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VALLEY LAWYER

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A Special Breed

ALAN J. SEDLEY
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SURELY BY PRESS TIME OF this edition of *Valley Lawyer*, the United States Supreme Court justices will have met, voted and reached their (5 - 4 ?) decision on the constitutionality of President Obama's health care law.

Yet as I sit and draft this column, it is day three of the hearings, and though news organizations are abuzz with a wide spectrum of predictions of the outcome (e.g., "Will the Court rule that the individual mandate is unconstitutional?" "Could the Court rule that the entire law shall fail?", "Will it be 'red versus blue' and another *Gore v. Bush?*), I am unable to definitively predict future outcomes. And so, I choose not to commit my predictions to writing only to have some/all of my well-developed thoughts scorched by the final rulings and chance being the subject of ridicule around the water cooler. (Do offices still have water coolers?)

The Sunday preceding opening argument in the health care law case, the *New York Times* ran a headline that read, "In Health Care Case, Lawyers Train for 3-Day Marathon." The article noted that the week before, and in preparation for each involved lawyer's monumental task of presenting their respective client's position before the Court, there were so many moot court exercises conducted by each legal team, the totality threatened to exhaust something that had never been in short supply, Washington D.C. lawyers willing to serve as 'pretend' Supreme Court justices.

The Health Care Reform law argued before the Court is a sprawling revision of the health care system containing a multitude of rules, policies and mandates. Among the most highlighted is a provision meant to provide coverage to tens of millions of previously uninsured Americans by imposing new requirements on states, insurance companies and employers, and (through what has been referred to as the "individual mandate"), requiring most Americans to obtain health insurance, or pay a penalty. As such, the decisions rendered in this case by the high Court will have enormous practical consequences for how health care is delivered in the United States.

Attorney Paul Clement (who represented the 26 states challenging the law) said that the challenge facing the lawyers participating was not just the length of the arguments the Court would hear, but the wide variety of topics to be addressed. The justices broke the case down into four discrete issues, and scheduled a separate session for each, for a total of six hours, the most in one case before the high Court in more than 40 years. Clement, like his principal adversary, Solicitor General Donald Verrilli Jr., argued three times.

Walter Dellinger, acting solicitor general in the Clinton administration, said he was worried about, "...the enormous endurance challenge this will be for Verrilli and Clement." Dellinger, who has argued more than 20 cases in the Supreme Court, said making even a single 30-minute presentation is draining. "The day or two after a Supreme Court argument," he noted, "I just basically collapse."

As a 32-year former litigator, I read the account with particular interest, reflecting back on the years of task preparation, whether it be preparing for the taking of a particularly complex and/or guaranteed contentious deposition, assembling a summary judgment motion, preparing for a hearing before the Provider Reimbursement Review Board panel, or mediation, arbitration or trial preparation.

Granted, little I did in preparation for the multitude of tasks amassed in thirty years could compare to the sheer intensity of preparing or arguing even once before the U.S. Supreme Court, and I'd imagine most of my colleagues would concur. However, it would be unjust and unrealistic to draw close comparisons and gauge the complexities of our respective law practices to those few who appear before the justices of the U.S. Supreme Court.

Indeed, and in addition to having a working knowledge and understanding of the laws—cases, codes, regulations and statutes—that apply to a practitioner's particular area(s) of practice, so too must the lawyer often become a quick-study of an endless array of non-legal concepts in order to adequately prepare for a client's needs.

A tort lawyer, for instance, must often acquire a working knowledge and comprehension of engineering principles (products liability), complex medical terminology and concepts (medical malpractice), or economic paradigms, without the benefit of an engineering degree, a medical education or a semester at Wharton School of Business. A successful criminal lawyer often needs to understand and apply a wide spectrum of logic and theory as varied as forensic science, physics, architecture or weaponry. A family lawyer must necessarily understand the dynamics of family relationships, counseling, psychology and accounting (without studying to be a CPA).

Moreover, once the legal and non-legal information is acquired, it must then be affectively assembled and applied during the never-ending task of adequate preparation. A transactional lawyer becomes an author of documents, needing to rely upon many of the same skills as a novelist—clear and effective communication through the written word. Much the same skill level is required for the probate lawyer drafting a complicated trust, or an advanced directive. The trial lawyer, like those brave souls arguing before the Supreme Court this past week, must be the consummate orator, displaying an artist's ability to paint a picture effectively yet succinctly.

This column is not intended to paint the successful lawyer (nor the legal profession) as necessarily heroic, superhuman or frankly any more or less virtuous than dozens and dozens of other non-legal professionals or workers. Rather, its intention is to draw attention to both lawyers and the clients of those lawyers, that often times, the preparation required on a daily basis by the successful lawyer is not driven only by fact and by knowledge of the law, but by art, medicine, science, literature and countless other non-legally based constructs that make our profession fascinating, complicated and above all, unique.

We tip our hats to the gifted souls who have the unfettered confidence and poise to address the justices of the U.S. Supreme Court. We can only imagine the intense nature of such an arduous task, the uncompromising preparation it must entail. The lawyer who argues before the Supreme Court is indeed one of a special breed of attorneys, who among other talents, is willing and able to subject him or herself to the constant barrage of unanticipated questions and interruptions symbolic of such hearings. And yet, we should never lose sight of the fact that these lawyers attended many of the same law schools we attended, participated as we all did in moot court exercises during our first years of law school, learned the same basic principles of law and persuasion that many of us were subjected to, and practiced law in firms not dissimilar from the legal environment many of us have experienced.

Though the attorneys arguing the Health Care Reform Act before the Court this week may have the hopes and goals of countless Americans on their shoulders this past week, let us never lose sight of the critical importance and obligation of thorough preparation required of each of us towards our clients, and the fact that as far as many of our clients are rightfully concerned, the judge sitting in a department of the Los Angeles Superior Court might as well be Chief Justice Roberts.

Calendar

Probate & Estate Planning Section

Property Tax Issues for Estate Planners and Probate Attorneys

MAY 8
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Wade Norwood highlights the issues you should be aware of in regard to property taxes and your client's interests.

MEMBERS	NON-MEMBERS
$35 prepaid	$45 prepaid
$45 at the door	$55 at the door
1 MCLE HOUR	

Special Book Signing and Cocktail Reception

MAY 9
5:30 PM
SFVBA CONFERENCE ROOM

Join us to celebrate Justice Armand Arabian's publication of *From Gravel to Gavel*. Books will be on sale and the retired Justice of the Supreme Court of California will be on hand to sign attendees' copies.

FREE TO CURRENT MEMBERS!

Small Firm & Sole Practitioner Section

Duty of Loyalty v. Free Speech—The Oasis Decision

MAY 10
12:00 NOON
SFVBA CONFERENCE ROOM

Attorney B. Austin Baillio addresses the impact on your practice of the California Supreme Court's 2011 ruling in *Oasis West Realty, LLC v. Goldman* that the duty of loyalty extended to situations involving use of client information, even where no confidential information is disclosed.

MEMBERS	NON-MEMBERS
$30 prepaid	$40 prepaid
$40 at the door	$50 at the door
1MCLE HOUR (Legal Ethics)	

Workers' Compensation Section

How to Interview the Claimant: The Defense and Applicant's Perspective

MAY 16
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Harry Samarghachian outlines the above and discusses how to ascertain if there are other non-workers' comp claims to be considered.

MEMBERS	NON-MEMBERS
$35 prepaid	$45 prepaid
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1 MCLE HOUR	

Santa Clarita Valley Bar Association

Spring Mixer

MAY 17
6:00 PM
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$20

Family Law Section

Incorporating Your Client's Long-term Financial and Tax Considerations into the Settlement Process

MAY 21
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

CPA Jerry Cohen and Scott Goldstein, MBA outline financial issues and tax considerations you must take into account in the settlement process. They discuss everything you need to know—critical income tax details, retirement plans, life insurance.

MEMBERS	NON-MEMBERS
$45 prepaid	$55 prepaid
$55 at the door	$65 at the door
1 MCLE HOUR	

Business Law, Real Property & Bankruptcy Section

Chapter 13 Primer

MAY 23
12:00 NOON
SFVBA CONFERENCE ROOM

Michael D. Kwasigroch, Renee Grace Rodriguez, Stella Havkin and Chapter 13 Trustee Melissa Besecker discuss the pre-petition period, client control issues, preparing the clients for 341a meeting, Lam motions, MOMODS, attorney fees, etc.

MEMBERS	NON-MEMBERS
$30 prepaid	$40 prepaid
$40 at the door	$50 at the door
1 MCLE HOUR	

Paralegal Section

Special 2-Hour Ethics Seminar

MAY 23
6:00 PM
SHERMAN OAKS GALLERIA
COMMUNITY ROOM

Catherine Durgin and Kathleen Rosenstock will focus on compliance with the requirements of Business & Professions Code 6450.

MEMBERS	NON-MEMBERS
$35 prepaid	$45 prepaid
$45 at the door	$55 at the door
2 MCLE HOURS (Legal Ethics)	

Litigation Section and Criminal Law Section

Forensic Media: Getting to the Truth re George Zimmerman/Trayvon Martin

MAY 24
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Forensic Expert Doug Carner, in the news for his lab's work on the George Zimmerman's police station video, discusses how you can strengthen your case and locate weaknesses in opposing counsel's case based on forensic media. Doug will discuss audio, video and image enhancements, file tampering, trial prep and court exhibits. This seminar is for attorneys who use surveillance video in PI cases, recorded calls in business litigation and family law cases and audio or video evidence in insurance fraud cases.

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1 MCLE HOUR	

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. To register for an event listed on this page, please contact Linda at (818) 227-0490, ext. 105 or events@sfvba.org.

Nominating Committee Seeks a Few Good Candidates

ELIZABETH POST
Executive Director
epost@sfvba.org

ATTORNEY MEMBERS WHO have the aspirations to help lead the San Fernando Valley Bar Association are encouraged to submit your name for consideration to be nominated as a candidate for the 2012-2013 SFVBA Board of Trustees. The Nominating Committee is soliciting applications and recruiting candidates for the Bar's 20-member governing body. The deadline for submissions of applications is **Friday, May 18, 2012**.

The primary role of the SFVBA Board of Trustees is to set forth policy, establish programs and oversee the association's finances. Members of the Board of Trustees have the unique opportunity to work closely with other Bar Leaders and local Bench officers, develop new programs and design better benefits and services for the membership, all while working towards a better future for our Bar. Trustees are called on to educate the public and inquiring members about the Bar's mission and programs.

The Nominating Committee strives to select the most qualified leaders for office and seeks candidates who are committed to the future development and growth of the SFVBA. Immediate Past President Seymour I. Amster, who will Chair the Nominating Committee, wants the Board of Trustees to "reflect the vast diversity of our membership, from areas of practice to members of law firms to sole practitioners."

While the time commitment will vary for each individual on the Board, Trustees are required to actively participate on at least one committee and are expected to support the SFVBA's activities, including attending the annual Installation Gala and Board retreat in September and other SFVBA special events such as Judges' Night. Trustees are also required to attend a monthly Board meeting, held at the Bar offices at 6:00 PM on the second Tuesday of each month.

The Nominating Committee selects up to 12 candidates for six open Trustee seats on the Board. Trustees are elected to two-year terms. Following the September 10 election, the President Elect appoints two additional members to one-year terms on the Board.

