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Estate Planning

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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is:
To serve our members, our communities, and our legal system.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of *Riverside Lawyer* published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication, and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

The Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in the Riverside Lawyer.

The material printed in the Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

CALENDAR

MARCH

- 1 Riverside County Mock Trial Competition – Elite 8 Round**
Hall of Justice – 5:30 p.m.
- 3 Riverside County Mock Trial Competition (Semi-Final)**
Historic Courthouse – 9:00 a.m.
- Riverside County Mock Trial Competition (Final Round)**
Historic Courthouse – 1:00 p.m.
- Riverside County Mock Trial Championship Awards Ceremony**
Historic Courthouse – 3:30 p.m.
- 13 Civil Litigation Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
- 14 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Honorable Jackson Lucky
Topic: “Documentary Evidence: Don’t Fear the Paper”
MCLE
- 15 Solo/Small Firm Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Joshua Naggar, Esq.
Topic: “Ethical Representation of Cannabis Clients: The Green Gold Rush is Here!”
Ethics MCLE
- 16 General Membership Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Panel Discussion with mediators and arbitrators from Chapman University
Topic: “Restorative Justice Mediation Program at the Juvenile Detention Center”
MCLE
RSVP by March 13
- 20 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Hon. Sherrill Ellsworth, Ret.
Topic: “Technology and the Future of Family Law”
- 30 Court Holiday – Cesar Chavez Day**
RCBA Offices Closed

EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.





by L. Alexandra Fong

This month's issue of *Riverside Lawyer* deals with estate planning. What is estate planning? Estate planning is the process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during the person's life and at and after death, while minimizing gift, estate, generation skipping transfer, and income tax. Estate planning includes, planning for incapacity as well as a process of reducing or eliminating uncertainties over the administration of a probate and maximizing the value of the estate by reducing taxes and other expenses. The ultimate goal of estate planning can be determined by the specific goals of the client and may be as simple or complex as the client's needs dictate. Guardians are often designated for minor children and beneficiaries in incapacity.¹

For those of you who have not yet made plans as to how one's estate will be distributed for future generations, Riverside County Bar Association's Lawyer Referral Service (LRS) can refer you to attorneys who practice in the field of estate planning. LRS was established in 1968 as a non-profit public service to help individuals and businesses with legal matters in Riverside County find qualified legal assistance at a reasonable cost. The LRS has been certified by the California State Bar and meets the American Bar Association Standards for Lawyer Referral.

LRS' website is: www.riversidelrs.org. If you are in West Riverside County, their telephone number is (951) 682-7520. If you are

East of Banning, their telephone number is (760) 568-5555. The Riverside County Bar Association LRS has over 100 lawyers on its panel screened for experience in virtually every area of law. Every lawyer on the panel must meet or exceed standards of experience and qualifications and are screened regularly for experience, insurance, and client satisfaction.

The State Bar of California also has a California Statutory Will Form, found here: http://www.calbar.ca.gov/Portals/0/documents/publications/2014_CAStatutoryWillForm_ab_1986_bill_20100715.pdf and <http://www.calbar.ca.gov/Portals/0/documents/publications/Will-Form.pdf>. The first document comes with twenty-one (21) frequently asked questions, answered by the State Bar of California. California is one of only a handful of states that recognizes the validity of statutory will forms, which must be completed as it is written without any modifications. Not all states recognize holographic (handwritten) wills, so it is a good idea to consult with an attorney to properly draft the appropriate documentation, so that your wishes are followed after your death.

Most people with assets or a family should execute a will. However, not everyone needs an estate plan. The decision is a personal one and depends on more than the potential size of an estate. Consider the following eight key questions:

1. Are there children involved?
2. How large is the estate and which state is it in?
3. If you have any type of retirement account, such as a 401(k), 403(b), IRA, or Roth IRA, can its distribution to the beneficiaries be "stretched?"
4. Is privacy important?
5. Would you like some money to go to charities?
6. If you own a business, have you thought about succession planning?
7. What life stage are you in? Is estate planning becoming more important?
8. Are there special circumstances to consider (like blended families or disabilities)?²

Estate planning does not simply encompass wills and trusts and is a complicated area of law to learn. It is a good idea to consult with not only an attorney, but also a financial planner when completing one's estate plan.

As with my prior President's Column, I close this with an invitation to all members to attend a meeting of the board of directors of the Riverside County Bar Association and/or the Riverside County Bar Foundation, Inc. Our next meeting is scheduled for March 21, 2018, at 5:15 p.m., in the RCBA Board Room. I look forward to seeing our members attend.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, handling juvenile dependency cases. She is also president-elect of the Leo A. Deegan Inn of Court.



¹ https://en.wikipedia.org/wiki/Estate_planning (I do not usually use Wikipedia as a source to define a term, but many resources directed me to investment articles.)

² <https://www.fidelity.com/viewpoints/personal-finance/do-you-need-an-estate-plan>

BARRISTERS PRESIDENT'S MESSAGE

by Shumika T. R. Sookdeo



Checking on Our State of Affairs

When I was elected as the president of the Barristers in June 2017, I wondered whether I would be able to successfully lead the organization. Just months prior to the elections, I learned that I was pregnant with my first child. I thoughtfully reminded myself that an incredible group of young and ambitious individuals were also elected to complete the Barristers' board.

Each month the Barristers have been busy planning and executing events for the legal community in Riverside. These include MCLE events, social events, and networking events. With the continued support of the RCBA and our various sponsors, we have had great attendance at all our events.

Since the beginning of the 2018, we have managed to maintain our amazing momentum. The committees take pride in using creative ideas to ensure novel events and a variety of experiences for young attorneys and attendees.

On January 9, the Barristers teamed up with the RCBA Civil Litigation Section to present an MCLE on "Bias in the Legal Community," with guest

speaker Casey R. Johnson, a partner of Aitken Aitken Cohn.

On January 26, the Barristers held "Motion to Strike," a fun evening of bowling at Bowlero in Riverside. The Barristers' board, along with new faces, enjoyed a night free of shop talk and legal arguments and full of jokes friendly competition. We also held a social event in February at Romano's in downtown Riverside.

Upcoming Events

We have several upcoming activities planned:

- On March 1, noon, at the RCBA's Gabbert Gallery, we have an MCLE on evidence presented by Judge Jack Lucky. The event is sponsored by ABC Counseling.
- On March 16, 5:30 p.m. at Lake Alice in downtown Riverside, we have a social event planned.
- On May 9, 5:30 p.m. at Grier Pavilion, located at Riverside City Hall, will be the Barristers' Second Annual Judicial Reception. More information will follow.

Finally, please stay informed about Barristers' events by joining our mailing list at <http://www.riversidebarristers.org> or follow Riverside County Barristers Association on Facebook.

Shumika T. R. Sookdeo, managing attorney of Robinson Sookdeo Law, is a past president of the Richard T. Fields Bar Association, a commissioner on the California Commission on Access to Justice, and a board member of John M. Langston Bar Association and California Association of Black Lawyers.



* ATTENTION RCBA MEMBERS *

How would you like to receive (or read) the *Riverside Lawyer* magazine?

Some members have told us they prefer reading the online version of the *Riverside Lawyer* (available on our website at www.riversidecountybar.com) and no longer wish to receive a hard copy in the mail.

OPT-OUT: If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email (rcba@riversidecountybar.com).

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ANTICIPATING INCAPACITY DURING ESTATE PLANNING: NOMINATE AN INDEPENDENT CONSERVATOR TO AVOID ELDER ABUSE

by Jack B. Osborn

Clients often state that the reason they want a comprehensive estate plan is to avoid involvement of the courts in probate. They have heard the legendary stories about lengthy and expensive court proceedings with meddlesome judges. Even if clients are unfamiliar with the Dickensian probate world of *Bleak House*,¹ they certainly do not want their children in court publicly settling their affairs after they die. Moreover, clients shudder at the thought of court involvement should they face incapacity. Nevertheless, what may seem like an afterthought, nearly all estate plans include a nomination of a conservator. Clients are told that the nomination is for protection just in case the court must be involved – to ensure that their nominee will be in charge during any court proceeding regarding their incapacity.

Nomination of a conservator in an estate plan should not be an afterthought, but instead a decision based on a careful calculation of who is best suited to protect against potential elder abuse during one's incapacity. Generally, clients identify close family members to serve as a successor trustee or an attorney in fact through powers of attorney. That same family member is selected to serve in all roles as successor trustee, executor, attorney in fact, and is nominated to be the conservator. However, according to recent findings by the U.S. Senate Special Committee on Aging, as many as one out of every five senior citizens have suffered from elder abuse and it's most often committed by a victim's family member – that same individual placed in a position of trust to manage the elder's money and care.²

A smarter choice to protect against financial elder abuse by a family fiduciary may be to select a different person without an interest in the elder's estate to serve as the nominee as conservator should the elder face incapacity. Instead of the usual nomination of an adult child to serve as conservator during incapacity when court supervision is needed, the elder could identify a family friend, a younger colleague, or even a private professional fiduciary with experience in recognizing elder abuse. Knowing that another independent person is readily available to keep an eye on the management of the

care and finances of the elder may even serve as a deterrent against abuse by a family member serving as a fiduciary.

When presented with grim statistics regarding the prevalence of elder abuse by family members, most estate planning clients will disclaim, "Well, that won't happen in my family!" However, family members usually start out by simply assisting the elder and simple well-intentioned acts, may eventually result in claims of abuse. Arthritis or deteriorating eye sight means mom needs help with paying her bills. Initially, checks are written out for mom's signature and for convenience, the family member is soon added to the accounts. That son or daughter spends considerable time with the parent providing assistance and is often the only child available. Other children who reside out of the area may rationalize this situation by saying, "it just makes sense," for the son or daughter who lives close to add his or her name on the account and to assist with paying the bills. When going to the grocery store, mom doesn't mind that her money is used to pay for her groceries, as well as purchasing the groceries for the son or daughter's household.

