounts and did not agree on finances, and even did their laundry separately. Yet, they still resided in the same premises. In essence, they had become roommates and their marriage had ended nine years prior. Despite all of this, the Court determined that the Davises had not legally separated because neither of them had moved out.

The *Davis* case creates an odd grey area for military servicemembers who are deployed for long periods who could face a question of the date of separation, as they have technically not moved out of their homes until they return and retrieve their belongings. This ruling could be considered favorable to the lower or non-wage earning spouse, as their inability to separate from the other spouse for financial reasons (or lack of available housing in a school district, for example) could result in an increase in spousal support, retirement benefit entitlements, etc. It may also inadvertently undermine the wellbeing of children of divorcing couples, encouraging them to separate their lives more quickly to establish a date of separation in favor of maintaining a single home in order to least impact the children by maintaining their stability.

Of course, *Davis* has impacted the way family law practitioners must now advise clients and potential clients who are considering to continue to reside together. If the parties are not residing separately, formation of new business before moving out may mean that the other spouse has an interest in that business. One spouse incurring significant credit card debt before separating residences means that the other spouse may be liable for the debt. If the parties continue to reside together, the marriage may be considered of long duration based upon the move out date. This could cause one spouse to be liable for spousal support with no termination date instead of for simply one-half the length of marriage. To invoke the famous case *In re Marriage of Rossi*, 90 Cal.App.4th 34 (the lotto case), if a spouse happens to win the lotto after the marriage has broken down but prior to relocation, the other spouse would be entitled to one half of the winnings. Perhaps more realistically (or perhaps not depending on your viewpoint), a sudden upturn in in the economy could affect the value of investments while the spouses are still sharing a residence (or a vesting date could come to pass).

Continued from Page 3 . . .

Turning an eye again towards a servicemember's, receipt of a reenlistment bonus during shared residence could cause the spouse to claim an interest. (As an aside, in some of these examples, other considerations may apply).

In response to the Court's repeated references to Legislative intent and plain meaning of words, as demonstrated in the conclusion: "We conclude that living in separate residences —is an indispensable threshold requirement (*Norviel*, supra, 102 Cal.App.4th at p. 1162) for a finding that spouses are —living separate and apart for purposes of section 771(a). This interpretation of the statutory language aligns with the common understanding of the words, the statutory history of the provision, and legitimate public policy concerns" [emphasis added], on February 18, 2016, Senator John Moorlach introduced SB 1255, which has dubbed the Anti-Davis Legislation.

SB 1255 will add Section 70, which reads:

(a) "Date of separation" means the date that a complete and final break in the marital relationship has occurred, as evidenced by both of the following:

(1) The spouse has expressed his or her intent to end the marriage to the other spouse.

(2) The conduct of the spouse is consistent with his or her intent to end the marriage.

(b) In determining the date of separation, the court shall take into consideration all relevant evidence.

(c) It is the intent of the Legislature in enacting this section to abrogate the decisions in *In re Marriage of Davis* (2015) 61 Cal.4th 13 846 and *In re Marriage of Norviel* (2002) 102 Cal.App.4th 1152.

It will apply retroactively to cases pending on January 1, 2017.

This would bring the date of separation back to a similar factors test previously used by courts stemming from cases like *Marriage of Baragry* (1977) 73 Cal.App.3d 444 and *Marriage of Imperato* (1975) 45 Cal.App.3d 432. This would also place the Family Code more in line with the financial realities faced by parties and practitioners on a daily basis.

Save the Date!

On June 23, 2016, the Foothills Bar Association will hold its annual Membership Drive and Mixer beginning at approximately 5:00 p.m. in the Guinness Room at Hooley's Irish Pub in Grossmont Center, La Mesa.

More information to follow...



**FOOTHILLS BAR ASSOCIATION
OF SAN DIEGO COUNTY**
Service, Professionalism, Collegiality

You are cordially invited to a FREE MCLE seminar presented by the

**FOOTHILLS BAR ASSOCIATION
CRIMINAL LAW SECTION**

**Friday, May 20th, 2016
12:15 pm – 1:15 pm**

LOCATION:

**East County Court House – Jury Room Ground Floor
250 East Main Street, El Cajon, CA 92020**

TOPIC:

“Veteran’s Pretrial Diversion Program”

California Penal Code §1001.80, which went into effect in January 2015, authorizes a defendant who was or is a member of the U.S. Military to take part in "pretrial diversion" on misdemeanors. Successful completion results in dismissal without conviction if certain requirements are met. In this program, Judge Krauel will discuss the Diversion Program requirements for qualifying veterans, guidelines and procedures. As San Diego has a large military community, this program will be beneficial to all criminal law practitioners.