The *2012 Application for Nomination to the San Fernando Valley Bar Association Board of Trustees* can be downloaded from the news scroll at www.sfvba.org. Have questions? Feel free to contact me at (818) 227-0490, ext. 101.

IMPORTANT DATES TO REMEMBER
2012 Board of Trustees Election Deadlines

May 18
Nomination Form must be received

June 10
Nominating Committee issues Report to Secretary

July 1
Nominating Committee Report mailed to members

July 25
Additional nominations signed by 20 active members must be received by 5:00 PM by the Secretary.

August 15
Ballots mailed to members

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By Client Communications Committee

The Specialist

The SFVBA established the Client Communications Committee to address the number one reason for client discontent—need for better communication—and reduce negative contacts with the State Bar. The Committee, a volunteer group of a dozen veteran practitioners in wide-ranging fields of law, answers written questions from attorney members regarding problems they observed or dealt with that may have been avoided by better attorney-client communication. Responses are published anonymously in Valley Lawyer.

Q: I've been doing family law exclusively for decades. I have published articles on the subject, sat as a judge in my field and other lawyers refer clients with dissolution and custody issues to me. Can I advertise online and in Bar magazines that I am a specialist in family law?

A: Communicating to prospective clients or even attorneys who might wish to refer clients to someone with an attorney's particular background and skills requires the recipient to know what your skills are. There are many reasons why lawyers may communicate that they practice in particular fields of law, limit their practice to the field and specialize in the field.

Communicating one's specialty helps the public find attorneys whose skills cover an area of law the client needs. The medical profession gave us the model for specialization. It's probably true that most referrals to physician specialists come from other physicians who may be the main treating doctor, a general practitioner or from practitioners in other medical specialties. Attorneys, generally, have done likewise. For that reason, the primary target of holding ourselves out as specialists is to inform other attorneys.

The SFVBA member who asked the question seems to have all of the requisites for specialization. Concentration to the exclusion of other fields of law, published works, sitting on the bench in the field and getting referrals in his or her field certainly suggest member has the credentials to honestly hold out as a specialist in family law.

Many professionals have inflated opinions of themselves and their services. Physicians learned a long time ago that not all of their practitioners were candid and honest. Some made claims of specialized skills they simply never possessed. To avoid public confusion, they developed peer reviews to insure colleagues who held themselves out as specialists in any particular field were not defrauding the public. This developed into boards which tested specialists in their field and granted them certifications.

Court Rulings on Specialists

In *American Academy of Pain Management v. Joseph* DC No. CV-96-02108-LKK, 2004 DJDAR 75, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of limiting the term "board certified" to organizations which qualify with state standards. The court decided that the organization in question, which fell short in its examinations, postgraduate training requirements and in fact, grandfathered most of its members with no examination at all, was not under the penumbra of the U.S. Constitutions' protection of commercial speech.

Because the public is entitled to protection from mail-order and pandering entities which try to make specialists out of anyone who pays them, the state's public protection mode enables regulation of the certified specialist designation, in spite of the admonition of the constitutional mandates of *Bates* and *Peel* noted in last month's response.

California's Rule of Professional Conduct 1-400 (D)(6) expressly prohibits a communication or solicitation stating one is a certified specialist unless certified by California's Board of Legal Specialization of other State Bar accredited organization. ABA Rule 7.4 (d) goes further and prohibits implying certification as a specialist in the absence of ABA or state authority. Both rules require identification of the certifying entity.

A lawyer in New York can state that he or she is board certified in a specialty if the ABA-approved certifying organization is identified and includes the following disclaimer: (1) the certifying organization is not affiliated with any governmental entity, (2) the certification is not required to practice law and (3) does not indicate greater competence than other attorneys experienced in this field of law. In a 2012 decision, *Hayes v. State of New York Attorney Grievance Committee*, the U.S. Court of Appeals for the Second Circuit distinguished all but the governmental entity requirement.

The court reached their determination because the public knows one need not be a specialist to practice law and in fact, the examinations, requirements as lead counsel in 50 trials and participation in a hundred cases involving taking of testimony, as well as MCLE requirements and percentage of time required in the specialty, demonstrated greater competence than merely having experience in the field. In *Ibanez v. Florida Dept. of Business and Professional Regulation* 512 U.S. 136 (1994), the Supreme Court distinguished the governmental entity requirement.

Inquiring member may certainly hold out as a specialist anywhere. Since California does certify specialists in family law, the public might infer that in the absence of board certification, the attorney member might not be as effective as one who passed the certification test. On the other hand, most referrals come from other attorneys and they may be more impressed with member's reputation and credentials, even if not certified.

SFVBA Client Communications Committee accepts written questions, which may be submitted to epost@sfvba.org or SFVBA Client Communications Committee, 21250 Califa Street, Suite 113, Woodland Hills, CA 91367. The opinions of the Committee are those of its members and not those of the Association.

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LIMITED SCOPE REPRESENTATION (LSR), or "unbundling," is when a client hires an attorney to assist with specific elements of a matter such as legal advice, document preparation, limited appearances or document review. Within LSR, the client and attorney agree on the specific, discrete tasks to be performed by the client and the attorney. Depending on the nature of the attorney's involvement, the attorney may or may not make an appearance in court. The client represents him/herself in all other aspects of the case.

Since LSR is such a valuable tool for the delivery of legal services to all Californians, especially for low and moderate income clients, lawyer referral services are urged by the State Bar of California to promote and encourage family law limited scope representation. In 2004, the Attorney Referral Service (ARS) of the San Fernando Valley Bar Association introduced Family Law LSR as a pilot program.

The program's popularly peaked in 2006; the ARS was referring over 150 cases and the LSR panel members collectively earned close to $100,000 in attorney fees. With its popularity dwindling, Family Law LSR referrals are down 70 percent since its peak. With suspicions that the lack of its use may be linked to the lack of knowledge by the public about the program, the ARS plans to give high priority to educate the public about the program and put more funding into efforts to promote these services to clients.

It's a win-win-win scenario for the participating panel attorneys, the clients and the ARS. The program is well received by the attorneys. They earn full fees for the work they contract to do for the client. Often, the limited scope matter turns into full representation of the client. In managing the program, the ARS essentially found no complaints from LSR clients. Low and moderate income clients, that otherwise don't qualify for our Modest Means program (income below 175% of the federal poverty level), are pleased to have the ability to hire an attorney for a little analysis.

The most important feature of the program is the initial in-office consultation. Many clients will not be familiar with the various options, the court process or the many ways in which they can participate in their own representation. The attorney will help educate clients on the ways an attorney can assist them in a limited scope context.

The attorney also ensures the client is in agreement on the limitations on the scope of representation. The LSR determines which tasks are to be performed and, more importantly, which tasks the attorney will not perform. They use designed templates that can be tailored to each need, and include a number of checklists to document the limitations or to note any changes. This is designed to allow the attorney and staff to easily track issues to help assure nothing is overlooked.

During the intake, the attorney will evaluate the client's legal needs and determine whether the client is a good candidate for LSR, clients like Mr. Anderson, a Valley resident in the midst of a divorce and seeking counsel to help finalize the matter. "Stuck in the mud" was his chosen expression to describe his predicament. He added, "Perhaps I could have avoided getting stuck in a drawn-out court battle, which I certainly do not enjoy being in, had my w… (refusing to spell-out wife) and I hired an attorney to help along the bitter process—I just couldn't find one I could afford."

The ARS knows the public is being well-served by the program because attorneys who join the panel must meet the following criteria: minimum of five years practicing family law; completion of risk management training in providing limited scope services (training developed by the Limited Representation Committee of the California Commission on Access to Justice); meet the qualification guidelines for the panel; and membership in the Family Law Section of the SFVBA.

Interested members can borrow the three-hour video and written material of the SFVBA's training from our CLE library. The training is also available by the Practice Law Institute (PLI) and the State Bar of California, which can be viewed online for free at www.pli.edu.

ARS or SFVBA members interested in joining the Family Law Limited Scope Representation panel should contact Director of Public Services Rosie Soto Cohen at (818) 227-0490, ext. 104

Case Study

Brinker Restaurant Corporation v. Superior Court

By Richard S. Rosenberg and John J. Manier

AFTER A WAIT OF MORE THEN THREE YEARS, the California Supreme Court issued an unanimous, landmark decision which clarifies employer compliance obligations for providing state mandated meal and rest periods. *Brinker Restaurant Corp. v. Superior Court*, 2012 DAR 4615 (April 12, 2012). The decision also addresses important issues involving wage-hour class action lawsuits in general, especially where meal and rest period violations are claimed.

Meal Periods

Labor Code sections 227.6 and 512 and analogous provisions found in each of the Industrial Welfare Commission's Wage Orders, require employers to "provide" a 30 minute uninterrupted meal period to any employee who works a shift lasting five or more hours.

The substantive issue before the Supreme Court was whether "provide" meant that employers merely had to make the meal break available, or did it require employers ensure that each and every meal break is actually taken. The Supreme Court sided with employers on this critical compliance question. Key rulings by the court:

- Employers have three choices if an employee works more than five hours on a shift: (1) give the employee one uninterrupted 30 minute (unpaid) meal break, free from all work, starting any time before the employee's sixth hour of work begins; (2) consent to a mutual waiver of the meal break, but only if the shift does not exceed six hours; or (3) obtain a written agreement for a so-called "on-duty meal period" if the stringent guidelines for such agreements are met.
- If the shift lasts 10 or more hours, then a second meal break must be provided as well. The employee can waive the second meal break, provided the shift is 12 or fewer hours and the employee took the first meal break.
- For a meal period to be compliant, the employee must be free to use the meal period "for whatever purpose he or she desires." The court said that this means that the employee must be allowed to leave the premises during the meal period.
- An employer is not required to "police" its employees to ensure that they actually perform no work during the meal period. Thus, no penalty is required merely because the employee elected to clock in and resume work before the full 30 minutes have elapsed. However, where the employer "knew or reasonably should have known that the worker was working through the authorized meal period," or did not take a full 30 minutes, then the employer is liable for penalties under the Labor Code.
- In *Brinker Restaurant*, the plaintiffs claimed the employer had an "early lunching" practice that resulted in employees working more than five hours after their first meal break. However, the court ruled that employers are not required to provide a "rolling" meal break five hours after an employee's first meal break. Rather, a second meal break is required where the employee works more than ten hours and does not waive the second meal break. In effect, the Supreme Court gave the "green light" for California employers to schedule their employees' meal periods for early in the shift, without being required to give them a second meal period for shifts of ten hours or less.

Rest Periods

Each IWC Wage Order requires employers to "authorize and permit all employees to take rest periods, which … shall be in the middle of each work period" if possible. Employees must be allowed ten minutes of rest for every four hours of work "or major fraction thereof." The Supreme Court laid out the following rules for compliant rest breaks.

Richard S. Rosenberg is a founding member of the labor/employment law boutique Ballard Rosenberg Golper & Savitt, LLP in Glendale. He can be reached at rrosenberg@brgslaw.com. **John J. Manier** is a senior counsel with the firm and can be reached at jmanier@brgslaw.com.

- If a work shift is less than 3½ hours, no rest break is requited. If the shift is:
  Over 3½ hours to six hours = One rest break
  Over six hours to 10 hours = Two rest breaks
  Over 10 hours to 14 hours = Three rest breaks
- Nothing in the Wage Orders authorizes when the rest break must be given in relation to a meal period. However, the court noted that "generally for shifts of eight hours, one rest break should be before the meal break and one after."

