

NEWSLETTER

Is it Safe to Terminate My Problem Employee?

By Michael M. Freeland, Freeland Law APC

Your law firm employee is just not working out. He has a record of poor work performance and a poor attitude. Can you terminate his employment without worry of a wrongful termination or other claim against your business? That depends.

For small business owners in California, the “at-will” employment relationship is your front line defense against a wrongful termination lawsuit. Unless a California employee is a union member, government worker, or has an agreement of employment for a specified term, then he is likely an “at-will” employee. In state court, the judge will likely presume an employee was employed “at-will” unless he can prove otherwise.

When your employees are “at-will”, the terms and conditions of their employment can be changed at any time, unless you have promised to the contrary. An “at-will” employee can lose his job for any reason (that doesn’t violate the law.) Bottom line: an “at-will” employee is not “entitled” to his job and therefore can lose his job for any reason or even without being given a reason. He is not entitled to advance notice of future termination or an explanation

Renewals:

July was time to join or renew your membership. Attached please find a list of current members. If you don’t see your name, we don’t have you on our list so please submit your membership application and \$55 check for dues if you have not done so already. The membership application ensures that we have your correct information including address, telephone and fax number and e-mail address for the website and directory. Your membership dues provide you with free MCLE and social events throughout the year. If you have membership questions, please call Bradley Schuber at 589-8800 or email bschuber@a-k.com

YOUR ATTENTION REQUIRED:

Are you tired of seeing these boxes in our newsletter instead of something interesting? Do you have something to say? Join the campaign to rid this Newsletter of little boxes by sharing your thoughts on legal-related issues or matters that may be of interest to the members of the Foothills Bar Association. You will see your name in print and receive the undying gratitude of the Foothills Bar Association. Forward your article to Cheryl Stengel at cs@debtbsd.com or call 233-1727.

for his firing. In fact, an employer can even be mistaken in their reason for firing an “at-will” employee and still avoid wrongful termination liability.

Based on the foregoing, if your employee is deemed by the court as “at-will” then you will not be required, when defending against a wrongful termination claim, to prove that there was a good cause for firing the employee. Simply saying, “Things just aren’t working out” can suffice. You also need not necessarily treat your employees equally - as long as you are not basing your employment decision on their race, age, gender or any other recognized protected class. Finally, for “at-will” employees, you need not base your termination decisions on staff seniority, i.e. length of employment. Long term “at-will” employees are just as vulnerable to employment termination as newbies.

Certainly, given the advantages of the relationship, most small employers want their employees to be “at-will”, but just calling a job position “at-will” does not necessarily guarantee that later on a Court (or a jury) will agree with that characterization. Here are some steps that can be taken to strengthen your claim that your ex-worker was employed “at-will”:

- Do not promise your worker that he/she “has a job for life”, or “need not worry about termination” or will be employed for any specified period of time. Such promises could be construed as voiding an at-will relationship and permit the employee to argue that he or she reasonably thought he/she could only be terminated for “good cause”;
- Avoid requiring that the employee provide a lengthy notice of his intent to resign. Arguably, such a requirement provides the worker with a guarantee of employment, at least for the notice period.
- Ensure that your employee handbook and/or an acknowledgment document exists notifying an employee that his position is at-will. Have each of your employees sign such an acknowledgment and keep these records with his personnel file;
- Avoid employment contracts, unless absolutely necessary. The common law presumed “at-will” relationship can be restricted or voided where an express (or implied) agreement between the employer and employee evinces a contrary intent. Certainly, some employment relationships, such as where an employee is paid on commission, may require a written agreement, but in general there is no need for a “contract” to describe the terms of the employment relationship; that role could be filled by a well-drafted employee handbook. If in doubt, seek the advice of an attorney who specializes in employment law to opine whether a contract is needed and to assist in drafting same.

