



# NEWSLETTER

## Foothills Bar Association's Annual Dinner Celebration

By William Hannosh, Esq., FBA President

On January 26, 2018, the Foothills Bar Association held its 55<sup>th</sup> annual dinner celebration and installation of the 2018 officers and directors, at Babylon Palace Banquet Hall in El Cajon. The audience enjoyed entertainment by local comedians and music by local DJ, Barry Mantel. The appetizers and dinner were delicious. Just over 90 guests attended, including six judges.

This year, Attorney Cheryl Stengel received the Foothills Bar Award. The Foothills Bar Award began in 1999 and is a special recognition given to the member of the bench or bar whose contribution of service, effort, time and skills to the legal community of East San Diego County exhibits the highest ideals of public service. Ms. Stengel served on the FBA's board of directors for 11 years, including as President in 2015. During that time, she co-chaired the Civil Litigation Section with Mark Raftery and faithfully served as the managing editor of the FBA's monthly newsletter. Ms. Stengel has also served as speaker on bankruptcy topics at several FBA MCLE seminars and participated in the annual "Law Day" event, among other activities.



## Upcoming Events Calendar

### February 8

#### Estate Planning and Probate Section 12:15 – 1:15 p.m.

Law Office of Nancy Kaupp Ewin, Esq.  
8166 La Mesa Blvd., La Mesa

Topic: TBA

Speaker: TBA

### February 12 – Lincoln's Birthday

State Courts Closed

### February 19 – Presidents' Day

State and Federal Courts Closed

### February 20

#### Family Law Section

12:00 - 1:15 p.m.

East County Court, Dept. 5  
250 E. Main Street, El Cajon

Topic: What You Need to Know in 2018  
From The Bench

Speakers: Hon. Enrique Camerena, Hon.  
Pamela Parker, Hon. Tilisha Martin; Hon.  
Laura Duffy, and Hon. Frank Birchak

### February 22

#### Criminal Law Section

12:00 – 1:10 p.m.

East County Court, Dept. 10  
250 E. Main Street, El Cajon

Topic: New Laws

Speaker: TBA

## Continued from Page 1...

Deputy District Attorney Michele Linley was the recipient of the George A. Alspaugh Award. The George A. Alspaugh Award was initiated in 2003. This award is given to a member of the association or legal community who exhibits the highest standards of civility in the practice of law, thereby advancing the positive image of the attorney as a professional and officer of the Court, and by so doing, garnering the respect of his or her colleagues. District Attorney Summer Stephan was on hand as the Alspaugh Award was given to Ms. Linley. Ms. Linley, who began her illustrious prosecutorial career in El Cajon, is married to Rupert Linley, who was head of the San Diego City Attorney Office's Criminal Division during his career.

The Lifetime Achievement Award was presented to Attorney Garrison “Bud” Klueck. This award was initiated in 2016 and is awarded annually to lawyers who have practiced law at a very high level of advocacy and competence for more than 25 years. Recipients of the award must have practiced for most of their career in East San Diego County. Traci Hoppes, Mr. Klueck’s partner at Klueck & Hoppes in La Mesa, gave a moving introduction of the award recipient, who is also a Past President of the Foothills Bar Association.

In typical and traditional form, the Hon. Eddie Sturgeon, a born-native of El Cajon, was present to swear in the new 2018 Foothills Bar Association’s board of directors and officers. The new board, which has expanded this year to include five additional members, will convene in February to tackle new items and business on the agenda.

This annual dinner celebration was well-attended. I want to extend a sincere thanks to all who came. Also, I feel moved to once again thank all of our sponsors, who made the event and the various raffle prizes possible. Those generous sponsors include: Garmo & Garmo, LLP; Batta & Fulkerson, LLP; RJS Law; The Law Office of J.H. Elias; Allergic to Handcuffs Bail Bonds; Litivate; the Attalah Law Group; Konoske Akiyama & Brust, LLP; and the Law & Mediation Firm of Klueck & Hoppes.

This year, it will be my prerogative to establish and encourage a vibrant, robust and interactive mentorship program between newer attorneys and Bar-passers and veteran practitioners. I am sincerely honored and excited to be able to serve as FBA President in 2018 and I look forward to accomplishing great things with our new board.

Continued from Page 2...



## Commercial Landlords: Beware the Smoke

By Keith Jones, Esq.

Marijuana businesses possess a lot of capital to grow, harvest, develop, distribute and promote their products. Commercial landlords on the flip side may have several vacancies in their buildings resulting in a reduced income stream. Consequently, commercial landlords may feel tempted to lease to marijuana businesses who entice the landlords with offers to rent for well above-market rates.