Next, son or daughter is receiving monetary gifts; these increase in value over time – perhaps a car for a grandson or a kitchen remodel. Other children of the elder are unaware of the gifts, but they are certainly grateful and relieved that their sibling has stepped up to assist mom. A common next step in the scenario is that mom's estate plan is changed; the child providing the assistance is now the sole beneficiary or the major beneficiary of mom's estate and is the designated fiduciary. When the other children find out about the change to the estate plan and the long history of gifts to the child providing care, they are angry and resentful. The caregiving child is accused of unduly influencing and isolating mom. The caregiving child is also angry. How can he or she be accused of wrongdoing? He or she has been the only one providing care – where have her brother's and sisters been during all of these years? Finally, mom is angry; why are her children fighting and why are her wishes regarding her favorite child being questioned?

Does this pattern described of gift giving and changes to the estate plan constitute financial elder abuse of "mom?" Whether financial abuse has occurred is certainly dependent on the level of capacity of the elder. The courts are full of cases where families debate whether "gifts" by an elderly family member are freely given by someone with capacity or

1 Charles Dickens published *Bleak House* serially between 1852 and 1853. The story involved a multigenerational probate proceeding and resulted in many procedural reforms in the Court of Chancery.

2 For a comprehensive summary of U.S. Senate findings regarding elder abuse, go to elderjustice.gov.

the product of undue influence of an elder with diminished capacity. Additionally, there may be a cultural component regarding the attitudes toward transfers to a family member. Some cultures in the United States have a greater expectation that elderly family members share their resources with family members in need and failure to take these cultural variables into account may result in the wrong conclusion regarding whether there has been financial elder abuse.³ Nevertheless, California statutes regarding financial elder abuse provide a uniform and consistent definition that applies across all groups.⁴

Whether there are allegations of elder abuse or simply well-intentioned and reasoned favoritism of one family member over others, the elder's estate plan and the acts of his/her chosen fiduciary may well end up being the subject of a court proceeding brought by aggrieved family members. It is likely that the named successor trustee will object and allege that the elder has a carefully drafted estate plan to prevent the necessity of court involvement. When presented with such a case, courts generally look to the establishment of a conservatorship to ensure that the elder's interests are protected

3 Sanchez, Y.M. "Distinguishing cultural expectations in assessment of financial exploitation." *Journal of Elder Abuse and Neglect*. 1996; 8(2) 49-59.

4 See the statutes related to the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) found in California Welfare & Institutions Code sections 15600-15657.5.

and that the issue of elder abuse is resolved.⁵ The court will usually give deference to the elder's nominee providing that the appointment of the nominee is in the best interest of the proposed conservatee.⁶

Since the court will rely on the written nomination of the elder regarding appointment of a conservator, it is important that the nomination is done early as part of an overall estate plan when capacity is not at issue. Clients should understand that nearly all court proceedings regarding an estate plan involve allegations of incapacity and financial abuse by a family member. The nomination of an independent or neutral conservator as part of a comprehensive estate plan is an important step in protecting the client should they face incapacity and abuse by poorly behaved children.

Jack B. Osborn is a Certified Specialist in Estate Planning, Trust & Probate Law by the State Bar of California, and a Partner with the Law Firm of Brown White & Osborn LLP in Riverside, Redlands and Los Angeles. He is the past president of the San Bernardino County Bar Association and the Joseph B. Campbell American Inn of Court, as well as past chair of the Conference of California Bar Associations.



5 For an interesting discussion regarding why a conservator may be appointed when there is a comprehensive estate plan in place, see *Conservatorship of Manuel; Manvelian v. Manvel* (2nd Dist. 2017) Unpublished BP266834.

6 Probate Code section 1810.



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LUIS LOPEZ

MARY MADISON CAMPBELL

BLENDED — REFERENCE TO A BAD MOVIE OR THE NEW NORM IN ESTATE PLANNING

by Andrew Gilliland

Of the over forty credited movie roles,¹ it is difficult to determine which Adam Sandler movie is the absolute worst. Near the top of any list would be the 2014 cinematic reunion with Drew Barrymore — *Blended*. This installment in the Sandler/Barrymore collection addresses the challenges and benefits associated with two single parents with children coming together as a blended family. While the movie fails to deliver laughs (with the exception of Terry Crews singing and dancing), deep thoughts (other than perhaps why people keep paying to see Adam Sandler movies), the subject matter of a blended family raises questions for an estate planning attorney who deals with the unique issues and opportunities that are part of estate planning for blended families.² With a national divorce rate somewhere between 40-50%, a remarriage rate for divorcees around 75% (with a subsequent divorce rate around 60-70%), and a death rate of 100%, working with blended families occurs in every estate planning attorney's practice.

Initially, defining a blended family can be problematic because there are so many variations of blended arrangements that go beyond the basic *Brady Bunch* model. Notwithstanding the variety of possible arrangements, typical types of blended families include the following:

- Parents with separate children who raise them together (think *Brady Bunch*);
- Parents with separate and joint children who raise them together (think *Brady Bunch* plus);
- Parents with only one having separate children whom step-parent is raising;
- Parents with each having separate adult children; and
- Parents with only one having separate adult children.

No matter what the blended familial arrangement, two questions predominate the analysis: (1) How “blended” is the family? and (2) What is the relationship between step-parent and child (whether a minor or an adult)? Discovering and understanding the answers to these ques-

tions permits the estate planning attorney to competently engage, prepare, and administer an estate plan.

Estate planning has overarching principles that are magnified when planning for a blended family. The first principle revolves around the time periods for which an estate plan covers. These time periods include during life, at death, and after death. An estate plan is drafted to handle the situation as if the client were to become incapacitated or die tomorrow or whether either of these occurred many years down the road. At each of these time periods, the basic questions that must be asked (setting aside tax considerations) are:

- Who makes the decisions for the incapacitated?
- Who controls the assets and their distribution?
- Who is entitled to the assets?
- Who gets what asset?
- When are the assets distributed?

There are other important considerations that may affect the creation of an estate plan such as preserving family peace, creating legacies, charitable giving, and avoiding litigation both for the heirs and the lawyer preparing the estate plan. For a blended family, the key consideration is whether the surviving spouse has absolute control over the decisions and the “who, what, and when” of asset distribution. Unknowingly leaving such control to the surviving spouse can potentially render the deceased's estate plan useless or worse tie it up in years of litigation. Moreover, non-probate assets such as contractual rights with named beneficiaries (life insurance policy or a retirement account), payable on death accounts like a bank account, or real property held in joint tenancy with rights of survivorship, will transfer to the surviving spouse if the surviving spouse is the named beneficiary or the joint account or joint title holder. When this occurs, the surviving spouse will have absolute control of the asset.

Documenting the overarching principles into an estate plan depends on the type of assets involved as well as the client's specific intent and needs. Incapacity planning during the client's life usually takes the form of a power of attorney and advanced healthcare directive. Various types of trusts, entities, or financial products can be utilized for asset protection, wealth transfers, and tax avoidance/deferral during life. Trusts and wills as well as jointly titled

¹ <http://www.imdb.com/name/nm0001191/>.

² The author acknowledges that estate planning as a whole provides unique issues and opportunities and that some of the subject matter of this article may be applicable to non-blended families.

properties and beneficiary designations direct the “who, what and when” of asset distribution at the death of a client.

In the absence of an estate plan (and this is critical to advise the client in a blended family), California law creates an estate plan through the application of the laws of intestacy.³ This application can have unintended and unwanted consequences because the laws of intestacy provide distinct benefits for the surviving spouse. For instance, regardless of whether the marriage is long-term or short-term, the surviving spouse is entitled to a share of the decedent’s estate, with such share depending on whether the property is characterized as community property or separate property and the number of the decedent’s surviving children.⁴ The surviving spouse also has the ability to delay access to personal and real property during the probate process.

With this background in mind, the initial question to ask (as with the beginning of any attorney-client relationship) is “who’s the client?” What seems to be a simple question takes on added importance in a blended family where the interests may not always be aligned based on the type of blended family. Under the California Rules of Professional Conduct joint representation is permissible. Rule 3-310 of the California Rules of Professional Conduct permits the representation of joint clients provided that both clients provide informed written consent. Keep in mind that there is a distinction under this rule between an actual conflict and a potential conflict and written consent may be required for both. Informing a client requires a disclosure that joint representation has potential issues for conflict, confidentiality, and competency that could affect the attorney’s ability to represent both of them and letting the clients know what will happen in the event that an unwaivable conflict occur or even a conflict that affects the attorney’s ability to provide competent representation to the clients.

The parameters of confidentiality also should be made clear when dealing with a blended family in the estate planning context. Both spouses should be informed that anything shared with the attorney will be shared with the other spouse. There are no secrets even if the attorney has a longer relationship with one of the spouses. The clients should also be aware that while there is attorney client privilege for communications with the attorney, there is no privilege as to statements made to joint counsel between the spouses.⁵ Thus, if there is a later divorce, the communications with the estate planning attorney are not subject to the attorney client privilege as between the spouses. With a higher divorce rate for those remarrying a second and third time, failure to disclose this risk may lead to a malpractice claim.

With a blended family, the initial meeting takes on even more importance. Discovering (and hopefully avoiding) potential and actual conflicts often is the key to providing competent representation and avoiding a malpractice claim. Moreover, no attorney likes to deal with returning funds and to whom such funds must be returned should the attorney be forced to withdraw because of an unwaivable conflict. The attorney can save time in the end by spending time in the beginning. There are a number of red flags to be aware of during the initial meeting and any subsequent meetings as well. These include:

- The existence of a bitter prior divorce;
- The type of blended family arrangement (*Brady Bunch*, *Brady Bunch* plus, adult children, etc.);
- The relationship of the spouse with the other spouse’s children;
- The goals and priorities of the spouses together and for the separate and joint children;
- The age and experience of the spouses;
- The age difference between the spouses;
- The length of the marriage;
- The earning power between the spouses; and
- The dominance of one spouse over the other.

