



NEWSLETTER

Courtroom Fundamentals (and Refreshers) for All Attorneys MCLE Program is a Success

By Hiba Benny, Esq. and William Hannosh, Esq. FBA President

On September 15, 2018, law students and attorneys met at University of San Diego's School of Law, at Warren Hall, to hear from four experienced speakers discussing motion practice; civility in and outside of the courtroom; knowing and understanding the Evidence Code; and practical pointers for new attorneys that were never taught in law school. Over 30 people, most of whom were attorneys, attended the MCLE entitled "*Courtroom Fundamentals (and Refreshers) for All Attorneys*", which provided three hours of general MCLE credit and one hour of ethics credit. The speakers were Judge Eddie Sturgeon, Judge Tilisha Martin, Judge William Howatt (Ret.) and Mark Krasner, partner at the firm, Blanchard Krasner & French.

The attorneys in attendance were able to have their State Bar-mandated Livescan fingerprinting completed and uploaded at the event while a full-course meal was served during the networking lunch hour.

The first hour of the MCLE, entitled Motion Practice and Fast-Track, was presented by Judge Sturgeon. He spoke about how cases are assigned in the civil department; Case Management Conferences (CMCs); his demonstrated willingness to offer parties either mediation, arbitration or settlement conferences; the fact that his department will normally have sixty or more motions on calendar in a given day;

Upcoming Events Calendar

October 8 - Columbus Day
State and Federal Courts Closed

October 11 - Estate Planning and Probate Section

12:15 – 1:15 p.m.

Ewin Lambourne Law

8166 La Mesa Blvd., La Mesa

Topic: Probate Inventory & Appraisal Issues

Speaker: Joseph Lantagne, Probate Referee

October 16 - Family Law Section

12:00 – 1:15 p.m.

East County Court, Dept. 5

250 East Main Street, El Cajon

Topic: 15th Annual Bud's Blockbusters:

Recent Family Law Cases You Need to Know

Speaker: Garrison "Bud" Klueck, Esq., CFLS

October 31 - Civil Litigation Section

12:00 – 1:15 p.m.

BJ's Restaurant, Grossmont Center, La Mesa

Topic: Preparing for a Successful Mediation

Speaker: Monty McIntyre, Atty & Mediator

November 1 – Criminal Law Section

12:00 – 1:15 p.m.

East County Court, Dept. 10

250 E. Main Street, El Cajon

Topic: 3 Ways to Manage High Conflict

Clients/People

Speaker: Bill Eddy, Atty, Author & Speaker

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and how he reads the briefs and papers either in support or against a motion before he issues a tentative ruling. The discussion by Judge Sturgeon was especially intriguing, as a majority of the practitioners in the audience were family law attorneys, and the presentation gave them an opportunity to take a momentary glance into the world of civil litigation. Given the impact of courts' heavy dockets on judicial and government resources, Judge Sturgeon was quick to remind attorneys to be as prepared as possible before walking into a Trial Readiness Conference (TRC), having stated that judicial officers have a great deal of pressure to make sure that cases are being resolved or completed in an expeditious manner.

The second hour saw Judge Martin give a thoughtful and detailed presentation on civility in (and outside of) the courtroom. She discussed how some practitioners (both new and seasoned) will act in her courtroom. She reminded all in attendance that, in the same way the attorneys talk about judges, in turn, judges also talk about attorneys. One comical yet troubling real-life, example of a lack of civility was discussed by Judge Martin, who mentioned an attorney who lacked professionalism when she sat backwards in her chair, during a hearing, tilting her head behind her, while addressing the court by basically speaking upwards, toward the ceiling. Judge Martin expressed to the audience the weighty temptation of wanting to sanction this particular lawyer, on the spot. She refrained.

With the newly added (and mandated), extra burden of family law judges having to personally read and review judgments and orders associated with their cases, Judge Martin also reminded attorneys about the essential need to be prepared and informed about their own cases before appearing in court. One concern raised in the presentation is how attorneys can often neglect filing and exchanging their clients' financial declarations (within the time parameters allotted by statute) prior to important hearings such as mandatory settlement conferences (MSCs). Judge Martin reminded the audience about how even this simple negligence can cause delay, in the general scheme of things.

Judge William Howatt, Jr. (Ret.), who is now a mediator for JAMS after serving on the bench for more than 27 years, spoke at length about the need for attorneys to become more intimately familiar with the Evidence Code and how it can best serve an attorney in trial practice and motion hearings. Judge Howatt, who served as presiding judge over civil and family courts for several years, expressed his personal satisfaction with being able to object properly and at the right time in court, so that the sustained objections essentially stop opposing counsel in their tracks. The retired judge has spoken at numerous MCLE presentations in recent years, placing a high premium on the ability to know how to admit evidence at trial, the hearsay rule, its exceptions and other important code sections that are often overlooked by litigators.

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Mr. Krasner, who presented the last hour of the MCLE entitled “*What They Didn’t Teach You in Law School*”, discussed the need for attorneys to be mindful of their hygiene, appearance and dress selection. He reminded the audience that attorneys ought to “dress and act the part”, especially since one never knows when or where a client relationship could begin. He stressed the need for attorneys to show up to work early and to always be prepared. He also talked about the present-day attorney’s need to go above and beyond client expectations – for the sake of building goodwill and a lifetime client relationship, if at all possible. He also spoke about the wisdom of having an extra set of clothes, a jacket or suit, in case there is an emergency trip to court, or, an unexpected visit by a client in need of legal services. Indeed, Mr. Krasner’s life advice centered around the practical, daily matters that come with any solo or corporate-style law practice – things which are not customarily taught in law school.