Class Actions

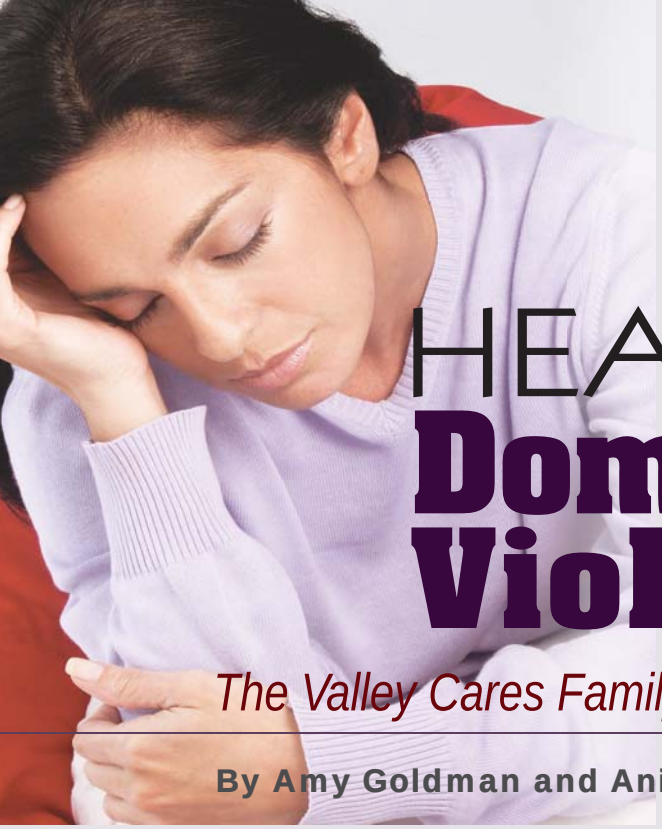
Brinker Restaurant is a class action lawsuit. The trial judge had certified three different subclasses, based on the plaintiffs' claims for (1) rest period violations, (2) meal period violations and (3) "off-the-clock" work. The Supreme Court's decision did not end the case, but only decided whether it was appropriate for the trial judge to certify all or part of the case for class action treatment. Here is how the court ruled on the class action issues:

- The court upheld the trial judge's certification of the rest period class because Brinker Restaurant admitted it had a uniform policy on rest breaks. The court found that this policy violated the Wage Order because it did not provide employees with two rest breaks for all shifts over six hours.
- The meal break class was remanded for further consideration in light of the court's opinion. The trial court's certification of the meal break class was based in part on the erroneous assumption that a meal break is required after five hours of work. This made the class definition overbroad, insofar as it includes employees who took an early lunch.
- The Supreme Court rejected the trial judge's certification of the "off-the-clock" class since the plaintiffs only had individual, case-by-case evidence of this, which is not enough to justify certifying a class.

Recommendations

The overall impact of *Brinker Restaurant* should become clearer as lower courts seek to interpret and clarify the ruling. In the meantime, employers must remain vigilant in complying with California's stringent wage-hour laws. At a minimum, we recommend that employers do the following:

- Disseminate a lawful meal and rest period policy.
- Train managers on the meaning of the policy and the circumstances under which the state mandated penalty compensation must be paid.
- Ensure that start and stop times for all meal periods are recorded on time keeping records (unless all company operations cease during meal periods).
- Develop a program to systematically review compliance with the policy.
- Post the policy near employee time clocks and where other such postings are made.
- Consider obtaining written meal period waiver agreements where such agreements are permitted.
- Any so-called "on-duty meal period" agreements should be reviewed by counsel to insure compliance with the state's strict requirements.



HEALING Domestic Violence

The Valley Cares Family Justice Center

By Amy Goldman and Anita Garcia Velasco

ACCORDING TO THE California Women's Health Survey, approximately 40% of California women experience physical violence from an intimate partner in their lifetimes. The need for legal advocates for victims/survivors is overwhelming. Neighborhood Legal Services of Los Angeles County (NLSLA) is always working to expand its services to low income people.

For many years Maria Sanchez[1] endured a life tormented by violence at the hands of her boyfriend who is the father of her three small children. So often, Sanchez woke up thinking that if she could just do everything right maybe he wouldn't get angry and wouldn't call her names. Maybe this time he wouldn't hit her. But of course, her boyfriend's actions continued irregardless of Sanchez's behavior, and he continued to abuse her—subjecting her family to a terror that consumed their daily lives.

Sanchez's boyfriend repeatedly told her that calling the police would be futile; they would not believe her and take her children away from her. Sanchez believed her boyfriend's threats. She felt alone, desperate and unable to get out of her situation.

Sanchez's story is repeated hundreds of times at the Valley Cares Family Justice Center (Valley CARES FJC), which opened its doors in 2010 as the first Family Justice Center in Los Angeles County. Several community associations and government entities have partnered with the Valley Cares FJC Neighborhood Legal Services, including Valley Trauma Center, the Center for Assault Treatment Services Program (CATS), Los Angeles Police Department, Los Angeles County District Attorney and the Los Angeles City Attorney's Office.

These organizations share one mission: to provide a place where survivors can plan for their safety, meet with a detective, a prosecutor and receive assistance with their civil legal needs, receive forensic medical examinations and counseling services all at one place. These partners work together as a multi-disciplinary team to address the multifaceted needs of survivors.

Each year law enforcement agencies in the San Fernando Valley and across California respond to an alarming number of family violence calls. But these calls are just the tip of the iceberg. Experts estimate that only 25 percent of family violence cases are actually reported.

Survivors of family violence, sexual assault, stalking and other forms of abuse fail to report for myriad reasons, including fear of the system, fear of the offender, religious beliefs, emotional ties to the abuser, threats to children, lack of money or resources and lack of knowledge about available assistance. When survivors do come forward, they need specialized, coordinated services to address their legal, emotional and financial needs. The goal of the Valley CARES Family Justice Center[2] is to provide these specialized services under one roof, and to help survivors heal from violence and begin to rebuild their lives.

Seeking freedom from violence is a daunting task. The circuitous path requiring victims to travel across the county between different agencies—shelters, courts, law enforcement, counseling, legal services and public benefits offices—can often derail the process. Coupled with cultural and linguistic barriers, these obstacles can break a victims' spirit and send her back into the dangerous but familiar environment. In fact, many survivors return to their abuser in the face of these seemingly insurmountable odds.

The Valley CARES FJC houses a multi-disciplinary team of professionals to address the myriad needs of survivors of family violence—all in one place. Survivors can make a police report, get free legal services, see a counselor and have medical evidentiary examinations in a comfortable setting with couches, murals and toys for children.

The movement towards this type of holistic service for survivors of violence in the San Fernando Valley began in 1997. At that time, Northridge Hospital Medical Center founded the Center for Assault Treatment Services Program, designed to provide medical evidentiary examinations and forensic interviews by specially trained Sexual Assault Nurse Examiners to individuals of all ages who had experienced sexual abuse or sexual assault.

In 1998, the Center for Assault Treatment Service Program partnered with the Valley Trauma Center and the

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Los Angeles Police Department to establish a Sexual Assault Response Team, operating 24 hours a day, 7 days a week to enhance investigations of sex crimes and improve service delivery to survivors. These units work closely with prosecutors from the City Attorney and District Attorney's office in gathering evidence for a criminal case.

Neighborhood Legal Services of Los Angeles County, one of California's most prominent public interest law firms, joined this collaboration in 2008. The organization, which has worked to address the most critical needs of Los Angeles' poverty communities since 1965, brought to bear its considerable experience in serving survivors of violence. The organization helps families with restraining orders, divorce, custody orders, immigration issues and access to healthcare and public benefits. It also provides services to thousands of San Fernando Valley residents each year through its Self Help Legal Access Centers and Domestic Abuse Self Help Clinics located at the Van Nuys, San Fernando and Antelope Valley Courthouses.

The collaboration between legal services, law enforcement, medical, psychological and social services spares the victim the overwhelming task of traveling to multiple agencies to seek assistance from disconnected service providers. When Sanchez finally decided she had to leave her boyfriend, she reached out to the Van Nuys Police Department and was referred to the Valley CARES FJC. The Police Detectives at the Center, specially trained in serving family violence and sexual assault victims, made sure Sanchez felt comfortable and safe as they took a full report.

Sanchez was then guided across the hall to meet with attorneys from Neighborhood Legal Services. With assistance from Neighborhood Legal Services attorneys, she was able to get a temporary restraining order against her boyfriend with custody orders limiting his access to their children until the judge could hold the hearing and make a more permanent determination. At the restraining order hearing, Sanchez obtained a 5-year restraining order and was granted full legal and physical custody of her children with monitored visitation for her boyfriend.

Although she had taken definitive steps to leave and obtained her protective orders, Sanchez was still afraid that her boyfriend would report her undocumented status—as he had frequently threatened to do—and that she would be deported without her children. Neighborhood Legal Services attorneys were able to collaborate with the LAPD detectives at Valley CARES Family Justice Center to obtain the proper documentation to qualify Sanchez to apply for a U-Visa for her cooperation with law enforcement on her case. This new status allowed her to obtain a work permit, qualify for public benefits to provide for her three small children and remain financially independent of her abusive boyfriend. Sanchez no longer had to choose between providing for her children's basic needs and her own physical safety.

At Valley CARES FJC, Sanchez was able to obtain counseling services to help her process the traumatic events she had survived and rebuild her self-confidence and self-worth, which had been badly damaged in the abusive relationship.

Angela Romeral, an LAPD detective who works with the center, says the Valley CARES FJC allows law enforcement to bridge the gap in services that often prevents or deters a victim from being able to fully cooperate with law enforcement. If victims have access to critical services in their time of need, they are far more likely to continue cooperation with law enforcement, resulting in more complete investigations and greater offender accountability. When the perpetrators of this type of family violence are held accountable, they lose their control over their victims.

Today, Sanchez is looking forward to a much brighter future. Thanks to the services she received at Valley CARES FJC, she has full custody of her three children and no longer needs to worry about her immigration status. With her work permit, she looks forward to supporting her family, pursuing an education, and living a healthy, violence free life.

Breaking the cycle of family violence is a team effort at the Valley Cares FJC. By working collaboratively, each service provider and government agency is better equipped to meet their common goal of ending family violence.

Neighborhood Legal Services of LA County is conducting a free 2-hour MCLE training on May 17 from 4:30 p.m. to 6:30 p.m. at the SFVBA offices. Attorneys will be trained to prepare restraining order documents and represent clients at TRO hearings.

[1] Client's name has been changed and Maria Sanchez is an alias.
[2] To learn more about Family Justice Centers, visit the National Family Justice Center Alliance website at www.familyjusticecenter.org.

Meditation for Stressed Attorneys

By Vanessa Nellis and Joey Soto

BEING A LAWYER IS A stressful profession. Attorneys are always looking for ways to decrease stress. For many of their schedules, it is impossible to participate in yoga regularly, practice thirty minutes of cardio each day, eat fish, avoid fast food, and exactly follow doctor's recommendations. As much as attorneys enjoy extracurricular activities, such as taking yoga classes, it is hard to commit to an one and a half hour class, not to mention the added driving time. When things are hectic in lawyers' professional lives and personal time is limited, meditation is a quick way to relieve stress, refuel and refocus.