Do not hesitate to ask the hard questions. A little discomfort now may save the clients pain later on. Pay attention to not only what is said, but how it is said and by whom it is said. If one spouse dominates the conversation, make it a point to ask the other spouse specific questions to get their input as well. It is not enough that the non-dominant spouse passively sits there in silence or tepid agreement. The dynamic between the couple often provides valuable insight into how the attorney can or cannot competently meet their legal needs and whether there is potential for conflict down the road.

An important place to start with a blended family is to determine what is already in place. This is particularly true when the spouses are older and one or both of them has a prior deceased spouse. If there has been prior estate planning, a careful review of the provisions is necessary, not only to determine the prior intent, but also to determine if the plan is irrevocable or revocable or whether the client can amend the existing plan. Look not only for language dealing with a specific power to amend but also for a power of appointment in an existing plan. Is there a general power of appointment allowing the holder to determine the beneficial use and enjoyment of the decedent’s assets or is there a special power of appointment allowing the holder to determine the beneficial use or enjoyment of a specific asset or category of assets? Find out if there is a pre or post nuptial agreement properly executed that directs how

³ California Probate Code section 6400 *et seq.*

⁴ California Probate Code section 6401.

⁵ See *Anten v. Superior Court* (2015) 233 Cal.App.4th 1259, citing *Croce v. Superior Court* (1937) 21 Cal. App.2d p. 18, 20.

assets are to be handled in the event of a death. The key is to determine what is in place and what the clients can or cannot do based on the prior planning. Naturally, the attorney will want to obtain copies of these documents and review them carefully.

The characterization of the blended family's assets as separate or community also needs to be determined at the outset and discussed with the clients to make sure they have an understanding of what the legal effects of their current ownership and any proposed changes to such ownership (such as putting it into a joint trust) may have on the asset. Along the same lines, a discussion of how assets are acquired during the marriage should be had. For a blended family with a marriage of longer duration, it often occurs that separate assets have now become blended (transmuted) into community property usually through intent, commingling, or simply using marital assets to make payments or improvements to separate assets. Advising both clients in general terms of the character and potential transmutation of assets should be done. If a dispute or conflict arises over characterization of assets, the attorney may consider advising that separate legal counsel be used for purposes of characterizing the clients' assets.

Having established the attorney-client relationship, determined the

status of the clients current planning (if any), and characterized the assets, discovering the clients' intent with respect to their separate and joint assets allows the attorney to create the proper estate planning vehicle to meet their legal needs. Often the intent coincides with the type of blended family arrangement and this article will focus on four typical situations.

Intent No. 1: The deceased spouse's children get all of the decedent's separate assets with nothing going to the surviving spouse. The factual situation triggering this type of planning usually occurs when each spouse has been independent and the spouses do not want to commingle their assets during the marriage or at death. To achieve this result, a will or trust disposing of the decedent's property can be utilized, along with a waiver under California Probate Code sections 140 and 141. The waiver must be in writing and signed by the surviving spouse, as well as list what items are being waived such as the family allowance, homestead, community property, quasi-community property, the right to an omitted share, and others. For the waiver to be enforceable, the surviving spouse would have to have been apprised of the assets and their rights with the opportunity to seek independent counsel.

Intent No. 2: The surviving spouse has the right to use all the assets (usually only the income and limited principle) during his/her life and then the assets are distributed to his/her separate children. Generally, this type of planning occurs when the remarriage takes place later in life with adult children. Using a Bypass Trust or a Qualified Terminable Interest Property (QTIP) Trust can limit the surviving spouse's ability to distribute principle to themselves and to restrict changing the beneficiaries of the estate plan. Furthermore, the surviving spouse should not have a power of appointment over the assets or the right to

amend or revoke the estate plan in place. The attorney may also have to consider whether the surviving spouse should be the trustee of the trust and what powers the trustee should have to get at the principle. A power of attorney should not provide the other spouse with the right to amend, modify, or revoke the existing estate plan or other assets intended to be kept separate for each spouse's children.

Intent No. 3: The surviving spouse has the right to use all of the assets (income with limited or complete access to principle) during their life and then the remainder is divided equally among both of their children. Usually the attorney will see this type of intent for estate planning when the spouses are close to the other's children or have a belief that an equal division will reduce tension or litigation in the family. Again, a Bypass Trust or a QTIP Trust is a frequent vehicle used for this type of planning. The same precautions against using a power of appointment and appointment a trustee or providing the right to amend, modify, or revoke in a power of attorney apply.

Intent No. 4: A separate child or separate children is/are disinherited in favor of the surviving spouse, surviving spouse's children, or joint children. This situation typically arises when there has been a prior bitter divorce or the separate children do not approve of and/or conflict with their parent's new spouse. Provide clear language that the child or children are being disinherited. The attorney may want to make sure that the reasons are documented in the attorney's notes for the possibility and likelihood of litigation. Some attorneys like to place the reason why in the will or trust, but that potentially opens up a challenge especially where the underlying reason no longer exists. For example, the will or trust states that a child is disinherited because they have a drug problem, but at the time of death they are clean and sober.

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Was the intent to disinherit because of an ongoing drug problem or because they had a drug problem at all? Perhaps the best position is to keep it simple and avoid superfluous language, but make sure that the attorney notes are clear.

After preparing the estate plan, both clients should be given the specific opportunity to review prior to execution. Be leery if one spouse says that they are not going to review the estate plan and are okay if the other spouse says it is okay. Let them know (preferably in writing) that they need to review it and understand what they are signing. To avoid an estate plan being invalidated for failure of both spouses to execute (especially if there is a joint trust), verify that both spouses have executed the estate plan and make sure that there are fully executed copies in the attorney files. In addition to these copies, have a discussion with the clients about who else should receive copies and how they should be presented. Having the clients communicate their intent together to the separate and/or joint children may help to ease potential future challenges due to a failure to understand their intent.

Finally, having an estate plan in place is only as good as it is carried out. Once the intent is memorialized in the estate plan, the underlying assets will need to be transferred, conveyed, or modified to match the intent and estate plan. Jointly held property between the clients with rights of survivorship will escape the protections of an estate plan

and will need to be transferred if the clients' intent is to have it subject to the estate plan. Likewise, beneficiary designations on life insurance, retirement accounts, or other financial vehicles will pass to whomever is named on the document regardless of the estate plan.

While *Blended* may just not be a very good movie (again with the exception of Terry Crews), estate planning for a blended family is a good opportunity for the attorney to utilize their skills as a legal counselor to create a unique plan for their clients. Blended families and estate planning further challenge the attorney to develop an estate plan that is clear from ethical and technical pitfalls that could doom the estate plan, as well as create potential malpractice issues for the attorney. For a blended family where feelings may be surface of sub-surface hostile care needs to be taken to understand the blended family dynamic to create a viable plan.

Andrew Gilliland is the owner of Andrew W. Gilliland Attorney-at-Law with offices in Riverside and Temecula. Andrew is the co-chair of the RCBA's Solo & Small Firm Section and a member of the RCBA's Publications Committee. Please see his profile on page 27.



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WHAT IS ESTATE PLANNING, WHAT DOES IT INVOLVE, AND HOW WILL IT HELP YOU?

by Nesa Targhibi

What is an estate plan? Do I need one and when?

Estate planning is a process that allows you to designate the recipients of your assets in case of your death. Estate planning is frequently used to eliminate the need for probate and minimize taxes. It can also serve to pick and choose who will make financial and health care decisions on your behalf if you become unable to make your own.

Many people believe estate planning is only for the rich. However, everyone has an estate regardless of his or her wealth. An estate includes all the property one owns at the time of death. This includes real estate, bank accounts, stocks, life insurance policies, and personal properties such as cars and furniture. A proper estate plan will ensure that your final wishes regarding your property and health care are honored and your loved ones are provided for. Since we cannot predict when a tragedy such as an accident, illness, or death can strike, the best time to plan and create a proper estate plan is now.

What is involved in an estate plan?

A typical estate plan will likely include a few different instruments. Some of the most commonly used instruments are discussed below.

- **Will** – A will is a legal document which allows you to plan out exactly how you would like things to be handled and distributed after you are gone. It allows you to choose who will receive your assets and what assets they receive. Also, a will allows you to disinherit people. Without a will, your assets are distributed according to the governing state laws and your beneficiaries are designated according to the governing state laws as well. Further, having documented your wishes and desires helps minimize arguments and fights among family and friends as to what they believed your intentions were.

A will also allows you to choose who should take care of your minor children. Having a will gives you and your partner a chance to evaluate your choices and make an informed decision. You can choose a guardian who would be able to provide

for your children as you would have provided for them. Without a will in place, it is left to the court to decide which family member or state-appointed guardian should take care of your children. A court appointed guardian might not know your children and their needs as well as you do.

A will also allows you to choose who oversee your affairs and distribute your assets. Similar to guardianship, having a will allows you to evaluate your choices and pick someone you view as honest and trustworthy. Without a will in place, the court appoints an executor. Further, a will allows your beneficiaries to avoid a lengthy probate process. Every estate, whether there is a will in place or not, goes through probate. However, having a will allows for a simpler and speedier process. The court knows beforehand how to divide the assets, who the executor is, who the guardians will be. Without a will, the court has to make all of these decisions.

Finally, you get to decide how you will be remembered. A will allows you to plan for gifts and donations to charities, art institutes, museums, or other causes close and dear to your heart. Through this you will be able to show your beliefs and values and allow for your legacy to live on.