FBA Civil Litigation Section MCLE Update

By Steven Banks, Esq., Co-Chair

The Civil Litigation Section of the Foothills Bar Association is pleased to host the MCLE program, “Preparing for a Successful Mediation” presented by Monty McIntyre, Esq. on **Wednesday, October 31, 2018** from 12:00 to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

Mr. McIntyre is an attorney and a mediator, arbitrator and referee at ADR Services, Inc. He has over 37 years of civil trial experience and has conducted over 1,000 mediations. His areas of expertise include disputes in business, class actions, construction, elder abuse, employment, insurance, medical malpractice, personal injury, professional liability, and real property matters.

The seminar is free and will be beneficial to attorneys in all areas of practice. FBA members will earn one hour of MCLE credit. Attendees are encouraged to order lunch from BJ's menu at their own expense, but are not required to do so. Walk-in registrants will be accommodated as space allows.

Please RSVP to bar@foothillsbar.org.

In Golf, Green Jackets are Great, Yellow Jackets Aren't

By Keith A. Jones, Esq.

My last Foothills Bar Association article highlighted the dangers that the Mission Inn in Riverside and its customers faced with black widow spiders lounging around its outdoor patio restaurants. The appellate court reversed the trial court's granting summary judgment in favor of Mission Inn, finding that a duty warn and protect against black widow spiders existed based in part on the California Retail Food Code which requires restaurants to control both living and dead insect populations.

Another appellate court determined that the duty to protect patrons from insects extends to beyond the clubhouse and even the longest drive in the golf course setting. Yellow jackets attacked and stung a patron more than fifty times as she prepared to take her shot on the fifth hole fairway as part of her golf lesson. She nearly passed out when she tried to drive to the hospital. Fortunately, the instructor summoned paramedics while someone else drove the victim to the nearby fire station. The patron ultimately missed five weeks of work and will need three injections per month as her continuing treatment.

Evidence on the golf club's summary judgment motion established that employees had seen stray yellow jackets and bees, but had no knowledge of any swarm, hive or nest on its grounds or that any other patrons had been stung in the area. The golf club did not perceive the yellow jackets to be a problem and did not set traps, or have a written policy for inspecting its grounds for dangerous conditions or pests. An employee located the possible yellow jacket nest a couple of days after the incident which consisted of a one and a half inch hole in the ground near the lip of a sand trap. Relying on this evidence, the trial court granted summary judgment in favor of the golf club, finding no duty to protect against the risk because the golf club had no knowledge of swarming yellow jackets or subterranean yellow jacket nests on the fairway.

The victim urged on appeal that the golf club had a duty to protect against yellow jackets and their nests by inspecting the grounds and setting traps. Both parties focused on foreseeability which had been addressed in the decision in the Mission Inn case issued just before oral argument in this case. The golf club argued that foreseeability of the risk did not arise due to the presence of a yellow jackets' nest, but would arise at the point when a nest was disturbed in such a manner as to prompt them to respond by swarming and attacking.

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The appellate court looked to a more general question of whether it would be foreseeable that a yellow jacket nest on the golf course grounds might be dangerous for its patrons. Like the Mission Inn court, the appellate court reasoned that the absence of a prior attack did not relieve the golf club of the responsibility to inspect its property to prevent such attacks. It noted that people avoid yellow jacket nests because, like black widow spiders, it is common knowledge that yellow jackets can be dangerous.

Consequently, a property owner would have a duty to inspect and protect against yellow jackets and their nests to the extent reasonably possible because a property owner is in a better position to protect against the risks. This duty would not, however, require inspection of every hole or crevice so long as the owner acted reasonably in protecting against the potential harm.

As part of its duty to protect patrons, the appellate court stated that the golf club could hire an employee to supervise the inspection of the golf course and to respond to reports of yellow jackets. It could have hired a pest control company to set traps and inspect the golf course as had been done at other golf courses based on the declaration of the victim's expert. Likewise, a golf club could purchase insurance. Although not specifically addressed, perhaps warning signs to encourage golfers to report sightings of yellow jackets and nests would also be an inexpensive and reasonable method to exercise the duty of care. The Mission Inn court had suggested that the posting of warning signs for black widows would have been a reasonable step towards satisfying the duty to protect its restaurant patrons.

ANNOUNCEMENT

The FBA is pleased to announce that attorneys, Janice Miller and Julia Perkins, are the new co-chairs for the Estate Planning and Probate Section, effective August 2018. The FBA appreciates their service and thanks Nancy Ewin, Esq. for her many years of dedication in chairing this Section.

their chase to win the coveted green jacket. However, I suspect the yellow jackets residing on the golf course would swarm if those seeking the green jacket disturbed their nest.

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 Steven Banks at: sbanks@krigerlawfirm.com or 619-589-8800, or Christopher Hayes at cjhayes@cox.net or 619-846-0183.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the second Tuesday of each month. The next meeting will be on October 9, 2018 at the Law & Mediation Firm of Klueck & Hoppes, APC., 7777 Alvarado Road, Suite 413, La Mesa, CA 91942 beginning at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming event 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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A Professional Corporation
ATTORNEYS AT LAW

5464 Grossmont Center Drive, Suite 300
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Tel. (619) 464-1200 WLF@LaMesaLaw.com
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Steven Banks	sbanks@krigerlawfirm.com	619-589-8800
Kate Iwanami	kmiwa2013@gmail.com	619-551-4900
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Garrison@FamilyLawSanDiego.com 619-588-2064

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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

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

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