How to Meditate

Meditation can occur using the items already found in an attorney's office. Here's how. First, choose something to focus on. If inside an office, one's focus could be the sound of breathing, relaxing music, an inspiring photo (perhaps of loved ones) or anything elevating (such as a dream, favorite pastime, etc.). If writing helps center one's attention, quickly jot positive thought(s) down on paper. For many colleagues, listening to classical music is their preferred way to quiet their minds.

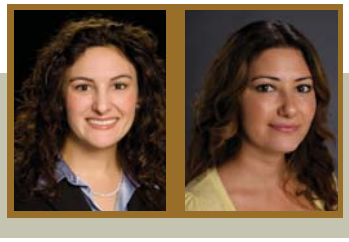
Steps to Meditating

1. Lock the door to one's office and/or let office mates know not to disturb for the next few minutes. Consider turning off the lights.
2. Sit up straight, interlace fingers and gently place hands on core center/stomach.
3. Close eyes and breathe deeply in and out through the nose.
4. Inhale and feel the breath expand one's stomach, ribs and chest, then exhale and release it out completely.
5. Think of a word that describes the ideal state of mind one would like to embody, such as gentle or relaxed.
6. For three to five minutes, simply sit, breathe and think of the word with each exhale. If mind tends to wander, keep refocusing on the word. If an attorney truly has a hard time focusing, try slowly counting to eight with each inhale and exhale.

Simple meditation can be done almost anywhere to reduce stress and gain a balanced perspective. Meditation streamlines one's thinking, filters out any nonsensical, nagging thoughts, and helps brings laser sharp focus to one's life. It's a great alternative to caffeine during the mid-afternoon slump. Sometimes meditation causes one to visualize as though in a dream state, and other times nothing exciting happens.

It's not about what happens during the meditation, it's about what happens in the attorney's life as a result of the meditation. Calming the mind works wonders in restoring a sense of equanimity, and making attorneys more efficient at work and at home.

During meditation practice, simply take time to notice one's feelings, emotions that arise and thoughts that



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form. As the mind comes up with ideas about things to do instead of meditating, just embrace the thought, and then let it go. It is suggested that meditation be practiced five minutes a day for eight weeks. (According to the UCLA Mindfulness Awareness Research Center, eight weeks is the minimum requirement for shifting habitual responses.)

Benefits of Meditation

Reasons to meditate include:

- Reverse body's stress response, reducing the effects of chronic stress
- Improve attention, sustain concentration, speedup cognitive processing and improve working memory
- Improve physical/biological balance, slow down heart rate and breathing, normalize blood pressure, use oxygen more efficiently and sweat less
- Slow the aging process. Adrenal glands produce less cortisol, the mind ages at a slower rate and immune function improves.
- Increase creative thinking and problem solving
- Break habit. Give up life-damaging habits like smoking, drinking and drugs that contribute to more stress in one's life

How Meditation Works

Meditation is defined as, "stilling the fluctuations of the mind through pointed focus." Through meditation, attorney minds move from the extremely active thinking state (beta), to a slower more creative problem-solving state (alpha), and then to a meditative state of relaxed attention and healing (theta).

Brains' frontal lobes are located behind the forehead and is how stress-induced headaches arise. This part of the brain basically shuts down (goes offline) once an individual starts connecting with his/her breath and focusing his/her mind on one thing. The other parts of the brain also start to slow down, calming the sympathetic and parasympathetic nervous systems, and reducing the stress response.

The Impact of Divorce and Separation on Children

By Renee Leff, LMFT, J.D.

PRIOR TO 1982, UNDER THE Tender Years Doctrine, children were thought better off in the care of their mother in the event of divorce or death of the father. After 1982, the social thinking changed with the belief that the best interest of the children were served with frequent and continuing access to both parents. Courts began declaring joint physical custody, and thus began the shuffling of children from parent to parent, house to house.

Recent findings in neuroscience, however, support the traditional view of Attachment Theory, which holds that repeated separations from a primary caregiver in the first three years of life may hinder the healthy growth and development of the brain. There is significant reaction to these findings from some professionals in the psychological and legal community.

Neuroscience and Attachment Theory

The first two years of an infant's life are the critical years, as the brain triples in size. In order to maximize brain growth and development, the brain, which is experience-dependent, requires the presence of optimal social/emotional experiences that are found in a consistent, specific primary caregiver. Although the baby is too young for language and cognitive knowledge, the baby recognizes and unconsciously comes to expect, the specific caregiver's smiling face, gentle tone of voice, odor and soothing techniques.

The primary developmental goal for infants, age 0-3, is self-regulation, which means the capacity to shift from positive emotional states, like happiness and joy, to negative emotional states, like fear and anger, and back again to positive emotions with ease and smoothness. Since the baby is born with a primitive nervous system, a consistent, specific primary caregiver becomes the external regulator for the infant to help him transition these states with ease. In order for the infant to learn self-regulation, the caregiver must be the same person, available, sensitive and quickly responsive to the child's needs. The primary caregiver also plays a critical role in the child's second year of life when the child begins to learn the skills of toilet training and socialization.

There are several important qualities that a caregiver needs to possess in order to raise a securely attached child. Sensitivity to a child's cues is very important. In order for this to occur, positioning the child face-to-face is necessary so that the cues may be read, e.g., smiling or frowning. Another quality a caregiver needs to have is a quick response to distress, as he/she must know that the baby does not have the capacity to tolerate delays or lack of response. The caregiver must therefore be timely and know what soothes and comforts the child. Usually this is a gentle tone of voice, touch, a smiling face.

When the baby has such a primary specific caregiver, the baby will thrive. There is an interconnection between a baby who is securely attached to a primary caregiver and the growth and development of the brain. When the baby is content, maximum neuronal growth occurs because opiates are secreted. This facilitates the development of the orbital prefrontal cortex, which mediates the emotional and visceral activity in the baby's growing right hemisphere. In such a state, the baby will be able to settle into play, is soothable, learns to self-soothe, and to tolerate negative emotional states. An unconscious expectancy has been formed that comfort will return in the form of his primary caregiver. He/she will be able to master the goals of self-regulation, autonomy, and socialization by the end of two years of life.

According to Attachment Theory, the primary stressor for an infant is physical separation from the primary caregiver. Psychological and physical safety is threatened by the absence of the caregiver, and this stresses the baby. Experiences of repeated stressful events produce toxic neurotransmitters which can delay and/or damage right

hemispheric neuronal growth. One such neurochemical is cortisol.

Impact on Infants, Age 0-3 and Upward

In 2012, divorce shows no signs of abatement. Many babies, in utero, or under one year of age, find themselves with their parents living in separate houses. Although many parents settle their differences amicably, there are also many who fight furiously in court for equal time with their young child(ren). Often, each parent believes that he/she can be a primary caregiver, without really knowing what a caregiver needs to do to provide for the child, or that the child intuitively selects a preferred caregiver, one who meets his/her needs quickly and contingently.

With the exception of cultural norms, multiple and consecutive caregivers are often experienced by the baby as repeated abandonments. According to most of the articles written in the July 2011 issue of *Family Court Review* ("FCR"), when the relationship with a primary caregiver is continually interrupted and disrupted, the baby loses his reliable external regulator, his safe haven and is likely to experience and re-experience loss and stress. These separations, if not repaired, may produce symptoms in the baby that can turn into emotional disorders in childhood, adolescence and throughout the lifespan.

Symptoms in young children can be avoided before they turn into cognitive deficits and acting out behaviors as the children reach latency and adolescence. Divorcing parents, with the aid of enlightened mental health professionals, child custody evaluators, attorneys and the courts, can become aware of the fragility that occurs to a young child who experiences separation from a primary caregiver. Both parents need to be especially sensitive to the child at times of separation and reunion.

Multiple Attachments and Infants of Divorce

A baby is capable of making multiple attachments. By the time he/she is two weeks of age, he/she can distinguish the voice of the secondary caregiver from other voices. The baby is capable of recognition, excitement and joy when a loving secondary caregiver is present, especially if it is the other parent. However, grandparents, family members and nannies are all welcomed by the baby if their presence is familiar and loving.

Nonetheless, this is not to be confused with a primary attachment to the caregiver who is the one who consistently cares for the baby during all his/her daily and night-time activities: bathing, changing diapers, ensuring food is present when hungry, feeding, playing, napping and sleeping on a reliable basis and in a predictable environment. Change in routine, change in house, change in caregiver can be disruptive and confusing to a young child who thrives on consistency.

The right hemisphere comes online when the baby is in utero, at birth and throughout the life span. It is through the right hemisphere that the infant gets a sense of well-being or of discomfort, even fear. The infant is able to send and receive, to communicate without speech through vision, sound, facial expressions, touch and gesture. The baby develops bodily and psychological comfort from right hemispheric development. Primitive affects, like joy, fear, beautiful or scary sounds are encoded in the right brain, without words to give meaning to them.

The left hemisphere develops when the infant is approximately 18 months old. The left and right hemispheres join between the child's third and fourth birthday. This is the time when the infant begins to develop language, concepts of time, and, very slowly, to make sense of things.

Overnights and Multiple Homes

The July 2011 issue of FCR implies that in a divorcing home, it is best not to stress the child with multiple caregivers, multiple homes and overnights until the child's brain is fully developed and both hemispheres are joined. When the child learns the concept of "tomorrow," of separation and reunion, when he/she can understand he/she will be returned to the primary caregiver, that is the best time to begin overnights with the secondary caregiver.

As stated above, according to the experts, overnights should not occur until the child is three to four years of

age. However, most parents are eager for their children. Many want 50/50 custody of their newborns, despite the advice of experts. Always these parents will find lawyers to represent them, custody evaluators to advocate for them, and some judges who will rule favorably for them. Often parents will make agreements between themselves and not go to court. Sometimes they will seek advice and even with advice, go forward with 50/50 or overnights before the child is mature enough to manage the change in caregiver and environment without stress.

It has been established that babies thrive in an environment that is stable and predictable. They tend to prefer a specific primary caregiver who meets their needs with a timely response. There is a brain growth spurt in the first two to three years of life, and these are the critical years for optimal brain growth and development. Such a spurt never occurs again.

Neuroscience and Attachment theory in the research stated above suggest that secure attachment may not form if there is repeated and prolonged separation from or change in caregivers during this time, as it disrupts the baby's unconscious expectations of whom he/she will be with, where he/she will be, when he/she wakes up in the morning. Furthermore, it is implied that the babies health and development are maximized when overnights, changes in caregivers, multiple homes are put in place after the baby's left and right hemisphere have joined, when he/she is between three and four years of age.

Psychological and Legal Reactions

The publication of the July 2011 issue of the *Family Court Review* has caused quite a stir in the legal and psychological community. Some critics are concerned that "blanket restrictions" could be placed on "overnights" for children under three years of age. Yet others are not convinced that the neuroscience and attachment studies cited in the July 2011 FCR accurately reflect and apply to divorcing families. A June, 2011 article by Judy Cashmore and Patrick Parkinson stated: "social science literature does not support a prohibition on overnight stays for infants and toddlers." It does advise that insight and care be exercised in relation to overnight stays of more than one night per week in children under three. Other criticism suggested that studies from other experts that did not support the neuroscience and attachment theory were excluded from the July 2011 edition.