- **Trust** – A trust is a legal instrument that creates a fiduciary agreement where a trustee holds trust assets for the benefit of designated beneficiaries. There are many different forms of trusts available such as Living Trusts, Revocable Trusts, Irrevocable Trusts, AB Trusts, ABC Trusts, Q-TIP Trusts, Special Needs Trusts, Spendthrift Trusts, Education Trusts, Charitable Trusts, and Life Insurance Trusts. Due to their complexity only a few forms are described below:
- **Revocable Trusts** - A Revocable Trust, also known as a Revocable Living Trust or Inter Vivos Trust, is a trust that can be changed and amended at any time. This will allow you to change the provisions of the trust as you change your mind or as surrounding circumstances change. The flexibility of a revocable trust is one of its major benefits.

However, on the opposite side, the assets which are used to fund the trust will be considered your own personal property for the purposes of protection from creditors and estate taxation. This is because you can make changes to the trust, such as who maintains and utilizes the assets, how the assets are supposed to be distributed, and you can even revoke the trust in its entirety at any time. Therefore, the trust's assets are viewed to be under your full control and thus are not given any protection. There are areas where the use of revocable trust is still beneficial. One major area would be to avoid probate proceedings. Assets which are held in a revocable trust at the time of a trustee's passing will pass directly to the beneficiaries named in the trust outside of the probate proceedings. Also, avoiding a probate proceeding will allow your trust agreements and assets to remain private and not become part of public records for everyone to know, unlike a will which will become part of public records.

- **Irrevocable Trusts** - An Irrevocable Trust is generally a kind of trust that cannot be changed except in a few instances. An irrevocable trust can be created in two main ways. For one, an irrevocable trust can be created and signed as an irrevocable trust from the very beginning. Alternatively, a revocable trust can become irrevocable upon satisfaction of a specific condition stated in the trust. Irrevocable trusts can provide protection against creditors since the terms of the trust, rather than your personal preferences, dictate how the assets are to be treated. This has caused irrevocable trusts to be one of the major tools used in asset protection.
- **Health Care Directive** – A health care directive or advance health care directive is a legal document, which allows you to pick a person or persons who will make decisions about your health care when you are unable to make those decisions due to illness or incapacity.
- **Durable Power of Attorney** – A durable power of attorney is a legal document which allows you to pick a person or persons to make financial decisions on your behalf when you are unable to make those decisions due to illness or incapacity.

How can an estate plan help you and your loved ones?

A good estate plan will provide you and your loved ones with many benefits. The most important benefits are discussed here.

- **Plan for Incapacity** – As mentioned above, many of the estate planning instruments listed are used to ensure your financial and health wishes are followed in case of incapacity.
- **Provide for Loved Ones** – Estate planning will allow you to identify those that you wish to receive your property after you pass away, instead of allowing state laws to make those decisions for you.
- **Help a Favorite Cause** – Through proper estate planning, you can help charitable causes dear to your heart both during your lifetime and after you pass away.
- **Avoid Probate** – A proper estate plan will ensure your loved ones receive their shares of your assets quickly and without the hassle of going through the often lengthy probate process.
- **Minimize Expenses** – Avoiding probate will allow your loved ones to avoid unnecessary court costs and legal fees.
- **Minimize Taxes** – A proper estate plan may allow you to minimize estate taxes.
- **Ease the Burden on Your Loved Ones** – As part of your estate planning, you can plan out your funeral arrangements and thus not only lower the funeral expenses, but also ease the strain on your grieving family and friends.
- **Ensure Your Businesses Continue Smoothly** – Through your estate planning, you can put in place people and procedures necessary to ensure that your businesses continue their day-to-day operations without any unnecessary interruptions in case of your incapacity or death.
- **The Best Benefit Is Peace of Mind** – A properly drafted estate plan will put your mind at ease by ensuring that you have a plan in place in case of tragedy and knowing that not only are your loved ones provided for but that your health and financial wishes will be followed in case you are incapacitated.

Estate planning is an ongoing process. You should review and update your estate plan documents, as existing law as well as your family and financial situations are subject to change.

Nesa Targhibi is treasurer of the Riverside County Barristers and a sole practitioner based in Riverside County. She practices mainly as a special appearance attorney covering Riverside, San Bernardino, and Orange counties.



THE BANKRUPT DEBTOR'S FRESH START: EXEMPTING PROPERTY FOR RETIREMENT PURPOSES

by Cathy Ta

Upon the filing of a bankruptcy, some key events arise: (a) the creation of a new entity called the bankruptcy estate of the debtor; and (b) all property of the debtor becomes property of the estate. The debtor may then exempt certain property from the estate, thereby removing that property from payment to creditors. Exemption of property achieves the primary goal of bankruptcy, which is to provide the debtor a financial "fresh start," by providing the debtor "adequate property" to "maintain an appropriate standard of living" in moving forward after the bankruptcy case.¹

Generally, a debtor must choose between: (a) exempting property protected by state or local law; or (b) property specified in the Bankruptcy Code, unless the state law applicable to the debtor does not so authorize, meaning, the state "opts out" of Bankruptcy Code exemptions. California is one of many states that have opted out of Bankruptcy Code exemptions, such that a California debtor may claim only those exemptions provided by California law.

California, in turn, provides two sets of exemptions, one for debtors generally,² another for debtors in bankruptcy.³ A California debtor in bankruptcy must elect between either the general set or the bankruptcy-specific set of exemptions.⁴ "California's exemption statutes reflect the state's desire to allow a debtor to retain only certain property deemed necessary for a fresh start..."⁵

Under either set of exemptions, California provides a debtor in bankruptcy an exemption for payments from qualified individual retirement accounts to the extent reasonably necessary to support the debtor or their dependents as part of the debtor's "fresh start."

In *Dudley*,⁶ the 9th Circuit construed whether a debtor's individual retirement account was exempt pursuant to California's general set of exemptions, to wit, California Civil Procedure Code section 704.115, subdivision (a)(3). Specifically, the debtor had withdrawn funds from their IRA for non-retirement purposes. The 9th Circuit affirmed the bankruptcy court's test that the account must be designed and used for retirement purposes to qualify for the exemption; however, the 9th Circuit corrected the bankruptcy court in reiterating that an account may still qualify for the exemp-

tion if the account was designed and used principally for retirement purposes, as opposed to only retirement purposes. It recognized that "the primary purpose of the exemption is to provide income for a debtor in retirement" and "to safeguard a stream of income for retirees at the expense of bankruptcy creditors."⁷ Thus, courts should consider whether a plan could have one or more purposes, such as to supplement current income and to provide for retirement. In determining whether the principal purpose is to provide for retirement, courts should look at the totality of circumstances, with all factors being relevant and no single one being dispositive. In *Dudley*, the 9th Circuit remanded the case to the bankruptcy court to consider all factors, including the purpose of the withdrawals, whether procedures for withdrawals were followed, the frequency of the withdrawals, whether the account was used to shield or hide funds from creditors, and whether any withdrawals diminished the account to such an extent that they were inconsistent with the majority of the assets being for retirement purposes.

Similarly, in another case, the 9th Circuit found that in determining that a private retirement plan was not designed and used primarily for retirement and therefore not exempt. In that case, the bankruptcy court properly considered all relevant factors, including whether the debtor overfunded the plan or violated other IRS rules in contributing to the plan, the contribution amount by the corporation relative to the debtor's wages from the corporation, and the debtor's credibility and subjective intent.⁸

The Bankruptcy Code and California law protect a debtor's right to exempt certain property, including payments from individual retirement accounts, as part of the debtor's fresh start. However, these exemptions particularly for retirement purposes, are not intended to be abused at the cost of rightful payment to creditors. After all, the bankrupt debtor's fresh start is limited to exemptions of property necessary and adequate for the debtor to move forward financially after the case. Bankruptcy it is not intended to provide a windfall to the debtor at the expense of creditors.

Cathy Ta is an attorney at Best Best & Krieger LLP. She practices in the areas of insolvency, bankruptcy and business litigation.



1 *Sticka v. Applebaum (In re Applebaum)*, 422 B.R. 684, 687 (B.A.P. 9th Cir. 2009) (citing 4 Collier on Bankruptcy, ¶ 522.01 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2009)).

2 C.C.P. § 704.010-704.210.

3 C.C.P. § 703.140(b).

4 C.C.P. § 703.140(a).

5 *Applebaum*, 422 B.R. at 691.

6 *Dudley v. Anderson (In re Dudley)*, 249 F.3d 1170 (9th Cir. 2001).

7 *Dudley*, 249 F.3d at 1176 (quoting *Jacoway v. Wolfe (In re Jacoway)*, 255 B.R. 234, 240 (B.A.P. 9th Cir. 2000) (citing *In re MacIntyre*, 74 F.3d 186, 188 (9th Cir. 1996)).

8 *Cunning v. Rucker (In re Rucker)*, 570 F.3d 1155, 1162 (9th Cir. 2009).

ESTATE PLANNING AND DIGITAL ASSETS

by Nesa Targhibi

As the world around us changes and becomes more technologically advanced, we find ourselves on the internet more and more. We conduct businesses online, we bank online, we shop online, and we store a large portion of our documents, pictures and other belongings online. But what will happen to all these digital assets when we are no longer around?

Common examples of digital assets are purchased movies and games, personal pictures, profiles on social media, and documents stored on a cloud. Some of these assets are part of online accounts, which often have complicated terms of service agreements that can make it difficult or impossible for loved ones to access the assets. Further, simply providing loved ones with your log-in information might not be enough. There are some laws, which can put your loved ones, who try to access your accounts, at the risk of violating privacy and anti-hacking statutes or committing fraud.

So how can one go about protecting a person's digital assets? The same principles of protection that apply to your physical assets can apply to your digital assets as well. Here are a few steps to take to ensure your digital assets are protected and your loved ones will have access to them.