However, commercial landlords should proceed with caution before leasing to a marijuana business and craft their leases to address a wide variety of issues for their protection. Marijuana is still illegal under federal law which can cause the landlord to be deemed part of illegal enterprise. Leasing to a marijuana business may trigger action by the U.S. attorney, the U.S. Drug Enforcement Agency, and other federal agencies, including the IRS. A recent announcement by the U.S. government regarding a change in marijuana law enforcement policies may place a commercial landlord at a greater risk for property seizure if it leases to a marijuana business.

The problem remains even if the federal agencies do not take action to enforce the federal law so long as marijuana remains listed as a Schedule 1 drug under the Federal Controlled Substances Act. For example, the lender probably required the owner to comply with all federal and state laws, rules, ordinances and regulations for the entire term of the loan. Violating federal marijuana laws may compel a lender to pursue foreclosure due to a default. An existing lender may not be concerned but an owner may have difficulty obtaining a new loan if a marijuana business is operating on the property. To compound the problem for commercial property owners, lenders are also requiring personal guaranties for loss of the property due to marijuana leasing activities as a non-recourse liability.

Accepting rent payments also presents difficulty because marijuana businesses are generally cash businesses, without checking or other business accounts. Commercial landlords rarely have the mechanism in place to accept large cash rent payments. Owners may have to develop procedures to do so, particularly if the owner's loan requires tenants to remit rent payments directly to a lender-controlled bank account. Like the physical land and buildings, the rent payments may be subject to seizure under federal law. Moreover, commingling rent received from marijuana businesses with other tenants' rent may result in a much larger seizure than just the marijuana business' rent.

## Continued from Page 4...

Another issue concerning title insurance is becoming more common. Some title insurance companies have stopped insuring properties upon which marijuana businesses are located or are issuing policies with exclusions. Lenders require title insurance as a condition to funding the loan and in all likelihood, will not proceed with the loan if clean title insurance is not available because a marijuana business is present.

California law permitting marijuana use and sales requires marijuana businesses to provide extra security measures. However, the security applies to their business and not necessarily the neighboring businesses in a shopping center or industrial park which may be adversely impacted by increases risks. For example, the parking lot and other common areas may experience an increase in activities prohibited under California law, such as smoking or consuming marijuana products in public areas. Other tenants may be impacted by safety and parking issues as long lines form outside marijuana businesses who may limit the number of customers inside their premises.

A shopping center may be subject to an operating easement that limits the types of businesses allowed to operate and may prohibit other uses, such as bars or liquor stores. Operating easements are typically many years old and probably do not address the evolving marijuana business issues. Large tenants, such as grocery stores or pharmacies, may have restrictions over the types of businesses that a landlord can permit in a shopping center. Some tenants may even have rights to pay significantly reduced rent or vacate if a landlord violates the restrictions.

Indemnity provisions in a lease may not protect the landlord, especially if the multi-million dollar property is seized or if other tenants pursue their remedies against the landlord. An owner would be placed in the difficult provision of deciding which lease or leases to breach and which to honor. Either way, the owner loses. And how would a marijuana business satisfy the indemnity provision? Deliver millions of dollars of cash to the property owner (assuming it has millions of dollars)?

A property owner can address these and other critical issues in its lease with a marijuana business either by modifying its standard lease or developing a new lease. Property owners need to be mindful to proceed cautiously so that their properties don't go up in smoke.

# 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 Chair Steven Banks at: [sbanks@krigerlawfirm.com](mailto:sbanks@krigerlawfirm.com) or 619-589-8800.

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

- The Foothills Bar Association Board of Directors generally meets on the third Tuesday of each month. The next meeting will be on February 20, 2018 at Bo Beau, located at 8384 La Mesa Blvd., La Mesa beginning 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, February 20, 2018  
12:00 pm – 1:15 pm**

**LOCATION:**

**East County Court House – Department 5  
250 East Main Street, El Cajon, CA 92020**

**TOPIC:**

**“WHAT YOU NEED TO KNOW IN 2018  
FROM THE BENCH”**

**SPEAKERS:**

**Hon. Enrique Camarena  
Hon. Pamela Parker  
Hon. Tilisha Martin  
Hon. Laura Duffy  
Hon. Frank Birchak**

**This event is free for members 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 Traci Hoppes at  
(619) 448-6500 or [Traci@familylawsandiego.com](mailto:Traci@familylawsandiego.com)**

# Sponsorships

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<b>George de la Flor</b> (Alternate Director)	<a href="mailto:gldelaflor@cs.com">gldelaflor@cs.com</a>	<b>619-246-9544</b>

### REPRESENTATIVES

**Garrison "Bud" Klueck, SDCBA, East County Liaison, San Diego County Bar Association**  
[Garrison@FamilyLawSanDiego.com](mailto:Garrison@FamilyLawSanDiego.com)      **619-588-2064**

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

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