SPEAKER:

Hon. Roger W. Krauel

COSTS:

Free to all attorneys courtesy of the Foothills Bar Association

This presentation qualifies for one unit (1.0 credit hour) toward California Minimum Continuing Legal Education (MCLE). For questions, please contact Daniel Cohen, Esq., CohenCohenlaw@Gmail.com, or Glen Honig, Esq. at HonigEsq@Gmail.com



LAW DAY FREE LEGAL CLINIC

DATE
May 2, 2016

TIME
2:00 pm—
4:00 pm

LOCATION
El Cajon
Library
201 E. Douglas
El Cajon, CA
92020

COST—FREE

About the Event:

The Foothills Bar Association presents a day of free legal clinics at the El Cajon Library, a branch of the San Diego County Library.



After brief introductions and topic related presentations, attorneys will offer consultation in the following legal areas:

- Probate/Trusts/Estates,
- Family and FCS,
- Landlord/Tenant/Unlawful Detainer,
- Criminal, and
- General Civil & Civil Harassment Orders

Consults will be on a first come/first served basis.

This is a popular event, so come early and be prepared for a short wait.

For more information go to

<https://ecflc02may16.eventbrite.com>

Or call 619-531-3900

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 May 17, 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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Senator Joel Anderson

California Senate District 38

TO: Foothills Bar Association Members:

RE: Request for letter of support for Senate Bill 1256 (Anderson) to protect small businesses from lawsuit abuse and frivolous litigation.

- Safeguarding our court resources for the claims that need it most is the purpose of SB 1256.
- “Drive by” lawsuits, harassing and sometimes frivolous, have become a way of life for many small businesses and individuals; stifling productivity and clogging our court system and wasting precious judicial resources.
- The goal of this bill is to cut down on lawsuit abuse and frivolous litigation by creating a process for a person who claims to be aggrieved by an illegal act to send a letter to the person who they feel caused the harm outlining what their grievance is, and engage in 30 days of good faith efforts to resolve the issue before they can file any legal action.

The bill will soon be voted on in the Senate Judiciary Committee.

Senator Anderson wants to make government work for you!

It’s important that we make a strong demonstration to the committee that Californians care deeply about making certain our judicial resources are used appropriately and protecting small businesses from frivolous and harassing law suits.

Please send your letter of support as soon as possible to Angeli.Calinog@sen.ca.gov or mail to the El Cajon District Office so Senator Anderson can personally deliver them to the committee chair at: 500 Fesler Street Suite 201, El Cajon, CA 92020.

- To read the **SB 1256 Fact Sheet**, see the attached. A sample letter of support is included.

- To read the **Text of the Bill**, go to:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1256

If you have questions, please call [\(619\) 596-3136](tel:(619)596-3136). Thank you.

ANGELI CALINOG

SENIOR DISTRICT REPRESENTATIVE

OFFICE OF SENATOR JOEL ANDERSON

500 FESLER STREET, SUITE 201, EL CAJON, CA 92020

O: [\(619\) 596-3136](tel:(619)596-3136) | F: [\(619\) 596-3140](tel:(619)596-3140)

[HTTP://DISTRICT38.CSSRC.US](http://DISTRICT38.CSSRC.US)

*Members: The Foothills Bar Association provides this information as part of its mission to promote communications between the bench, the bar and the community. The sending of this information is not to be considered an endorsement or recommendation by the Foothills Bar Association.

SENATOR JOEL ANDERSON

THIRTY-EIGHTH SENATE DISTRICT



www.senate.ca.gov/Anderson

SB 1256: Civility in California Litigation Act

SUMMARY

This bill would require that any person claiming to have been aggrieved by an alleged unlawful act or practice in Civil law shall, prior to filing any legal action, send a letter to the person or entity alleged to have caused the harm setting forth alleged facts in support of the grievances and for a minimum of 30 days engage with that entity in good faith efforts to be made whole.

BACKGROUND

Current law establishes the time and procedure for the commencement of a civil action. As a matter of public policy and judicial resources, settlement and or resolution of disputes and a full and fair hearing of claims is to be encouraged. Regrettably, what have become known as “drive by” lawsuits, harassing and sometimes frivolous, have become a way of life for many small businesses and individuals; stifling productivity and clogging our court system and wasting precious judicial resources.