The big exception to “at-will” employment protection is where your treatment of employees violates law or public policy. Such abuses of power can lead to a Wrongful Termination in Violation of Public Policy (or law) claim (or a “Tameny claim”). Tameny claims can be based on a variety of

Upcoming Events Calendar

February 9th

Estate Planning & Probate Section
12:15pm – 1:15pm

Office of Nancy Kaupp Ewin, Esq., 8166
La Mesa Blvd., La Mesa, CA 91942

February 21th

FBA Family Law Section
12:00pm – 1:15pm

East County Court House Dept. 6
Speakers: East County Family Law Judges

February 22th

FBA Civil Litigation section
12:00pm – 1:15pm

BJ's Restaurant, Grossmont Center, La
Mesa.

Topic: “Top 10 Ways To Stay Out of
Trouble: Ethics and Risk Management for
the Prudent Attorney”

Speaker: Heather L. Rosing, Esq.

disparate laws (or recognized public policies) which relate to the termination. Accordingly, although a small employer may have great latitude in termination decisions, he or she must still be able to discern legal versus illegal reasons to fire an employee. More importantly, a small employer needs to be careful to avoid situations where the issues associated with the termination may lead a disgruntled employee to wrongfully suspect he has a Tameny claim.

If you have any questions regarding employment law or on the issues raised in this article, contact attorney Michael Freeland, Freeland Law APC, at <http://www.mfreeland@freeland-law.com>.

President's Corner

By Carolyn R. Brock

Another new year, another new Foothills Bar Association president . . . it may sound like more of the same, however, this year is going to be different. Why will this year be different, you ask? Well, I'd like to say it is solely because I was installed as the 50th president of the Foothills Bar Association. But, what is really exciting about 2012 is that this is the year in which our Foothills Bar Association turns 50.

What does this mean to you? Well it means we are going to plan a big party to celebrate 50 years of service to our members here in East County.

How can you help? If you have any old photographs from Foothills Bar Association events you have taken over the years or memories that you would like to share, please forward them to me at carolyn@crbrocklaw.com and Catherine Tancredi, Esq., at Catherine@tancredilawoffice.com. We are putting together a committee and plan to create a fun and heartwarming memory book covering the association's 50 years. Your contributions will be greatly appreciated.

Settlement Panel Judges

February 2012

Date	Temporary Judge
February 1	JR Givens
	Judy Marolt
	John McCabe
	Judi Sanzo
February 8	Cynthia Baker
	Scott Finkbeiner
	Robert Lesh
February 15	Garrison Klueck
	Dawn Dell'Aqua
	Alan Clements (ED83661 Hendrickson)
	Timothy McDermott
February 22	Daniel Grunbaum
	Georgia Williams
February 29	Tom Bucheneau
	Gary Glauser

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DOWNTOWN LAW LIBRARY RENOVATION TO BE CELEBRATED AT UPCOMING GALA

The downtown branch of the San Diego County Public Law Library is in the process of undergoing a complete renovation. The library is in the final phase of the renovation and in early 2012 the building at 1105 Front Street will be open and ready for business.



Many of us remember the downtown law library as a dark old building where we sat in hard wooden-backed chairs doing legal research in the stacks. I think we may have walked

uphill each way to get to the library and back in those days, but we liked it. The newly renovated library has taken on a new color and warmth that you won't recognize when you enter the building. The new conference room that is available for members to reserve is really sharp.

To celebrate the upcoming grand reopening the library is hosting a black tie gala. The event will be held February 25th 6pm – 9pm at the downtown library. The event will have a Mardi Gras theme complete with live jazz music and casino tables. If you are interested in attending you can register online at sdcll.org or call Angie at (619) 531-4449 for assistance. All proceeds will benefit the renovation fund.

Catch This

By *Chuck Schmidt*

The FBA Family Law Section's January 2012 brown bag lunch and learn seminar was on Dealing with Dangerous Persons. Attorneys Charles Kim and Aaron Perry were the very knowledgeable speakers on the subject. The Honorable Catherine Bacal was present. It is always good to see the judges attend our seminars.