Some objected to the terms primary and secondary caregivers, stating that primary gives a sense of superiority to one parent, and that the preferred status of a caregiver changes over the development and lifespan of a child, e.g., secondary caregivers frequently become primary as the child ages.

Yet another well-respected child psychologist who is familiar with divorce stated that each parent's warmth to the child, as well as the specific parent/child interaction, are factors that need consideration with overnights and young children. The potential loss of the father in the first three years if not given overnights and the impact this would have on young children were other sources of concern. Certainly, despite the recent research in neuroscience and attachment theory, there is no consensus of professional opinion on issues of overnights and 50/50 custody in young children.

Divorce in 2012

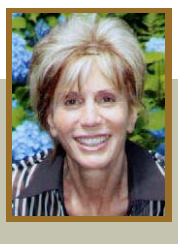
It is not a perfect world. It is impossible to turn the clock back. Now, more than ever, both parents are eager to raise their children immediately. And, yet, in this new millennium, although studies and science are informative, there is a struggle with the same old issues that divorce brings about: how to raise robust and productive children when parents are living separately, how not to marginalize one parent, what is really in the best interests of the children.

And yet, is it a possibility that a baby, who is securely attached to a secondary hands-on caregiver, one who keeps him or her on a consistent eating/sleeping/high warmth schedule, one who is attuned and responsive to the baby's needs, may do very well with overnights? It is not intended to lose the other parent socially, emotionally, physically, financially; they are needed in every way.

Multiple factors need to be considered with the issue of overnights, including the quality of each parent's interaction with the baby, their interactions with one another and whether they are able to maintain continuity and consistency of parenting plans. The context of the parent-child relationship, as well as the parent-to-parent relationship is critical.

Decisions for overnights and custody should not be formulaic; the particular family situation always matters much more than general studies and research. The task is daunting. Collaboration and input between mental health professionals and attorneys are crucial in order to help parents sort out the factors and create a plan in two houses that would not create a loss for the child, not dysregulate the baby, and ensure that both parents have a strong presence in their baby's life.

Perhaps the greatest psychologist of all, Leo Tolstoy, sums it up in Anna Karenina, when he says something to this effect: "Every happy family has similar characteristics, but every unhappy family is unique." Studies cannot capture what is unique in a divorcing family. The delicate factors that make the attunement in continual, moment-to-moment interactions of each child-parent relationship are what need understanding by divorce professionals so that they can implement the best possible outcome for the child.



Renee Leff, LMFT, J.D. is certified in Infant Mental Health. She has offices in West Los Angeles and Encino, where she offers psychotherapy and co-parenting education to parents and children undergoing divorce. She is listed on the LASC website as a high conflict therapist and a co-parenting facilitator. She can be contacted at reneeleff@reneeleff.com.

Balancing Act: Work-Life for Mom Attorneys

By Angela M. Hutchinson

Balancing life as a mother and work as an attorney can be a daunting task, but many women have taken on the challenge and achieved success. Today, attorney moms are thriving as sole practitioners, making partners at law firms and raising well-rounded children.

MAY 13, 2012 MARKS THE 98TH YEAR OF honoring mothers and celebrating the maternal bond and motherly influences around the world. Mother's Day became a national holiday in 1914 when a former law student, better known as President Woodrow Wilson, signed the bill. The original proclamation declared that it was a day of observance for mothers whose sons had served in the military and died in war.

In the field of law, studies often report the gender gap and salary differences between males and females. According to a 2010 Bureau of Labor Statistics survey, women made up only 31.5 percent of lawyers in the United States. Many of these women attorneys have children, while some never start families for various reasons, one of which may be that the combination of being a mommy and law firm partner tends not to go hand-in-hand.

Becoming a successful sole practitioner or staff attorney without children is already a challenge. When you add in sleepless nights for a newborn mom, child sick days for the toddler mom, extracurricular activities for the adolescent and teen moms, late nights at the office or case study research on the weekends may not necessarily mesh well with family life. Regardless, there are plenty of women attorneys who do make it work. The SFVBA is proud to acknowledge two attorney mom members. *Valley Lawyer* thanks these dynamic women for sharing their viewpoints on such an intimate topic.

Criminal Law Attorney/Mother of 8

Leah Naparstek is a criminal defense attorney. She married a rabbi at the age of 18, and within 12 year's time she birthed eight children, ranging in age today from 16 to 28. Five of her children are married and she has eight grandchildren.

In 2004, Naparstek and her family moved from Marina del Rey to Agoura Hills, and she decided to go to law school. She attended Abraham Lincoln Law University where she attended the university and had online coursework. She says, "This setup was crucial for me as I was still able to be a mother to my children while studying at the same time. I found that I LOVED the law!"

Her passion showed when she graduated summa cum laude and was class valedictorian. Throughout law school, Naparstek worked at an immigration law firm and passed the Bar in 2009. She then continued with immigration and also worked in the entertainment law industry. Several months ago, she opened her own practice in criminal defense.

Leah Naparstek (standing, third woman from the left in black dress) with her family.

As for balancing work and family life, Naparstek finds organization a challenging aspect. "I must be well prepared in order to succeed with my work well and still have enough time and energy left for my kids. It's a bit easier for me in this respect since I went back to school at the age of 40 when my youngest child was 8-years-old," she shares. "He is now 16, and while he is still a challenging teenager, there is less of a demand physically with regards to motherhood and it's more of a need to be emotionally in tune with his and his siblings' needs."

While it is difficult to balance being a great mom and attorney, it is definitely possible to be both according to Naparstek. "I find that I need to be particularly organized in my work during the daytime so that when I come home to family I am able to be there for them 100%," she says. "Of course there are always work emergencies that do arise when I am at home, but my children are old enough to understand this and they do cooperate with me."

Naparstek may not consider herself a perfect mom, but as the mother of eight children, she offers some parenting tips. "I think that one of the best gifts a parent can give their child or children is showing them that a person can achieve whatever it is they set out to accomplish at whatever stage they are in their lives," she says. "It is certainly difficult to be a successful attorney while still juggling family, meals, doctor's appointments, shopping, etc., but organization, once again, is the key for me."

When asked if children are a woman's hindrance to becoming a successful attorney, Naparstek says, "Not only does having children NOT prevent a female attorney from having a successful career, but rather, being a mother gives a person a much deeper insight into other people and their issues and problems."

As a criminal defense attorney, Naparstek stresses the importance of not judging others, giving people the benefit of the doubt, and having a keen sensitivity towards clients that have made mistakes or who have been misjudged or mistreated. She suggests being kind and gracious even when others are angry, rude, resentful and even hateful.

"Being a mother and having dealt with children and their challenges at every stage of their lives makes dealing with everything that I deal with in my work second nature. I don't have to think about what to answer…how to phrase something…when to be gentle…when to be firm...it simply comes instinctively and effortlessly."

While knowing the law and understanding the criminal justice system is critical to being a successful criminal defense attorney, the experience that Naparstek has gleaned in raising children with regards to understanding the human psyche on a much more profound level is what she describes as a priceless advantage.

Family Law Attorney/Mother of 2

Cari M. Pines is a certified family law specialist. She has two daughters who are four and five-years-old. Pines has been practicing law since 1993. For her, the most challenging

aspect of balancing work and family is sorting out the grey zones. "There isn't enough time in the day to be the teacher, advocate, nurse, therapist and lawyer for my daughters, and my clients that I wish I could be."

Pines jokingly tells people that she is really a lawyer who plays a mom on TV because she delegates so many of those duties to other people every single day. "It's easy to figure out which duties can and which absolutely cannot be delegated. The hard part is figuring out what falls in between those two categories," she shares.

"Peanut butter and jelly tastes just as good if a nanny makes it but Thanksgiving turkey requires my personal attention." She continues, "A babysitter can apply a bandaid to cuts and scrapes but a hospital visit means that I'm going to need to miss work." Pines shares that it is the dinners in between and the 102 degree fevers that most challenge her to balance her work with family life.

In Pines' opinion, it is impossible to be a great mom and a great attorney. "I do the best I can every day just to try to 'break even' as a mom and as an attorney," she says. "I believe that it is possible to excel at individual tasks but that to focus on excelling at everything is an unrealistic goal that only serves to make it harder to achieve excellence in either capacity."

Pines continues, "I try to break things down into the smallest parts possible and take on each challenge as it emerges. You win some and you lose some and there never seems to be a lack of opportunity in either department to succeed."

Pines believes that every child requires different attention. From time to time, she wishes there was a handbook on how to deal with the variety of adventures that present themselves on a daily basis. Pines has experienced several memorable experiences as an attorney mom. She tells stories about bringing her children to work. "I brought each of my children to work with me for the first few weeks of their lives. My oldest didn't make a peep and lasted in a bassinet by my desk for four weeks. Every once in a while I'd remember to take a break from a phone call or client meeting to change her diaper or feed her but she never presented any problem."

With Pines' second daughter, "She screamed at the top of her lungs from the second she popped out until

Cari M. Pine, Family Law Attorney

she turned two and required me to hold her every second of every day." Pines recalls during an extremely stressful settlement conference in a complex support case, her forensic accountant had to hold her baby and rock her for hours so that they could get through the meeting without the baby's personal participation in the family's conflict. "Finally, when I had to have random staff members pass her around to keep her quiet during a conference call with two lawyers, a judge and a custody evaluator in preparation for a Bar presentation we were putting together, I decided it was time for her to stop being a permanent fixture in my office," she explains.

As for Pines' master plan in balancing her work-life, she likes to play things by ear and roll with the punches. "Aside from that, the advice of other parents facing similar situations has been the more important asset I could have as a mother. But you can't know what those situations will be until they occur," she says. "There is no baby-gear store that can help you push a baby carriage along with a rolling brief case. There is no lactation consultant that can prepare you for pumping breast-milk in a courthouse restroom." Since many attorney moms have the same battle scars, they are often the best resource for advice, but Pines says, "Finding them is the hard part."

To the female attorney who thinks having children will prevent a successful career, Pines says, "She needs to have a very clear concept of how she defines success." Pines considers her career as a family law attorney to be the most successful of anyone she knows. She does the work she loves—improving the lives of other people's children while also being able to enjoy and participate in the lives of her own children.

"Running my own practice has afforded me the luxury of spending as much time as I can get away with dealing with the day-to-day dramas of my own children's lives, yet operate my practice with the support and assistance of my brilliant staff and partner," says Pines. "I have surrounded myself with an office filled with people who know my priorities, know when to interrupt me from a meeting when necessary and who tolerate and compensate for my absences when I'm out on mom-duty." Pines believes that having an office where people are supportive and understanding is the key to success as an attorney mom.

The Common Denominator

"What law and motherhood have in common is the ability to be able to have a profound and positive effect on people's lives in one way or another," says Naparstek. She believes being a mother allows for nurturing, teaching, guiding and interacting with love, kindness, firmness and consistency. "This certainly impacts the path that a child will take when he or she becomes an adult," she says. "Similarly, when a person finds himself caught up in the justice system, the manner in which an attorney can support and assist in that particular case can make a huge difference in the client's life, as well as the lives of his or her family and friends."