Be Aware – Be in touch with your attorney, financial advisor, and CPA on a regular basis and talk to them regarding protecting your digital assets. With new technological developments, laws governing the field changes all the time. It is important that your documents, such as a will and a trust, contain the proper legal language to ensure its provisions will be valid and enforceable when the time comes.

Take an Inventory – Make a list of all your digital assets. This can be harder and more confusing than creating a list of your physical assets. Digital assets include a large variety of items including but not limited to:

Hardware – This includes items such as your computers, tablets, CDs, DVDs, USB flash drives, USB hard drives, and memory cards.

Software – This includes programs you use to create or control information, such as financial programs like Quicken, tax preparation programs like TurboTax, or blog writing programs.

Online Presence – This includes accounts such as the following: email, social media profiles, online videos

and pictures, blogs, listservs, and sites for storage, shopping, and finances.

Collect Log-In Information List – Make a list of all your online log-in information including passwords. Make sure to keep this list in a safe place. This could be written on a piece of paper and kept in a safe or created as a file and kept on a secure server online.

Appoint the Right Person – The same person whom you have trusted with your physical assets might not always be the best person to manage your digital assets. Review your assets and pick the person or persons who can manage your digital assets according to your wishes. Provide instructions in your estate planning documents regarding who the trustees are, which assets they will control, and how they can gain access to the Log-In Information List.

Provide Instructions – Give your trustees instructions on how to manage your digital assets. These do not have to be detailed instructions. You might have a website or blogs that you would like to continue to exist after you are gone. You might have pictures or documents that you do not want to be deleted, but rather be given to friends or family. You might have sensitive work related information that needs to be returned to your employer or clients or private information on your personal computer that you wish to be deleted before the computer itself is sold or given to a loved one.

Include Authorization – Make sure your estate planning documents such as a will, trust, and a durable power of attorney include required provisions which designate and allow your loved ones to access and deal with your digital assets.

Update Your Lists and Estate Planning Documents – Update your list of digital inventory and log-in information regularly. Review your estate planning documents on regular basis to ensure they are up-to-date.

In today's world, our digital presence outlives our own lives and thus it is important to plan for its future after we are gone. Although the above steps might not work for everyone, it is important to start thinking about these assets and start planning ahead.

Nesa Targhibi is the treasurer of the RCBA Barristers and is a sole practitioner based in Riverside County. She practices mainly as a special appearance attorney covering Riverside, San Bernardino, and Orange counties.



UPDATE ON PROBATE COURT

by Honorable Thomas Cahraman

As our probate caseload continues to increase, one realizes how fortunate we were to add a fourth probate department at the start of 2017. At that time, Judge Roger Luebs commenced handling probate in Department 2 at the Historic Courthouse and we adjusted the regional caseload allocation to reflect the fact that we now have two judges in Riverside, but still only one in Indio and one in south county (at the Temecula courthouse).

With the retirement of Judge James Cox in November of 2017, Judge John Evans took over Department 1A in Indio. In Temecula (Department T-1), we have Judge Mark Cope. In Riverside, we have Judge Luebs in Department 2 as mentioned above, and myself (Judge Cahraman) in Department 8. It is truly an honor to serve with these fine colleagues.

The four probate judges are supported by an outstanding legal team of attorneys and examiners, along with a dedicated staff of court investigators. In addition, the clerk's role in probate is a sophisticated one and we have excellent clerical support both within the courtroom and behind the scenes.

The Chief Justice of the California Supreme Court recently appointed me to the Probate and Mental Health Advisory Committee to the Judicial Council. I have placed several items on agenda and have hopes of effecting certain changes in state law. In this regard, I hope to emulate Judge Cox, who took a statewide leadership role with the able assistance of our Managing Attorney Tom Johnson.

With regard to the nuts and bolts, practitioners should be reminded that we set declarations to dispense with accounting (under Probate Code section 2628) for hearing and we expect the conservator or guardian of the estate to give notice. Please also recall that we have adopted a useful local form for such declarations and that form is now out for comment, as to whether it should become mandatory in this county. By local rule, you must attach to any such declaration documents showing that property taxes, insurance, and mortgage payments are current on any personal residence that the conservatee or ward might own.

Our limited conservatorship local forms became mandatory last summer, with boxes to check as to the seven possible limitations on the freedom of the limited conservatee and the six possible rights that may be accorded to the limited conservator.

Please put your email on any pleadings you file! This is now required by California Rule of Court, Rule 2.111(1).

In Indio, Judge Evans generally handles guardianships on Fridays, conservatorships on Wednesdays, and estates and trusts on the remaining days of the week.

In Temecula, Judge Cope generally handles guardianships on Mondays, conservatorships on Wednesdays, and estates and trusts on the remaining days.

In Department 2, Judge Luebs generally handles guardianships on Thursdays, conservatorships on Mondays, and estates and trusts on the remaining days.

In Department 8, I generally handle guardianships on Tuesdays, conservatorships on Thursdays, and estates, and trusts on the remaining days.

All of the probate judges set trials in the afternoons. Some trials are set for one afternoon, and some are set for several. In Department 8, I only have three afternoons per week available for trial, because I handle the mental health conservatorships (under the Welfare and Institutions Code section 5350) at 1:30 PM on Mondays and Thursdays. Therefore, I send some of my trials over to Department 2 and some to general civil departments.

I would like to offer a few ideas to make your probate appearances go more smoothly:

- When you file a new petition pertaining to a trust, please include a paragraph setting forth the survivors of the decedent, or if the settlor survives, describing his or her family. So often we read new trust petitions in which it is very difficult to determine the family tree or the relationship (family, friend, or other) of any particular beneficiary.
- When you prepare to file a petition to probate a will or for letters of administration, please take the time to question your client carefully as to all intestate heirs. Even if there is a will, you must give notice to all persons who would inherit if there was no will. So often we find out by questioning in court that a party has failed to list an heir who "does not deserve" notice or a share of the estate. If that person comes back later to claim his share, it is of course possible that you, as well as your client, will be named in the eventual lawsuit. A pointed question or two in your office can allow you to avoid a lot of unpleasantness later on. ("Please forgive me, but did your dad ever have any other children in his whole life?")
- If you want to litigate a probate case and you lack litigation experience, consider the possibility of arranging co-counsel who can sit through

that first trial or two with you. Remember, in the face of an objection we will require strict compliance with the Evidence Code—do not rely on the general collegiality of the probate bar to get anything into evidence without authentication.

- Most of all, I would ask that you practice probate law with a holistic spirit of compassion. Everyone in my courtroom has suffered a loss, whether it be a conservatee who has diminished cognition, an heir who has lost a parent, or a guardianship minor who may be traveling a rough road toward adulthood.

It is a privilege to serve as supervising judge of probate for Riverside County. If any practitioner has suggestions as to how we can improve our approaches or procedures, please offer your ideas to Managing Attorney Tom Johnson.

The Honorable Thomas Cahraman is the Supervising Judge of the Probate Court, Riverside County Superior Court.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2018.

- Christina Bernheim** – Law Offices of Fernando J. Bernheim, Upland
- Estella K. Castillo** – Office of Medicare Hearings and Appeals, Irvine
- John C. Collins (A)** – Merrill Lynch, Ontario
- Patrick Ford** – Solo Practitioner, Victorville
- David Gonzalez** – Law Student, Moreno Valley
- Timothy C. Hooyenga** – Sole Practitioner, San Bernardino
- Christine B. Juneau** – Office of the Public Defender, Riverside
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THE TAX CUTS AND JOBS ACT OF 2017

by Phil Savage, David Foate, and Brandon Spivack

The newly passed Tax Cuts and Jobs Act of 2017 (“Tax Act”) introduced substantive changes to individual tax rates and deductions. The following is an overview of the changes. It is still an open question as to how these changes will impact attorneys in California, and the results will likely differ greatly depending on personal circumstances.

What Changes Can I Expect For My Personal Income Tax?

Standard Deduction Increases. The standard deduction will substantially increase:

- Married Filing Jointly/Surviving Spouse: From \$12,700 to \$24,000
- Heads of Households: From \$9,350 to \$18,000
- Single: From \$6,350 to \$12,000
- Married filing Separately: From \$6,350 to \$12,000

Child Tax Credit is Doubled. The Child Tax Credit will increase from \$1,000 to \$2,000 per qualifying child under the age of 18. In addition to doubling the Child Tax Credit amount, the Tax Act also increases the refundable credit amount to as much as \$1,400. A third major change to the credit is that it will be available to far more households. In 2017 the credit began to disappear for married couples who earned more than \$110,000 and single filers with adjusted gross income above \$75,000. Under the Tax Act, the phase-out thresholds were increased to \$400,000 for married filing jointly taxpayers and \$200,000 for all other individuals.

Personal Exemption Eliminated. The personal exemption is eliminated. In 2017, each taxpayer and his or her qualified dependents could claim a personal exemption of \$4,150. A family of four could claim \$16,600 in personal exemptions plus their standard deduction of \$12,700. Under the Tax Act, that same family can only claim the standard deduction of \$24,000. More income is taxable due to the lost personal exemption, but the Child Tax Credit reduces the amount of tax owed and may even provide a refund.

S.A.L.T. Deduction Capped at \$10,000. Taxpayers will only be allowed to deduct up to \$10,000 of state and local taxes paid during the year. For example, a California resident that pays \$12,000 in property taxes and \$20,000 in state income taxes will only be allowed to deduct \$10,000 on his or her federal income tax return for 2018.

In prior years, Californians could deduct the full amounts of both taxes.