An informative powerpoint presentation showed the dangers of our business – attorneys getting shot at, or car-bombed, or stalked. The goal is to be aware of possible occasions where something may happen. Emotions run high in family law matters. A disgruntled opponent or client may seek revenge or just go bezerk, especially with the stress of everyday life. Some points to ponder:

- Avoid confrontation.
- Lower your voice when the other person is yelling at you in order to calm things down.
- Get a guard dog at your office or home.
- Do not give out personal information as to where you are at if you are not in the office.
- Do not give out personal information in the social media like Facebook.
- If you are going to protect yourself with a weapon, make sure you are proficient at its use.
- Have an emergency exit plan at work and home and practice it!
- Be aware of your surroundings.
- Solve problems, do not create them.
- Be aware of howlers v hunters and their change in a regular pattern which may indicate future bad behavior.

The speakers discussed weapons for protection like mace, stun guns, knives, guns, baseball bats. Of course, there could be civil liability if not used properly.

It would be helpful if we follow the sage advice of Marc Kaplan by being civil to everyone.

Remember, the Family Law section seminars are free to FBA members, who pay only \$55 for yearly dues. Plus, you get MCLE credits for the seminars. FBA members can attend the seminars presented by the civil, criminal, and estate and probate sections at no extra charge. A bargain compared to other bar associations. The Family Law section seminars are on the third Tuesday of each month.

Next up in February are the east county family law judges.

We are always looking for speakers so if you wish to volunteer or make suggestions please contact the Family Law section chairs.

Also, if you wish to become a chair or co-chair of the Family Law section there is an opening now. Hurry before it is filled. You can contact any board member or attend a board meeting. See the website at foothillsbar.org, which includes information for future seminars, the newsletter and the dues application.

Good practicing.

Chuck Schmidt

Settlement Panel Judges

March 2012

Date	Temporary Judge
March 7	Chuck Schmidt
March 14	CLOSED
March 21	Scott Finkbeiner
	Michelle Brown ED78966
	Sandra Mayberry
	Richard Renkin
March 28	Garrison Klueck
	Robert Lesh
February 29	Tom Bucheneau
	Gary Glauser

CIVIL LITIGATION SECTION MCLE PROGRAM ARTICLE

On Wednesday, February 22, 2012, the Civil Litigation Section will present "Top 10 Ways to Stay Out of Trouble: Ethics and Risk Management Tips for the Prudent Attorney" with speaker Heather L. Rosing, Esq. from 12:00 noon to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

Ms. Rosing serves as the Chairperson of the Professional Liability Department of Klinedinst PC, overseeing a team of Klinedinst lawyers across the state in the defense of professionals such as lawyers and accountants. Ms. Rosing has developed a

nationwide reputation for her experience and skill in litigating complex malpractice and fraud cases; in defending lawyers, accountants, and judges in disciplinary matters; and in delivering sound advice in the areas of ethics and risk management. She has represented hundreds of lawyers and other professionals in hundreds of cases and matters in State Court, Federal Court, and arbitration proceedings. Her track record includes numerous and notable victories, both by way of motion and at trial. Ms. Rosing also serves as a consultant and expert witness in the areas of fee disputes, professional responsibility, privileges, and attorney

duties. She speaks regularly on ethics, professionalism, and malpractice all over the State and County.

Ms. Rosing is certified as a specialist in Legal Malpractice Law by the State Bar of California Board of Legal Specialization. She was appointed in 2009 to the American Bar Association's Standing Committee on Lawyers' Professional Liability. She served for six years on the Board of Directors of the San Diego County Bar Association and in 2008, she served as its President. An AV-rated attorney since 2000, Ms. Rosing has been honored with several accolades for her work in ethics and professional liability defense. She has been featured in the annual San Diego Super Lawyers publication every year since 2008. In addition, San Diego Super Lawyers named Ms. Rosing to "Top 25 Women Super Lawyers" (2009, 2010 and 2011) and "Top 50 Super Lawyers of San Diego" (2010 and 2011).

The seminar is free to members of the FBA and \$10.00 for nonmembers. The cost of your lunch will be whatever you choose from BJ's menu, although you are not obligated to order lunch. Please RSVP. Walk in attendees will be accommodated as space allows.