According to Pines, "The common denominator between law and motherhood is the same as that old saying about what the law has in common with a hotdog. It seems great on the outside but you don't want to know what goes into it." She continues, "Motherhood, like the law and hotdogs, is filled with ingredients that you never thought possible—sleepless nights that go on for years longer than any book will warn, bodily fluids that have no name, conflicts with grandparents about diapering choices and other facets of the world you never knew existed."

> "What law and motherhood have in common is the ability to be able to have a profound and positive effect on people's lives in one way or another."

Pines explains that the law provides guidance and structure in a desperate world, and that motherhood, provides a reduction in chaos in a way that the law cannot. "If only the law could offer a Band-Aid and a hug to make things all better, the world would be a much better place," she says.

Career Success v. Motherhood

A key tenet of the SFVBA Diversity Committee is that the more students interact with lawyers in a positive light through mentoring or parental relationships, the more likely they are to not only become a lawyer, but also to thrive in the legal profession and their community. As a result, attorney moms with daughters have a unique opportunity to help reduce the gender gap of women in the field of law.

In the case of career success versus motherhood, it is evident that both are valuable. Some women attorneys choose the path of solely nurturing their career, and they desire to win every court case. Other female attorneys may also be career-driven, but they have more of a passion for raising their children and are determined to be at every athletic game their child plays. Then there are the mom attorneys like our two SFVBA members who strive to balance it all, and are both career and family-driven. These renaissance women and others like them are sincerely committed to the balancing act.

Angela M. Hutchinson serves as the Managing Editor of *Valley Lawyer* magazine, and she was recently accepted to law school. Hutchinson is also a published author and entrepreneur within the entertainment field. She and her husband of eight years have two young children. Hutchinson can be reached at editor@sfvba.org.

When Divorces Go Grey

By Diana P. Zitser and Tyler C. Vanderpool

"Grey divorces" have seen a significant amount of growth due to an aging baby boomer population. In 2010, after forty years of marriage and to the shock of friends and family, former Vice President Al Gore and his wife Tipper Gore announced that they were divorcing.

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 34.

WHILE A VICE PRESIDENT divorcing is certainly shocking, what appeared to be the most surprising was the duration of the marriage and how in spite of it, they chose to separate.

These divorces are often referred to as "grey divorces" or "later-in-life divorces." Such divorces are characterized by three constants: (1) a long-term marriage (2) which has failed and is now is ending in a divorce (3) between persons who are typically age 50 or older. For a family law attorney, these type of separations result in several issues that are not common with traditional divorces.

The Rise of Grey Divorces

The U.S. Human Resources Services Administration has reported that Americans over the age of 50 are divorcing in higher numbers than ever before. One may think that this statistic is merely a product of a general rise in divorces. However, the rate of divorce in the last 20 years has remained relatively constant while divorces among those aged 50-64 have actually risen.

This is exacerbated not only by the fact that this generation enjoyed an unprecedented level of prosperity, but also because modern advancements in health and medicine are adding additional years of life expectancy to those involved. Thus, the amount at stake in a grey divorce is at an all-time high.

Dividing the Community

With so much at stake, negotiations and proceedings are going to remain anchored around the division of assets. Because of the duration of time invested in the marriage, a community estate in a grey divorce can become substantial and complex. Such divorces routinely involve family homes, vacation homes, rental and investment properties, furnishings, jewelry, bank accounts, life insurance policies, stocks, bonds, retirement and pension plans, and IRAs. The more substantial the estate, the higher the probability that a forensic accountant and experienced appraiser will need to be brought in to provide an expert opinion of what truly is at stake.

An additional complication may arise due to the inordinate amount emotional stress of ending a marriage of above-average longevity. Personal attachments to specific items will cause seemingly benign items to become central to the distribution of the estate. The family law attorney must be able to deal with these considerations during the proceedings and also be aware of the implications these decisions will have after the divorce is final.

When looking at the assets, two key factors should be considered. The first is the financial valuation of the asset. As noted above, this can be quite complex and given the duration of the marriage, there is a greater probability of requiring sophisticated expertise in determining the proper value. The second is the importance of the asset at present value as compared to a later point in time. It is vital to approach the division of the community estate by recognizing the various complex financial considerations at play, as well as the sensitivity of appreciating the emotional stresses and attachments inherent in the dissolution of a long-term marriage.

The Family Home

The family home will remain an important asset when dividing the community. The market value of the home should be relatively easy to determine. However, the asset's importance at the time of separation may not truly be apparent. Several tax benefits, personal financing opportunities (e.g., reverse mortgages) and their impact on social and retirement benefits may not be realized until a person reaches a particular age or elects to retire.

Furthermore, the emotional attachment to the home is typically of great consideration. The parties may disagree as to who should get the home and whether to sell it to cash out the estate. Typically, the equity in the home will prove to be a substantial asset in the community and thus will be integral to proper asset division. The family law attorney should develop multiple models and explore all options to ensure the most equitable outcome for the client.

Retirement Benefits and Stock Holdings

Retirement benefits, including pensions, retirement accounts and stock holdings, become even more important in grey divorces than in their traditional counterparts. Many investments will have finally reached maturity and are typically at their peak value at this period of the client's life. Because the retirement investment vehicles are typically assigned to a single primary holder with a named beneficiary, changing the characterization of these assets can be tricky at times.

A Qualified Domestic Relations Order (QRDO) may be required to divide the benefits as necessary and outline the rights and privileges of the parties involved. There are also important tax considerations to be accounted for when valuing these assets.

Pensions represent a unique concern when approaching this classification of assets. The federal government enacted the Employee Income Retirement Security Act (ERISA) as a means to protect pensions. Generally speaking, private pension plans are subject to ERISA, whereas

government plans are not. ERISA and non-ERISA plans present different approaches for the family law attorney seeking a QDRO because of the standards to which the request and the pensions themselves must comply.

One main issue in the QDRO's wording will be the exact division that will occur. In California, pensions will be valued based on the amount of pension benefits that accrued during marriage. After valuation, a pension may be cashed out based on the estimated future value or jurisdiction or may be reserved so that upon retirement, a percentage of each check given to the pension holder is awarded to his or her spouse. Retirement is not limited to the actual date of retirement but the court may order that the benefits shall be awarded at a time when the pension holder could retire.

Disability has also emerged as an emerging issue in grey divorces. Recent case law has begun to distinguish between disability allowance payments and disability retirement payments. While both are in fact disability benefits, courts are more apt to characterize the former as separate property. This is because rather than provide for retirement, the allowances are meant to replace lost wages as a result of the disability. The family law attorney should be quick to distinguish the two if such an issue arises.

Social Security

Social Security can play a minor, but important role in later-in-life/grey divorces. After the age of 62, a party may be entitled to benefits from the former spouse. This is a heavily complicated area and thus the family law attorney should be well-versed in the current Social Security Administration's guidelines.

The Impacts of the Divorce

The potential for tremendous emotional impact of divorce should be handled extremely sensitively and proactively. A poorly handled case may cause not only emotional difficulties during the primary proceedings, but can also wreak havoc on the lives of the ex-partners after the divorce decree is completed. A well-thought out strategic divorce plan should consider all risk factors mentioned above as well as the implications of future estate planning and quality of life for the client.

Financial Independence

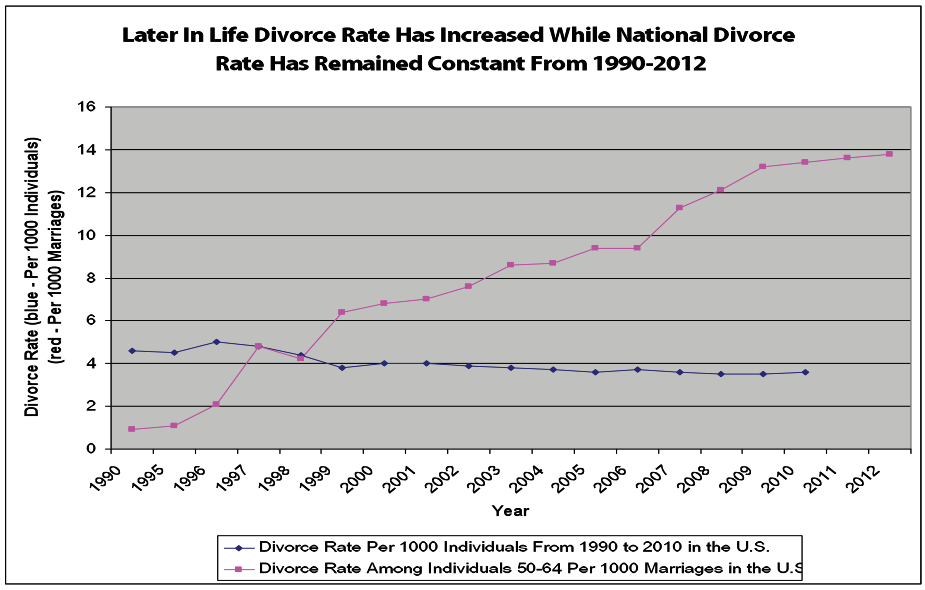
Because later-in-life divorces can involve retirees or those on the cusp of retirement, the prospect of securing financial independence is an especially trying concern. While appropriate asset division remains the chief mechanism of protecting client's financial future, there are other sources of future income that should be considered.

As discussed above, the equity in the marital home is likely to be the substantial portion of the community value. How the valuation is performed is a pivotal issue in assuring financial independence. For various reasons, a deferred sale of home order may be requested so that the family home may stay within the possession of one of the parties until a specified date. This too will extend the transitional period after the divorce is final.

When one party is the chief provider, spousal support is the typical remedy for assuring financial independence. Since later-in-life divorces typically represent long-term marriages, the length of the support is typically proportional to the term of the marriage, often resulting in lifetime support awards. However, such an award may overly burden the providing spouse if the court fails to consider his or her planned retirement age.

The fact that the providing spouse will eventually stop working must be taken into consideration when evaluating spousal support scenarios. A poorly planned spousal support model may require a future modification order which again would add ongoing stress to both parties.

The primary authority for evaluating spousal support awards is California Family Code §4320. This section balances a number of factors including but not limited to: contributions to the supporting spouses education, training or career; the ability to pay; the needs of each party based upon the marital standard of living; the obligations and assets of the parties; the duration of the marriage; the ability



*Sources:[1] Chart created by the Law Offices of Diana Zitser based on source data.

to earn; the age and health of the parties; tax issues; and a balancing of the hardships. The court will balance these factors with the ultimate goal of financial independence.

Health Care and Coverage

While moving on with one's life may seem beneficial from a theoretical perspective, the harsh reality is that a particular standard of living has been established and may be difficult to maintain on one's own. If one has been accustomed to having their medical expenses paid for or particular conditions treated with the assistance of one's spouse, how these are handled after the divorce should be considered during the divorce process.

In California, a person is entitled to remain covered by his or her spouse's insurance until the date when the divorce becomes final. It is rather common for tempers to flare and for one to remove the benefits of another. Such actions must be closely monitored to ensure coverage is maintained throughout the proceedings. The attorney should also be sure to request that expenses be covered if one party relied on such care throughout the marriage.

Estate Planning

Note should also be taken of what documents exist as to the distribution of each party's personal estate after their passing. In grey divorces, these are likely to include wills, trusts, life insurance policies and other transfers of assets upon the death of one or both of the parties. In the event these need to be modified, it must be assured that the intent of the parties to the various documents remains consistent after the divorce proceedings are finalized.