Income Tax Rates Reduced. In 2017, taxpayers fell into one of seven brackets, depending on their taxable income: 10%, 15%, 25%, 28%, 33%, 35% or 39.6%. For 2017 taxes, single individuals pay 39.6% on taxable income above \$418,400, married filing separately pay 39.6% on taxable income above \$235,350, and married couples filing jointly pay 39.6% on taxable income above \$470,000.

Under the Tax Act, taxpayers still fall into one of seven brackets, with the rates being reduced: 10%, 12%, 22%, 24%, 32%, 35% or 37%. In addition to the reduction in rates, the income thresholds necessary to move up to the next tax bracket were increased. For 2018 taxes, single individuals will pay 37% on taxable income above \$500,000, married filing separately will pay 37% on taxable income above \$300,000, and married couples filing jointly will pay 37% on taxable income above \$600,000.

Section 199A “Pass Through” Deduction ... What Is It ... Do I Benefit?

The Tax Act introduced Section 199A. Section 199A applies to any business that is not taxed as a C Corporation. This could include a law firm partnership or a solo attorney acting as a sole proprietorship.

Section 199A allows the business to deduct up to 20% of qualified business income (“QBI”), subject to certain limitations. Businesses engaged in a “service” trade or business (such as attorneys) begin losing the benefit of the deduction once their income reaches \$157,500 as a single filer (complete phase-out is \$207,500) and \$315,000 for joint filers (complete phase-out is \$415,000).

Section 199A is not available to employees that receive W-2 wages. It does, however, create the possibility that certain California attorneys (with income levels below the phase-out amounts) may pay less federal income tax as independent contractors than they would if they received the same compensation as employees receiving W-2 wages.

Taxpayers eligible to claim the full 20% deduction on QBI will have a maximum effective tax rate of 29.6% (the maximum 37% tax rate, reduced by 20%) on the QBI. As a result, \$0.70 of each dollar will pass through to the taxpayer. In some instances a conversion to a C Corporation with its 21% tax rate may be advantageous

for the taxpayer, particularly those engaged in a service trade or business (such as attorneys) that exceeds the income phase-outs listed above. Before converting to a C Corporation, the taxpayer should meet with his or her tax advisors to discuss the impacts that a conversion will have on their business. One impact overlooked at first is that C Corporation income is double taxed when it is distributed to owners. First, the corporation pays \$0.21 on each taxable dollar, leaving \$0.79 to be passed to the shareholders, and then that same dollar is taxed a second time at a long term capital gains rate of 23.8% when it is distributed out as a dividend, leaving only \$0.60 for the shareholder.

How Does The New Tax Act Impact My Estate Plan?

The Tax Act increased the Federal Estate, Gift, and Generation-Skipping Tax Exemption from \$5,600,000 to \$11,200,000 for individuals. Married couples, together, can now exempt \$22,400,000 in assets from Federal Estate, Gift, and Generation-Skipping Taxes.

This doubling of the exemption from these federal transfer taxes changes how estate planning attorneys should advise their clients to plan their estates. Individuals and families with estates valued under \$5 million dollars generally will not need to plan for the Federal Estate Tax. Estates valued under \$10 million dollars are not subject to Federal Estate Tax under the Tax Act. However, the Tax Act is scheduled to be repealed in 2026. As a result, more careful planning is necessary to determine the best plan for estates valued between \$5 - \$10 million dollars. Estate plans for estates valued over \$10 million dollars will continue to incorporate planning for the Federal Estate Tax.

Many estate plans formed for married couples over the last 10-20 years were designed to divide into two trusts to provide the maximum exemption from estate taxes. These were sometimes referred to as A-B Trusts or Survivor-Bypass Trusts. With the increased estate tax exemption provided under the law today, it is likely unnecessary to create two trusts to avoid estate taxes unless a married couple's assets are valued in excess of \$5 or \$10 million dollars. (There are a number of non-tax reasons to create two—or more—trusts at the death of the first spouse which are beyond the scope of this article.)

Because estate taxes are no longer a concern for many estates, many existing trusts should be updated. This is most likely the case where an existing trust for a married couple provides for an automatic A-B division into two trusts at the death of the first spouse but where it is unlikely that any estate taxes will be owing at the death of the surviving spouse. (For example, married clients with a trust that provides for a Bypass Trust at the first death where the marital assets are valued less than \$5 million

dollars.) For these clients, the Bypass Trust is no longer necessary to shelter estate tax exemption and assets funded into the Bypass Trust will not receive an adjusted basis to fair market value at the death of the surviving spouse. It may be appropriate to amend the trust so that the Bypass Trust qualifies for an adjusted basis at the death of the surviving spouse (converting the Bypass Trust to what is sometimes called a Marital Trust). In many cases this can provide a significant income tax benefit for the heirs after the death of the surviving spouse while still providing the other distribution protections originally intended with the Bypass Trust.

The Tax Cuts and Jobs Act of 2017 introduced major income and transfer tax changes. We are just beginning to understand some of the impacts of these changes. Income tax planning and estate planning for ourselves and for our clients should be reviewed to determine what course of action is the most appropriate under the new Tax Law.

Phil Savage is a Shareholder at GRESHAM SAVAGE. His practice focuses on business succession and estate planning. He is a certified specialist in estate planning, trust and probate law by the State Bar of California Board of Legal Specialization.

David Foate is an Associate at GRESHAM SAVAGE. His practice focuses on state and federal tax issues and works pro-actively with business owners and their tax advisors. He holds an LL.M. in Taxation.

Brandon Spivack is an Associate at GRESHAM SAVAGE. His practice focuses on estate planning and related tax matters, such as property tax and transfer tax issues. He holds an LL.M. in Taxation and is licensed to practice law in California and Florida.





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SPECIAL NEEDS TRUST: WHAT IS IT AND WHAT ARE THE BENEFITS?

by Nesa Targhibi

What is a Special Needs Trust?

In order to understand a special needs trust, we need to first understand what a trust is. A trust is a legal instrument which allows the trust creator or grantor to place funds and assets to be managed and distributed by a trustee (a person or entity) for the benefit of a beneficiary. A special needs trust, or a supplemental needs trust as it is sometimes called, is a legal instrument intended to provide benefits for individuals with physical or mental disability. The creator of trust can be parents, grandparents, guardians, or conservators of the disabled person.

The purpose of a special needs trust is to ensure that the disabled individual has a steady flow of income in order to live a happy and fulfilling life. In short, it allows the disabled individual to receive government benefits programs, along with income flow from the trust, to fill in the gaps. This is a more beneficial tool than just leaving an inheritance for the disabled individual. This is mainly due to the fact that funds and assets of a disabled individual are countable when it comes to assessing their eligibility for government benefit programs such as Supplemental Security Income (SSI) or Medicaid/MediCal benefits. However under the Omnibus Budget and Reconciliation Act of 1993,¹ Congress stated that any funds or assets placed in a special needs trust is not counted against the disabled individual when it comes to assessing eligibility for the government provided benefit programs.

Who Can Benefit from a Special Needs Trust?

Special needs trusts are intended to benefit a physically or mentally disabled adult or child. A disabled adult, as defined by the Social Security administration, is an individual age 18 or older who is blind or who has a medically determinable physical or mental impairment that prevents him or her from participating in any substantially gainful activity.² This physical or mental impairment must have lasted or be expected to last for at least 12 months or more. A disabled child is an individual under age of 18 who is blind or who has a medically determinable physical or mental impairment that causes severe functional limitations. Similar to the situation with disabled adult, in case of a disabled child the physical or

mental impairment must have lasted or be expected to last for at least 12 months or more.

What are the Benefits of a Special Needs Trust?

- **Source of financial support beyond government programs**

Special needs trusts can be used to provide supplemental and extra care beyond what the government provides. The person serving as trustee of the special needs trust can usually pay for anything for the person with special needs, as long as the purchase is not against public policy or illegal and does not violate the terms of the trust. Importantly, however, certain types of disbursements, most notably payments for food and shelter, may reduce the amount of SSI the beneficiary receives.

- **Continued eligibility for government benefit programs**

Although other forms of trusts such as family trusts can be set-up to provide for loved ones, none are specifically designed or intended to protect disabled individuals' interests. This is mainly due to the fact that special needs trusts allow the grantors to put funds and assets in the trust while still allowing the disabled individual to be qualified for government programs. This is because, under OBRA-93, the funds and assets that are properly placed in a special needs trust do not count as income for the disabled individual when it comes to evaluating their eligibility for government benefit programs such as SSI and Medicaid.

- **Protection against creditors**

The funds and assets placed in a special needs trust are not subject to creditors or seizure. Therefore, the assets of disabled individuals being sued are not subject to a judgment as long as they are properly placed in the trust.

What to consider when creating a special needs trust?

There are a number of specific and complex government requirements regarding special needs trusts and poorly

1 H.R.2264 - Omnibus Budget Reconciliation Act of 1993 - <https://www.congress.gov/bill/103rd-congress/house-bill/2264>

2 <https://www.ssa.gov/ssi/text-eligibility-ussi.htm>

drafted ones can easily be invalidated and set aside. This could cause loss of benefits, savings, or other financial and legal hardship for the disabled individual. In some situations, it could even lead to civil litigation or criminal proceedings. Thus, it is imperative that families create special needs trusts that conform to all the required laws and regulations. Some of the certain complex regulations and specifications that are required for creation of special needs trusts are listed below.

- A first party special needs trust can be created at any time before the disabled beneficiary's 65th birthday. (42 USC 1396p(d)(4)(A).)
- A Pooled Trust can be established for a disabled individual of any age and must be established and managed by a non-profit association. A separate account is maintained for each beneficiary, but funds are "pooled" together for investment purposes. (42 USC 1396p(d)(4)(C).)
- Under OBRA-93, a special needs trust can be created by parents, grandparents or guardians of the disabled individual. However, since the law does not define who the term "guardian" refers to (for example a court-appointed guardian or a guardian-in-fact such as a concerned family member or friend), a properly

drafted trust can allow for siblings, family members or friends to create the special needs trust.