This activity has been approved for 1.0 hour of MCLE ethics credit by the State Bar of California. The FBA certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing mandatory minimum continuing legal education.

If you have any suggestions for speakers or upcoming meetings, please contact section co-chairs, Mark Raftery at mraftery@epsten.com or Cheryl Stengel at cs@debttsd.com.

FBA Member Benefits In Action

By Keith A. Jones, Esq.

Foothills Bar Association's partnership with Attorney Credits, an approved MCLE provider, offers more than just a 20% discount on the MCLE programs to FBA members. I recently experienced the ease and convenience to finalize my MCLE requirements in January 2012.

I simply went to the Attorney Credits' website at www.attorneycredits.com and perused the wide selection of courses offered, particularly for those hard-to-get credits. I previewed a few courses before making my selections. Each course had a variety of convenient formats, such as streaming video, streaming audio, mp3 and video downloading.

Setting up an account is very easy and secure. Additionally, as a current member of the FBA, you automatically receive a 20% discount, no special codes required! Within minutes, I was sipping my coffee while earning my credits. After completing the course, a few more clicks and Attorney Credits issued a Certificate of Completion, which I printed and placed in my MCLE file.

In addition to the 20% discount, the FBA receives a copy of the final video in DVD format which the FBA has used to establish a library for current FBA members. You may check out any of the following videos, and receive self-study MCLE credit:

[So You Settled Your Case, Now What?](#) by Jon H. Espsten & Mark R. Raftery (Civ. Lit. Sec.)

[Medi-Cal Recovery – An Unavoidable Event?](#) by Richard Scott Stewart (Est. Plan. Sec.)

[Estate Planning Opportunities Under the 2010 Tax Relief Act](#) by Brad Dewan (Est. Plan. Sec.)

[Litigating the Personal Injury Case](#) by George De La Flor (Civ. Lit. Sec.)

[Selected Issues in Legal Ethics](#) by Professor Steven Berenson (Annual Hard to Get Sem.)

[Substance Abuse & Attorneys: Recognition, Understanding & Intervention](#) by Mick Meagher (Annual Hard to Get Sem.)

Update on Trust & Probate Litigation: Undue Influence by David Kross (Est. Plan. Sec.)

FBA members can borrow the DVD's for the seminars that they missed and earn the credit! Contact the receptionist at the office of former FBA President, Nancy Kaupp Ewin, Esq., at (619)698-1788. Her office is located at 8166 La Mesa Blvd., La Mesa, CA 91942. You will need to complete a form and leave a deposit.

The Foothills Bar Association has adopted the following Video Library Policies and Procedures.

1. Contact the receptionist at Nancy Kaupp Ewin's office, (619)698-1788 to confirm the availability of a video and to make arrangements to pick up the video at her office located at 8166 La Mesa Blvd., La Mesa CA 91942. You may also call (619)698-1788 to extend the check-out period subject to requests from other members for the video.
2. The FBA will need to confirm your membership status prior to the checkout and you will need to complete the form. You will be required to submit a check for \$20.00 representing a refundable deposit for the video.
3. Your check will be returned to you upon the timely return of the video. You will be sent an e-mail notification to the address provided by you to the FBA if you fail to timely return the video. If you fail to return the video within three (3) days after e-mail notification, then your deposit will be forfeited. You will still remain responsible to return the video.
4. You will be liable for the replacement cost of any video which is damaged, lost, or not returned, which includes the cost of the video plus any shipping, handling and mailing costs. Additionally, your membership privileges will be suspended until such time as you pay for the replacement costs or return the undamaged video.

Member's Name: _____

Phone Number: _____

E-Mail Address: _____

Video Title: _____

Pick-up Date: _____

Return Due Date: _____

Member Check No.: _____

By executing below, the Member acknowledges and agrees to the FBA's library policies and procedures.

Member's Signature: _____ Date: _____

2012 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 cs@debtsd.com.

ADDRESS CHANGES

Send change of address or telephone number to Stanley Bacinett at 619-667-4000.

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