In some cases, the parties may advocate for their grandchildren's well-being or for their adult children's financial security. This too should be considered in the modification of estate planning documents so as to reflect the intent of both parties.

Miscellaneous Issues

There are various other issues that must be taken into account during the negotiation period. Both parties may have committed more than half of their lives to the marriage and the psychological ramifications that may arise can be great even if not readily apparent. All alternatives should be considered and explored to minimize the trauma on all parties involved.

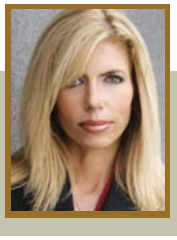
As an alternative to divorce proceedings, the family law attorney may wish to explore with the client the benefit of a formal separation with a well-spelled out separation agreement. Additionally, all possible future scenarios should be fully explored and accounted for. As an example, the parties may ultimately remarry, and a prenuptial agreement for the second marriage may be appropriate.

Later-in-life/grey divorces present unique challenges and considerations not found with their younger counterparts. It is the attorney's job to remain mindful of the complexity that a long-term marriage may represent to the issues of support and division of the community estate.

Implications inherent in the later-in-life divorces include complex issues such as tax liability for assets at present and future values, as well as its impact on the client's own financial independence as well as the effect on other parties involved.

During the course of representation, the attorney should remain compassionate and mindful of the stress and hardship the proceedings may have on each party. This may be one of the most difficult times in the person's life and while it may be difficult to think about the future, failure to do so can have devastating results.

During this very trying period of a client's life, attorneys should focus on eliminating any unnecessary conflicts, any destructive "game-playing" and generally focus on maintaining integrity in the process and minimize cost and emotional stress. The priority of the divorce process should be to focus on client's protection and empowerment and to assure improvement of his or her quality of life and well-being.



Diana P. Zitser is a Certified Specialist in Family Law by the State Bar of California, Board of Legal Specialization. The focus of her firm, Law Offices of Diana P. Zitser, APC, is dedicated exclusively to family law. She can be reached at diana@zitserlaw.com. **Tyler C. Vanderpool** was admitted in December 2011 to practice law in California. He can be reached at tyler@zitserlaw.com.

Test No. 45

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Grey divorces typically involve short-term marriages between persons age 50 or older.
   ❑ True ❑ False
2. In the last 20 years, the rate of divorces of all ages has risen at the same rate as grey divorces.
   ❑ True ❑ False
3. In dividing assets, the importance of the asset to the parties now and the importance of the asset to the parties at a future point in time should both be considered.
   ❑ True ❑ False
4. California law does not consider tax implications in the division of assets in grey divorces.
   ❑ True ❑ False
5. For dividing retirement benefits and stock holdings, a Qualified Domestic Relations Order (QDRO) may be necessary.
   ❑ True ❑ False
6. Generally, private pension plans are not subject to the Employee Income Retirement Security Act (ERISA), whereas government plans are.
   ❑ True ❑ False
7. In California, all pensions are divided immediately upon the dissolution of marriage.
   ❑ True ❑ False
8. Disability allowance benefits and disability retirement payments are always treated as community property.
   ❑ True ❑ False
9. A spouse may be entitled to the Social Security benefits of his or her spouse in a grey divorce.
   ❑ True ❑ False
10. California Family Code §4320 does not consider the financial obligations of the parties when making an award of spousal support.
    ❑ True ❑ False
11. California Family Code §4320 does consider the standard of living established during the marriage when making an award of spousal support.
    ❑ True ❑ False
12. A deferred sale of home order may be requested and granted in a grey divorce.
    ❑ True ❑ False
13. The value of the pension is established from the time it was created until the date of retirement regardless of the length of the marriage.
    ❑ True ❑ False
14. If a person is awarded benefits from his or her spouse's pension, the court may order such benefits be given when the holder is able to retire rather than when they actually retire.
    ❑ True ❑ False
15. In modifying a spousal support order, the court may consider the fact that retirement will create a change in the amount of income the supporting party will earn.
    ❑ True ❑ False
16. Grey divorces are more likely to result in temporary spousal support orders rather than lifetime support orders.
    ❑ True ❑ False
17. After the initial request for dissolution of marriage is filed, a party is entitled to remain on his or her spouse's health insurance plan.
    ❑ True ❑ False
18. An alternative to a grey divorce is a formal separation coupled with a separation agreement.
    ❑ True ❑ False
19. A Qualified Domestic Relations Order (QDRO) in California does not have to comply with the Employee Income Retirement Security Act (ERISA).
    ❑ True ❑ False
20. The family law attorney should be mindful of the impact the divorce may have on estate planning documents.
    ❑ True ❑ False

MCLE Answer Sheet No. 45

INSTRUCTIONS:
1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $15 testing fee for SFVBA members (or $25 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   21250 Califa Street, Suite 113
   Woodland Hills, CA 91367

METHOD OF PAYMENT:
❒ Check or money order payable to "SFVBA"
❒ Please charge my credit card for $_____.

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Credit Card Number Exp. Date

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Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

Don't Bother, Ruth! Marriage of Sorge

BY RUSSELL H. THAW

IN REVIEWING A CASE OF FIRST IMPRESSION, *Marriage of Sorge* (2012), Cal.App.4th Dist, it is important to understand the story of Ruth Zimmerman, who appealed denial of her application to set aside a support order. (see In *re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900)

Family Code Section 3691 provides that the grounds and time limits for an action or motion to set aside a support order, or any part or parts thereof, shall be one of the following: (a) actual fraud; (b) perjury; or (c) lack of notice. An action or motion shall be brought within six months after the date on which the complaining party discovered or reasonably should have discovered the fraud, perjury or lack of notice.

Often litigants misinterpret the "discovered or should have discovered" provision of Family Code Section 3691. For example, between 2003 and 2008, Ruth Zimmerman brought several applications to modify child support. At a hearing in November 2007, she filed a declaration indicating she knew Paul Zimmerman was giving her fraudulent information, but failed to file her motion until June 2008, more than six months later.

The trial court denied Ruth's application as time barred. Now at least one noted author suggests Ruth may have been successful had she used a different approach (See CFLR Family Law Refresher Course, 30th Annual (2011) P. 225). In the course handout, Stephen J. Wagner, CFLS, proposed that if Ruth sought relief pursuant to Family Code Sections 721 and 2102(c), she might have prevailed. The theory is that Paul's failure to disclose was a breach of his fiduciary obligation and coupled with his duty to disclose material financial information, constituted constructive fraud, the remedy for which is restitution.

Underpinning this argument is Family Code Section 2102(c): "From the date of separation to the date of a valid, enforceable, and binding resolution of all issues relating to child or spousal support and professional fees, each party is subject to the standards provided in Section 721 as to all issues relating to the support and fees, including immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party."

Many practitioners feel a valid, enforceable and binding resolution of all issues relating to child or spousal support is a time when all children of the marriage are no longer entitled to support. Now comes *Marriage of Sorge*, which interprets Section 2102(c) differently.

The *Sorge* court looked at whether Joseph Sorge owed Maryanne Sorge an ongoing duty of full disclosure regarding income and assets pursuant to Family Code Section 2102(c) post-judgment. The trial court ruled he did, stating "Family Code Section 2102(c) must be interpreted to apply until the court loses jurisdiction to make a child support order because the order for child support '(1) is terminated by the court or (2) terminates by operation of law.'" The trial court concluded the fiduciary duties outlined in section 2102(c) continued beyond entry of a decree, and because at the time of hearing there was a minor child, those fiduciary duties remained in effect and were binding upon the parties.

The appellate court analyzed the trial court's ruling, and stated that based on its conclusion that the parties continued to owe each other fiduciary duties, and in particular, a fiduciary duty to disclose all material changes to their incomes and

expenses, the court determined that Joseph had breached his fiduciary duties to Maryanne.

The appellate court then applied the relevant legal standards: "Provisions regarding fiduciary duties owed between parties in a dissolution action Section 2100 sets out the legislative policy behind the disclosure requirements between parties to a marital dissolution action." The legislature explains that "[i]t is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities…and in order to promote public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made . ."

Maryanne Sorge had requested the appellate court award sanctions by applying Family Code Sections 721, 2102(c), 2107(c) and 271. The court then analyzed the various statutes and determined that Joseph owed Maryanne no continuing fiduciary duty under section 2102(c) and that the trial court erred in interpreting section 2012 (c) as requiring a continuing duty between divorced parents to make "immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party," beyond the entry of a final judgment in a dissolution action, as long as there is a child for whom a support order remains in effect.

The task in construing a statute is to ascertain the legislative intent so as to effectuate the purpose of law. The statutory language ordinarily is the most reliable indicator of legislative intent. Words of the statute are given their ordinary and usual meaning and construe them in the context of the statute as a whole and the entire scheme of law of which it is a part. If the language is clear and a literal construction would not result in absurd consequences that the legislature did not intend, the plain meaning governs. If the language is ambiguous, a variety of extrinsic aids may be considered, including the purpose of the statute, legislative history and public policy. (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 288)

According to the trial court, Joseph's argument would result in a two-class system of parents: "One class of parents would be able to effectively obtain or modify child support orders fairly, efficiently, accurately and economically, where the others would have to resort to formal discovery which can have the opposite effect."

The appellate court then parted with the rationale of the trial court: "We disagree with the trial court's interpretation of section 2012(c) and conclude that this subdivision does not impose on divorced parties a continuing fiduciary duty to disclose all material facts regarding a party's income after a final custody and support order has been entered."

The terms valid, enforceable and binding all refer to the legal strength or force of the resolution at issue. The definition of resolution that seems most applicable here is the act of determining. Thus, the statute requires that there be a final determination of all issues relating to support before the parties' fiduciary duty to one another regarding disclosure of income will end.

The most reasonable interpretation of what would constitute a legally effective determination of all the issues

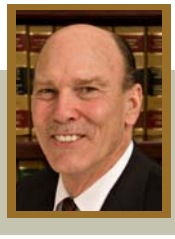
relating to child support is a final, as opposed to interim, child support order. In other words, a child support order that the parties and/or the court intend to be a final determination of child support represents just that, a "valid, enforceable, and binding resolution of all issues relating to child...support."

Further, interpreting the phrase "valid, enforceable, and binding resolution of all issues relating to child...support" to refer to a final child support order harmonizes section 2012(c) with other statutory provisions that would be rendered superfluous under the trial court's interpretation. Specifically, section 3660 et seq. sets out a framework for the exchange of financial information between parties whose dissolution proceedings are final.

The appellate court reasoned that if it were to interpret section 2102(c) in the manner the trial court suggested, there would be no need to have enacted a provision that would allow a parent to request income information under section 3664. "We conclude that for purposes of section 2102(c) a 'valid, enforceable, and binding resolution of all issues relating to child . . . support' means a final judicial child support determination, whether obtained pursuant to agreement of the parties or after litigation of the matter before the court."

It is tempting to provide remedies to those mislead by fraud, and more than one court has broadened the interpretation of a statute to encompass greater relief. What is to be learned from the *Sorge* opinion is that when the legislature sets forth time limits, they will be upheld on appeal. Another lesson from *Sorge* is this: when reviewing a statute, attorneys should look to see if their interpretation necessarily negates the plain meaning of another statute. If it does, then the interpretation of the first probably fails to conform to the legislature's intent when enacting the second.