- A special needs trust should contain certain language showing the intent to provide supplemental and extra care beyond that which the government provides. It must show that the intent is more than just providing basic support.
- Under OBRA-93, a special needs trust must be irrevocable. Further, it must comply with requirements for providing provisions regarding trust termination or dissolution and include explicit directions for the trust amending process.
- A special needs trust must also make specific references to the Social Security Operations Manual, including but not limited to providing for payback to Medicaid in certain situations.

If you are interested in creating a special needs trust for a loved one, be sure to consult with an attorney that is experienced in this area.

Nesa Targhibi is treasurer of the RCBA's Barristers and is a sole practitioner based in Riverside County. She practices mainly as a special appearance attorney covering Riverside, San Bernardino, and Orange counties.



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THE RCBA ELVES PROGRAM 2017

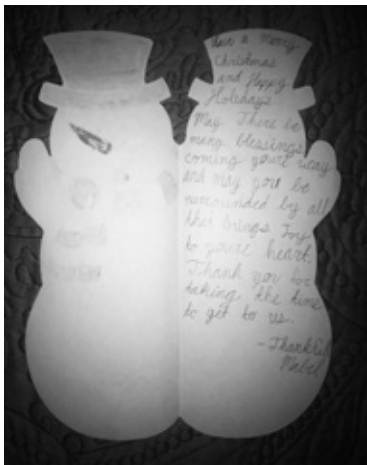
by Brian C. Percy

On December 24, 2017, the RCBA's Elves Program concluded its sixteenth annual program of helping needy families in Riverside County. This year we were able to serve 64 families. Your Elves provided Christmas gifts and a holiday dinner to 252 individuals (163 children and 89 adults).

This year we worked with the following organizations to identify families in need: The Victim Services Division of the Riverside County District Attorney's office, the Riverside County Probation Department, a Light House Social Service Center Community Emergency Outreach Program of the PW Enhancement Center (www.pwecenter.org) (www.lighthouse-ssc.org).

Every year the success of the RCBA Elves Program is solely due to the great support and generosity of you, our membership. Helping others is infectious, and Elf participation has grown beyond the RCBA members to include their office staff, their families, clients and friends.

We get lots of "Thank You" from the families too. For example the DeLeon family sent a special message to the RCBA Elves:



"Thank You and every one who participated in this special gift! I cannot tell you how much the gas/food card helps right now!" The Butler Family sent the following message: "The Butler Family whole heartedly appreciates the gifts and support. Merry Christmas

and Happy Holidays to you beautiful people." All the hard work you did was worth it!

Now for some recognition.

The Money Elves

Our funds came from direct donations and monies raised during several bar association events held throughout this past year. The money provided gifts for each family member, along with a Stater Brothers gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the family's holiday travel. I'd like to thank the following Money Elves for their support: The Riverside County Bar Foundation, Barrie Roberts, Klute & Newton, Aitken Aitken Cohn, Bratton & Bratton, Inc., Altura Credit Union, Hon. Kenly K. Kato, Vicki Broach, Ward & Ward, Rob Schelling, Kristen Kubec, Lazaro Fernandez, DaNeal Bailey, Peggy Barnes, Kimberly Byrens, Lisa Ruiz-Cambio, Marvin Cohen, Scott Ditfurth, Ana Horta, Mark Easter, Tammy Ingram, Roxana Jimenez, Mary Karlson, Connie Johnson, Ron Kaufman, Cheryl Madaris, Andrea McAreavy, Juan Ornelas, Michelle Ouellette, Sylvia Perez, Jorge Chica, Diane Huntley, Hon. Jean Leonard (Ret.), Robert Swortwood, Hon. Craig Riemer, Kirsten Shea, Julianna Tillquist, David Werner, Jo Larick, Abram Feuerstein, Rosa Marquez, Hon. Gary Tranbarger (Ret.), Hon. John Monterosso, Hon. Dallas (Ret.) & Pat Holmes, Diane Singleton-Smith, Shelley Fox, Erica Alfaro, Dan Hantman, Hon. Sheri Pym, Sandra Leer, Hon. Irma Asberry, Joseph Peter Myers, Bernard Donahue, Hon. William Bailey (Ret.), Holstein, Taylor & Unitt, Riverside County Barristers Association, Rabia Chaudhry, Joyce Zimmerman, Miranda Villareal, Isabel Safie, Glen Price, Deborah Vivian, Luis Tapia, John Wahlin, Charity Schiller, Danielle Sakai, Cathy Tisnado, Howard Golds, Cynthia



Marcos Reynoso, Christina Sovine and Veronica Reynoso



Shopping Elf Matt Strickroth



Shopping Elf Priscilla George



Shopping Elves Diane & Mike Huntley



Shopping Elves Jessica Diaz, Gabe Razo, Mike Razo (holding Benjamin), Casey Wilkerson, Kristin Allen, Pam Bratton, Bill Bratton and Carissa Razo (holding Jonathan).

Germano, Cathy Holmes, Elizabeth Han, Monica Smith, Neil Okazaki, Michael Sargent, Don Cripe, Hon. Richard Van Frank (Ret.), Lauren & Matt Strickroth, Susan Plummer, Jamie Hickman, Daisy De Anda, Brittany Reese, Lisa Yang, Monica Smith, Joseph Widman, Cota Cole & Huber LLP, Public Service Law Corporation, Kay Otani, Creason & Aarvig, LLP, Marbles Mediation, Jim Husen.

I would also like to provide a very special “Thank you” to Mark Easter. Mark has once again done a fantastic job of rallying a large number of his colleagues at Best Best & Krieger to the cause.

The Shopping Elves

Thanks to the help of the numerous Shopping Elves, my assistant Veronica, Charlene and a very helpful Kmart staff. We were able to shop, bag, tag, and deliver hundreds and hundreds of presents to the bar association in just over three hours, a new record. It was a joy to experience the festive mood of various individuals, firms, and families as they put on their Elf hats and their best bargain-hunting caps to find deals for our families. This year’s Shopping Elves were:

Marek Kasprzyk, Doris Duncker, Marty Nicholson, Sandra Alvarez, Angela Rodriguez and Sonya Rodriguez of Smile Builder Dental Office, Nesa Targhibi, Judi Murakami, Rosalive Armstrong, Jo Larik, Priscilla George, Erica Alfaro, Robert Alfaro, Paulina Smykowska, Marcia Bodine, Marie Myers, Jesse Male, Meg Hodges, Maria Aarvig, Diane Huntley, Amy Osborne, Michelle DeJohnette, LaShon Halley, Christina Sovine, Laura Mau, Lachelle Crivello, Barbie Trent, Susan Nauss Exon, Lauren Vogt, Matthew Strickroth, Christine Renken, Lenore Heard, Zina Lomeli, Krystal Reynoso, Nadine Vargas

As always Big Kmart stepped up to the plate providing us with an additional discount on every item purchased. Walter’s Auto Sales & Service donated the use of a very large Mercedes Sprinter van which was our

sleigh for the night. Once again a great big thank you to General Manager Steve Kienle and his parts manager Scott Eisengberger for making the transport of the vast number of gifts so much easier.

The Wrapping Elves

After the shopping was finished, all the gifts were delivered to the Bar and filled the RCBA Boardroom and several other workrooms. Over the course of two evenings, the Wrapping Elves wrapped the mountains of toys, clothes and household goods. A huge thank you to this year’s Wrapping Elves.

Poly High School in Riverside sent their top wrappers and Honor Society members: Joshua Vargas, Serena Siddig, Anthony Zlaket, Brandon Byre, Noah Aneur, Susana Toner, Gabrielle Oyama, Michelle Boulos, Kalysta Garland, Kolin McVeigh, Corissa Gann, Michael Utterbach, Josh Sullivan, Rachel Heil, Jesus Diaz, Alec Cabral, Claudia Smith, Kate Santoso, Heather Otto, Deborah Platt, and Olivia O’Connor. Thank you to your students for all your hard work.

Thank you to our local attorneys, judges, legal support, and friends and family for your efforts. We acknowledge the following: Matthew Knez, Nesa Targhibi, Rosa Marquez, Bianca Moreno Maria Romo, Ruth Heaurin, Erica Alfaro, Shaana Ramos, Jacklyn Williams, Jean Ahn, Elisha Werner, Daisy De Anda, Anna Gherity, Michelle DeJohnette, Mike Donaldson, Linda Claypool, Elizabeth Lord, Lenore Heard, Megan Demshki, Zachary Myers, Marie Moreno Myers, Fay Katayana, Mike Oritz, Amy Brummel, Rabia Chaudhry, Charli Steed, Paul Lin, Lauren Sanders, Alexis of @wealthykids.org., Paulina Smykowska, Aneka Amezcua, Caitlyn Eno, Vivian Duarte, Daisy De Anda, EvanRae Easter, Robert Alfaro, Kassie Alfaro, Emma Karidakes, Daniel Hantman, Hon. Kenly K. Kato, Kia Kato, Elisha Werner, Jean Alia, Jacklyn Williams, LaShon Halley, Matthew Halley, Alejandro Barrazo, L. Alexandra Fong, Steve Farset, Crista Haynes, Marika Myers, Carlos Mathus and Priscilla George.