SOLUTION

SB 1256 is designed to put some civility back into our legal system both in furtherance of the public policy favoring settlement efforts, but also as a prescription for reducing the financial pressure on our court system and their resources. Applicants would be required to correspond with their alleged defendants prior to filing suit in a good faith effort to settle any and all claims. The statute of limitations on any such claims would be tolled for a 30 day period following the date of the mailing plus any time the parties are engaged in negotiations pursuant to this provision so as to accommodate those efforts and not otherwise disadvantage any eventual claim. If a claim is ultimately filed, applicants will be required to set

forth in their complaint a description of the good faith efforts made in compliance with these provisions or provide a copy of the letter as proof of its mailing with the complaint.

These provisions also apply to any pursuit of legally mandated alternative dispute resolution, including mandatory arbitration.

If the court, factfinder, or arbiter determines that these provisions were not complied with in good faith, that determination may be grounds for dismissal of the claim. Any dismissal shall be accompanied with a writing stating in specificity why the case was dismissed and whether it is done so with prejudice. Dismissal without prejudice and a chance to cure is to be preferred.

This bill would not apply to claims arising from or related to certain violations of the Family Code, Penal Code, or Probate code as specified or; upon a finding of “true emergency” to which relief is required immediately under the terms and conditions for injunctive relief.

Attempts to comply by a person or entity receiving a demand shall be construed as an offer in compromise and shall be inadmissible as evidence or an admission of any kind. Evidence of compliance may be introduced by the defendant solely for the purpose of establishing good faith.

STAFF CONTACT

Craig Wilson
Legislative Director
(916) 651-4038
craig.wilson@sen.ca.gov

Letterhead

----OR-----

(Your Name)
(Your Organization)
(Your Address)
(Your Phone Number)
(Your Email Address)

(Date)

Hon. Joel Anderson
California State Senate
State Capitol, Room 5052
Sacramento, CA 95814

RE: Senate Bill 1256—Civility in California Litigation Act

Dear Senator Anderson:

On behalf of (Name of Organization) , I am proud to express our strong support of your bill to protect Californians from frivolous litigation and lawsuit abuse.

SB 1256 would ensure that potential litigants give notice, prior to filing any legal action in civil court, to the person or entity alleged to have caused the grievance and engage in good faith efforts to settle any and all claims.

Safeguarding our court resources for the claims that need it most is the purpose of SB 1256. Regrettably, what have become known as “drive by” lawsuits, harassing and sometimes frivolous, have become a way of life for many small businesses and individuals; stifling productivity and clogging our court system and wasting precious judicial resources.

This bill would put some civility back into our legal system both in furtherance of the public policy favoring settlement efforts, but also as a prescription for reducing the financial pressure on our court system and their resources. Let us continue to make certain our court resources are used to litigate claims which are not frivolous or a burden on our judicial system.

Best Regards,

(Your Name)
(Title)
(Organization)



Second Saturday Divorce Workshop

A Low Cost, Comprehensive Divorce Program

When: Saturday, May 14, 2016

**Where: Allied Plaza Building
7777 Alvarado Road, 2nd Floor Conference Room
La Mesa, CA 91942**

**Time: 8:30 a.m. - 12:30 p.m.
(Registration Begins at 8:30 a.m.)**

Cost: \$45.00

If you are a woman or man considering divorce, or in the early stages of divorce, you will want to attend this empowering workshop that is designed to help you take the next step, no matter where you are in the process of untying the knot.

Second Saturday deals with the legal, financial, family and personal issues of divorce in a logical, and compassionate presentation. With the guidance of trained professionals, you will gain greater understanding of the confusing divorce process. The workshop is taught by a Family Law Attorney, a Financial Professional and a Therapist, and will provide you with knowledge and resources that you need to inform, prepare and protect you and your family.

The Second Saturday Divorce Workshop program was founded in 1989. Second Saturday has helped thousands of individuals navigate the divorce process, and has raised hundreds of thousands of dollars in scholarships and programs to help women and men become financially independent. **For more information and to pre-register, call Sheri at (619) 784-1116, or you can email SecondSaturdayEast@gmail.com. Seating is limited so pre-registration is recommended, but not required.**

2016 FBA OFFICERS, DIRECTORS, SECTION CHAIRS & COMMITTEES

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REPRESENTATIVES

Dan Bacal, SDCBA	619-588-2064
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SECTIONS

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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.](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**