With the demise of Family Code Section 2102(c) as a post-judgment remedy, it doesn't appear that Family Code Section 721, which requires good faith and fair dealing between marital partners, survives post-judgment. While there may exist Civil Code remedies against fraud and deceit, other than under very narrow circumstances (such as those found in Family Code 3691), the Family Code provides no post-judgment remedy for such violations. As to using Family Code Section 2102(c) to circumvent the time bar set forth in Family Code Section 3691, don't bother Ruth, it won't work.



Russell H. Thaw is an attorney at The Reape-Rickett Law Firm in the Santa Clarita Valley, which specializes in family law. Mr. Thaw has been practicing family law for the last 29 years. He can be reached at rthaw@reaperickett.com.

EQUITABLE RELIEF FOR INNOCENT SPOUSES

By Zane S. Averbach and Cynthia L. Rubin

WHEN SPOUSES SIGN AND file joint federal tax returns, they are jointly and severally liable for all taxes due on the tax return. As long as the taxes are paid, all is well. However, all too often the spouse who has primary responsibility for the preparation of the tax returns and payment of the taxes fails to include all income, takes improper deductions or fails to pay the taxes, which results in delinquent tax liability together with penalties and interest.

Congress and the IRS recognize that there are circumstances in which it would be unfair or inequitable to enforce joint and several liability for tax deficiencies, and an exception to joint and several liability exists, allowing relief to an innocent spouse pursuant to Internal Revenue Code ("IRC") §1106. The determination of whether a person qualifies for innocent spouse relief will generally be made by reviewing all of the facts and circumstances.

Who Qualifies as an Innocent Spouse

IRC §6015(b), (c) and (f) set forth three separate tests for innocent spouse qualification. The tests for subsections (b) and (c) are extremely narrow. However, subsection (f) applies when, after taking into consideration all factors, it would be inequitable to enforce joint and several liability. This article discusses the requirements to qualify for equitable relief from joint and several tax liability pursuant to §6015(f).

Equitable Relief

Equitable relief is available if relief is not available pursuant to §§6015(b) or (c) and if, taking into account all of the facts and circumstances, it is inequitable to hold the requesting spouse liable for unpaid taxes and deficiencies.

In January 2012, the IRS published a proposed revenue procedure (IRS Notice 2012-8) to aid in the determination of whether an individual qualifies for innocent spouse status based on equitable relief. The procedure establishes threshold requirements for all requests for equitable relief, the conditions under which the IRS will make streamlined relief determinations and a non-exclusive list of factors to be considered in determining if equitable relief is appropriate. Although the proposed revenue procedure is not final, the IRS currently applies the proposed procedure.

Threshold Requirements

To be eligible for equitable relief, a requesting spouse must satisfy each of the following threshold conditions:

1. The requesting spouse must have filed a joint tax return for the year(s) in question.

2. Relief is not available pursuant to §6015(b) or (c).

3. Relief is requested timely. Relief for payment of unpaid tax liabilities must now be brought in no later than ten years after the assessment of taxes. Claims for credit or refund must be brought within three years from the time the return was filed or two years from the payment of the taxes.

4. No assets were transferred between spouses as part of a fraudulent scheme.

5. The non-requesting spouse did not transfer "disqualified assets" to the requesting spouse. Disqualified assets generally are assets transferred with respect to a joint return if the principle purpose was to avoid the payment of taxes.

6. The requesting spouse did not knowingly participate in the filing of a fraudulent tax return.

7. The income tax liability is attributable to income or deductions related to the non-requesting spouse.

New Streamlined Procedures

If all the threshold requirements are met, a new streamlined determination is available in cases in which the requesting spouse: is no longer married to the non-requesting spouse; will suffer economic hardship if relief is not granted (economic hardship is defined as the inability to pay reasonable basic living expenses if held liable for the tax); and did not know or have reason to know that there was an understatement or deficiency on the joint return or that the non-requesting spouse would not or could not pay the tax reported.

Innocent Spouse Relief

If the requesting spouse meets the threshold requirements but does not meet all of the requirements for a streamlined decision, all hope is not lost, as the requesting spouse may still qualify for equitable relief. §6015(f) lists several non-exclusive guidelines to determine if equitable relief is proper. Factors considered include:

1. Marital status of the spouses

2. Economic hardship to the requesting spouse if relief is not granted

3. Whether the requesting spouse knew or had reason to know of the item giving rise to the outstanding tax liability, including the requesting spouse's involvement in preparing the return

4. Requesting spouse's legal obligation to pay the outstanding federal income tax liability (a legal obligation includes an order of the family law court or a legally binding agreement)

5. Requesting spouse's receipt of significant benefit from the unpaid tax liability

6. Good faith effort of the requesting spouse to comply with the income tax laws since the tax year(s) at issue

7. Physical or mental health, including issues of abuse of the requesting spouse

8. Level of education of the requesting spouse

Case Study Analysis

Throughout their marriage W controlled the family finances, forced H to turn over his paychecks to her and refused to allow H access to their bank accounts. W received all of the mail and allowed H to see their federal tax returns, which were prepared by W's mother, only when they were presented for his signature. H was unaware of their financial situation and H did not know that tax returns were not filed for four years until an IRS agent visited their home. H was also unaware that taxes had not been paid. Tax returns for the missing years were jointly filed after the IRS visit. W often abused H, and W had been arrested after one incident. The couple filed for divorce and H requested innocent spouse relief.

Since the issue is not an understatement of tax but rather underpayment, the only relief available to H is equitable relief. However H does not meet the threshold requirements because a large portion of the tax deficiency related to his earnings. H would be denied innocent spouse status for the portion of the taxes related to H's income, but might still be eligible for the portion related to W's income.

H is not eligible for a streamlined decision because at the time of filing the request for innocent spouse status, H and W were not yet divorced.

The innocent spouse analysis is made on the basis of the facts and circumstances of the case. Factors favoring relief are: (1) H is separated from wife; (2) based upon the abuse, H most likely did not know or have reason to know of W's actions; (3) H did not significantly benefit from the nonpayment of taxes; and (4) H was both verbally and physically abused.

Factors weighing against equitable relief are: (1) H did not provide evidence that payment of the tax would be a hardship and (2) H failed to make a good faith effort to comply with subsequent tax filings and requirements because he had not filed a return for one tax year.

The evidence was inconclusive regarding H's legal obligation to pay the taxes and whether H was suffering from any mental or physical disability, so those factors were neutral.

In a tax court case with these facts, the court held that under the totality of the circumstances, H was relieved from the tax obligations related to W's income only. See *Schultz v. Commissioner TC Memo* 2010 – 233.

As this example illustrates, the requesting spouse need not meet all of the factors for equitable relief to be awarded innocent spouse status. To apply for innocent spouse relief, IRS Form 8857-Request for Innocent Spouse Relief, must be completed and filed with the IRS. The filing of the Request will stop collection action against the requesting spouse.

Zane S. Averbach is the managing partner of Goldfarb, Sturman & Averbach in Encino. Averbach represents clients in a variety of tax and business matters. Averbach can be reached at zaverbach@gsalaw.com. **Cynthia L. Rubin** is a partner at Goldfarb, Sturman & Averbach. Rubin has been representing employers in all aspects of employment law and business litigation for over 25 years. Rubin can be reached at crubin@gsalaw.com.

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A Day to Remember

BARRY EDZANT
SCVBA President
BarryE@Valencialaw.com

JUNE 13, 1973 WAS A DAY IN the life of a young 12-year-old boy, which will never be forgotten. The day began like any other. My sister Pam and I walked to school that morning, Pam going to Fulton Jr. High in Van Nuys, and myself going to Valerio Elementary. Both of us were eagerly looking forward to our graduations from our respective schools in just a few more days. While sitting in our classrooms, however, we had no idea what was transpiring 350 miles up north in a little courthouse in Martinez, California, the Contra Costa County Courthouse.

My father, Jack Edzant, became a lawyer later in life. After working hard, owning and running a printing company in Hollywood, Dad decided in his late 30s to fulfill a dream and become a lawyer. He graduated in the first graduating class from the San Fernando Valley College of law, passed the bar, and hung up his shingle to practice at the age of 43. Like many lawyers of that generation, my father took any case coming into his small office, including family law matters.

Dad was retained by Joyce Long to assist her in her divorce and to seek full custody of her 11-year-old son, Chris. A hearing on the custody issue took place in the Contra Costa Courthouse, with Joyce, Chris and Joyce's husband, Eugene Long, all being present. The hearing began in the morning, and the judge recessed the court for lunch. Eugene Long left the courthouse.

Following lunch, my father, Joyce, and Chris were in the courtroom hallway, seated on a bench, waiting for the courtroom door to once again open. At that time, Eugene Long walked up to the group of three, pulled out a .38 caliber revolver and began shooting. The first bullet pierced Dad in the abdomen, destroying two of his fingers in the process. The second one missed Joyce. As Dad went to protect himself, he was once again shot in the lower back. The fourth bullet missed Joyce again. Long was tackled by a bystander and the carnage ended. My father mustered up enough energy to run out of the courthouse, and collapsed on the entrance steps, critically wounded.

When my sister Pam and I arrived home from school that day, Mom's only words to us were, "Your father's been shot." Miraculously, however, the bullets missed all vital organs, blood loss was minimized quickly, and due to the amazing work of a small county hospital in Martinez, my father's life was saved.

Following multiple major surgeries, and a year of recovery, my father's outstanding surgeons and therapists not only saved his life, but gave him the ability to once again pursue his dream of practicing law, inspiring me to follow in my father's footsteps.

This incident on that fateful day was a strong catalyst for installing metal detectors in courthouses throughout our state, and perhaps the country. Every time I enter through a courthouse metal detector, I thank my father for the sacrifice he made for our colleagues, our jurists and our clients.

Family law is perhaps the most volatile area of law, given the inherent emotionally charged issues at stake. Practitioners must be zealous advocates for their clients, while at the same time be their therapist and friend. Not many areas of law require this critical blend of roles. It is an unfortunate reality that family law attorneys must at all times monitor their client's emotional state, as well as that of their client's spouse.

In family law, a practitioner should have some understanding of their client's, and their opponent's, past and present state of mind. Have they been violent in the past, and are they capable of being violent in the future? If so, extreme caution must be taken in the handling of the case, and the practitioner should be willing to walk away from the case if there is any hint that violence is possible. While you may not have a clue, as was the case of my father, constant awareness is vital in this area of law.

Dad lived in good health following the shooting until March of 2008, when he passed due to kidney cancer. He made many important contributions to the profession, including two published appellate decisions. He practiced law, albeit limited, until his last days. He would never have fully retired for he was given a second chance to do what he truly loved and he never took that for granted.

Ironically, Pam now works for Trope and Trope, a premier family law firm. As for me, well, I'll stick to fighting battles with auto manufacturers and insurance companies, thank you very much. I prefer not to deal with "real" people!

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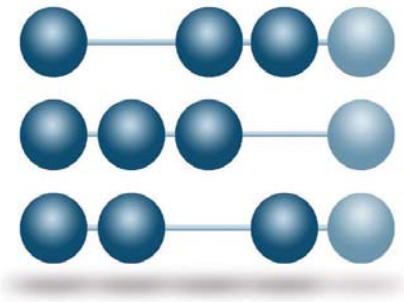

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