The Wrapping Elves with Santa

Delivery Elves

Our Delivery Elves delivered our gifts throughout Riverside County, including the cities of Corona, Norco, Lake Elsinore, Perris, Hemet, Riverside, Moreno Valley, and the Coachella Valley. This year's Delivery Elves who donated their time and gas were:

Hon. Charles Koosed and family, Erik Mills, Cindy Moran-Aquirre, Heber Moran, Misti Janes, Shaana Ramos, Hon. Judge Kenly K. Kato along with Kiya Kato and Jean Ahn, Mark Easter and family, Daisy De Anda and family, Anna Gherity, Mike Donaldson, LaShon Halley, Kirsten Shea, Arlene Cordova Dashkovitz, Tiffany Lewis, Diana Renteria, Angela Rincon, Margeaux Mernick, Paulina Smykowska, Erin Maggiano, Jacqueline Carey-Wilson, Bianca Moreno, Amy Brummel, Angela Rayfield, Crista Haynes, Lachelle Crivello, Lisa Yang, Brianne Wesche, Lenore Heard, Lazaro Fernandez.

Special Thanks


Once again, big kudos to my assistant Veronica, whose dedication and organizational skills made this a very efficient and fun experience for all involved; to the Riverside County Bar Association staff, especially Charlene Nelson and Lisa Yang, for all their energy and

assistance; to the management and social workers of Light House Social Services, and the PW Enhancement Center (Community Emergency Outreach Programs) and the Victim Services Division of the Riverside County District Attorney's Office for spreading the word and making sure we help the most needy families in the county. Once again, "Thank you" to Big Kmart and its staff at the at Mission Grove in Riverside.

Finally, a jumbo sized "Thank you" to the Elves themselves. Your wonderful spirit and camaraderie, which are represented in the photos accompanying this article, make this entire endeavor so rewarding to yours truly.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for next year. Ladies and gentlemen, I submit to you, this is a wonderful opportunity for you, your family, and your staff to share the joy of the holiday season.

Brian C. Percy was President of the RCBA in 2002 and is the chairperson (i.e. "Head Elf") of the Elves Program.




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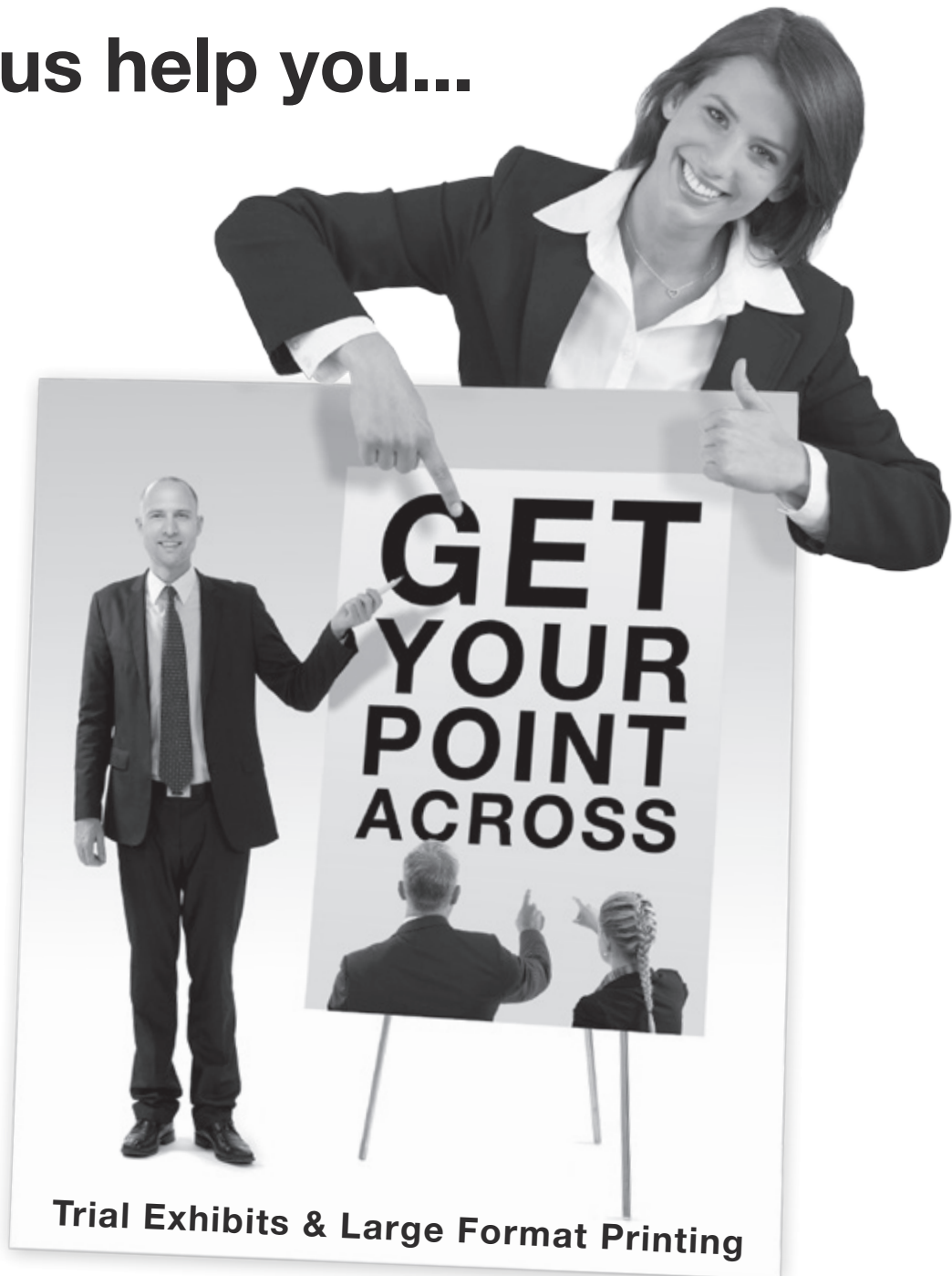
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OPPOSING COUNSEL: ANDREW (DREW) GILLILAND

by Betty Fracisco

Andrew (Drew) Gilliland is a “new man in town,” relatively speaking, but he has practiced law in several states and has a wealth of experience in business and estate planning. Drew is already a fixture in the Riverside County Bar Association as the co-chair of the Solo & Small Firm Section and a member of the RCBA’s Publications and Nominating Committees. His willingness to get involved and his ready smile will serve him well in this legal community.



Andrew (Drew) Gilliland

Drew was born and raised in San Diego, the youngest of three children. He had a unique childhood, because when he just did not fit into the routines of a regular school, his parents decided to have him tutored. This allowed him a lot of freedom and by the time he was of high school age, he was taking classes at both Vista and Palomar Community Colleges. At the young age of 17, he would often be gone from home all weekend, following groups playing at the Whiskey and other clubs. During the week, he would work full-time at HP in Rancho Bernardo from 7:00 a.m. to 3:00 p.m., then be able to complete all his school work. Drew aspired to be a film major at University of California, at Los Angeles or University of Southern California (USC). He actually enrolled at USC, but at the last minute decided to attend Brigham Young University (BYU), which was much cheaper and had a good film program, too.

This was an unexpected choice of schools, because although Drew had been baptized into the Church of Jesus Christ of Latter-day Saints, he had never been a church-goer, nor had his family. The decision to attend BYU ended up being a life-changing decision. After his freshman year, Drew went on a Mormon mission to Portugal for two years. Upon his return, it wasn’t long before he married the woman to whom he’s been married for more than 25 years. He graduated in 1993, a history major and the father of two children

Drew attended University of Utah Law School and between a good LSAT score and working as a teacher’s aide in the history department, he had free tuition. Although he did not have much free time, he managed to participate in Jessup Moot Court and was the president of the International Law Society. After graduating

(now the father of 5 children) and passing the Utah Bar, his first law job was in Las Vegas with Lionel, Sawyer & Collins, a “super ethical” environment where he worked for several years in their “business department” on an ongoing assignment involving the Venetian Hotel. In his words, he racked up 1300 to 1400 billable hours the first few years. He then moved the family to Florida, where in 2004 he earned an LL.M.¹ in taxation. Then it was back to Salt Lake City, where he worked with the “movers and shakers” at Parsons, Behle

and Latimer, in the real estate department at this large business litigation firm. He was general counsel and did “tax stuff,” asset protection, and served as in-house counsel for Summit Development. After a number of years, he decided that he needed the independence only a solo practice could provide, so taking his assistant with him, he opened his firm in Draper, Utah, where he specialized in estate planning, with a little family law on the side. This was a good fit for him, because it was clear by this point in his career that he had good negotiating skills and he liked working with people.

The solo practice also provided an additional benefit: Drew was able to coach three of his sons in high school baseball at Hillcrest High School. He had always loved baseball and had been a good little league player, but since he was home-schooled, never had the opportunity to play in high school. In fact, he purposefully delayed his long-range plan to return to California until his youngest son graduated from high school.

Unfortunately, despite his many years of practice and his advanced legal degree, Drew was required to take the California Bar Exam to practice in California. He continued in his practice in Draper until he was cleared to practice in California on September 13, 2017. Then he began setting up his practice in Riverside, where he specializes in estate planning and wills and trusts. He likes solving problems, such as how to plan for incapacity or death. He loves the human side of people. He is big on customer service, takes time to get to know the people for whom he’s working and has a great sense of fairness.

1 LL.M. is an abbreviation of the Latin *Legum Magister*, which means Master of Laws.

He occasionally still does some remote estate planning and problem solving for long-time clients in Draper.

Drew and his wife currently live in Menifee with the youngest of their five children, who is 14 and attending a charter school. They share their home with Drew's parents, now in their 70s and previously longtime residents of north San Diego County. His wife is already very comfortable with living in California and is rumored to have a special love for Disneyland. Their four grown sons are either out of college and employed or still in college.

The Riverside County legal community is fortunate to have a new member who is ready to not only start a new practice, but also volunteer in a number of areas that will benefit the membership. And just recently Drew announced that he is opening a second office in Temecula, a little closer to home. We wish him success.

Betty Fracisco is an attorney at Garrett & Jensen in Riverside and a member of the RCBA Publications Committee.



ATTENTION RCBA MEMBERS

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