

Contra Costa Lawyer Online



CONTRA COSTA LAWYER

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Lawyers And Social Media: The Ever-Changing Landscape

Social Media is a rapidly changing landscape, with new developments happening every day. A new social media platform like Pinterest can suddenly appear seemingly out of nowhere, and become of value (and








Spotlight



[What Are the CPAs Up To?](#)
While CPAs are not known for exciting activities, we do have a couple of interesting programs for the family law community.



[One Million Dollars in Food from the Bar](#)
\$1,000,000? That's right! Next year, our Food from the Bar goal is to cross the one million dollar mark. In 2013, our competitive food & fund drive benefiting the Contra Costa and Solano Food Bank will be in its

News & Updates

[New IRS Requirements Regarding the Reporting of Credit Card Transactions](#)
The ABA Commission on IOLTA reported that there are new IRS requirements affecting the reporting of credit card transactions that have the potential to negatively impact IOLTA accounts and lead to ethical violations by attorneys.



[2012 MCLE Spectacular \[Photos & Videos\]](#)
Thank you to all of our speakers, presenters, panelists, sponsors, volunteers and attendees who made the 2012 MCLE Spectacular extra spectacular! Below are some pictures and video of our plenary

The Contra Costa Lawyer is the official publication of the Contra Costa County Bar Association (CCCBA), published 12 times a year – in 6 print and 12 online issues.

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Google + also brings up issues around real-time communications: An ABA rule - and soon to be California rule - prohibits direct communication through real-time electronic means. For example, if there is a chat group and someone asks advice on a legal matter, you are not allowed to offer your legal services, since this could be considered taking advantage of, or putting undue pressure on, an individual under emotional stress.

The Bottom Line: Take care with your message, and where you send it. Don't use real-time chat to offer your services. And of course, no matter what circle you reach out to, make sure what you are saying is ethically sound.



Pinterest: Pinterest went from zero to more than 10 million hits in six months. In this image-sharing website, you can create a collection of related visual images and group them together. An attorney might use Pinterest, for example, by creating a board with an image of an legal article cover and encourage people to click on it, go to his/her site, and download that article. Using interesting photos and artwork, it could also be used to market an event.

Pinterest does have a downside for attorneys: Because it allows you to "repin" any image without any rights to it, the potential for copyright or trademark infringement exists. Pinterest is becoming more sophisticated about this issue; it now provides its users with both trademark and copyright complaint forms.

The Bottom Line: Attorneys should use caution when using images pulled from other sources on Pinterest. Pinterest itself encourages "repinning" from the original source. Attorneys in particular should make sure they take the extra step of tracking down the original source of an image they liked on Pinterest . If you are trying to impress people with your legal savvy and blatantly use images that aren't yours, this could be a turnoff to potential clients. While it's unlikely you will get sued, the public holds attorneys to a higher standard.



Groupon: Groupon allows businesses to broadcast special offers for goods and services. Attorneys who do estate planning and, for instance, offer a set price for an estate plan, could use Groupon to offer a discount for such services. Using Groupon or a similar service, attorneys can broadcast a discounted offer and clients who purchase the Groupon can present the coupon to the attorney.

The ethics of platforms like Groupon are being hotly debated. Some state bars, like Alabama and Indiana, have concluded that they are in violation of professional rules of

conduct because of the rules regarding fee sharing with non-lawyers. The majority of state bars, however, have concluded that rather than fee sharing, sites like Groupon involve paying a fee for advertising, and they have allowed it.

The Bottom Line: California attorneys should keep an eye out for an ethics opinion on this subject before putting too many resources into marketing services using this kind of a platform.



LinkedIn: LinkedIn has been around awhile, but is continuously making small changes that might not appear on your radar screen. One of these changes is the renaming of the *Specialties* section to *Skills and Expertise*. As *Specialties*, it was clear that if you were a family lawyer and didn't have certification for this legal specialty, for instance, you would be in violation of ethics rules. With the new label, however, this becomes a little more ambiguous and it may be safer to list family law under this section.

Bottom Line: To be safe, steer clear of adding anything to the *Skills and Expertise* you aren't licensed in. Instead, use the *Summary* section to describe your specific practice skills and avoid the issue altogether.



Facebook: Good news for lawyers - and everyone else - on the privacy front with Facebook. The company has been repeatedly sued for making users review complicated privacy setting in order to prevent certain types of information from being shared publicly. As part of the settlement terms with the Federal Trade Commission, Facebook has agreed to alert members to any public sharing of information upfront. This should make it easier for lawyers and others to avoid embarrassing disclosures that attorneys thought were only being shared with friends or family.

The Bottom Line: Don't use Facebook for anything that could be construed as confidential information. And even if you know that something isn't getting shared publicly, think hard about whether you want to share it anyway. If you were ordered by a court to provide any and all information from your Facebook profile, you may not be able to shield that "private" information from becoming part of the public record.

The Last Minute or Late Reaffirmation

Saturday, December 01, 2012



A reaffirmation agreement is a contract reinstating a debt otherwise dischargeable in bankruptcy. Often debtors in chapter 7 sign reaffirmation agreements related to car loans. In fact, some auto lenders (for example: Ford Motor Credit, Ford Leasing Trust, Jaguar Credit) insist on a valid reaffirmation if the debtor intends to keep a car and continue making regular payments. Without a valid reaffirmation, these lenders will repossess a car even if the monthly payments are current. Recently a few borrowers have been denied mortgage modifications where the underlying loan was not reaffirmed in a bankruptcy.[1]

To be valid, a reaffirmation agreement must be signed by the debtor, creditor, and in many circumstances the debtor's attorney or the judge. Additionally, a reaffirmation must be filed with the court before a bankruptcy discharge is granted. Generally, a chapter 7 discharge is granted about 90 days after the initial papers (called the bankruptcy petition) are filed with the court. In this article, I discuss four scenarios involving reaffirmation problems.

Agreement Signed But Not Filed Before Discharge

What happens if the agreement was signed by all parties but not filed prior to the bankruptcy discharge? Federal Rule of Bankruptcy Procedure 4008(a) provides "The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement." Counsel can move to reopen the case (See Bankruptcy Code section 350(b)) and file a motion asking for additional time. In my experience judges grant these requests.

Agreement Not Signed, Discharge Expected Soon

What happens if the reaffirmation is not signed and the discharge is expected tomorrow? Counsel can file a motion to enlarge the time to file a reaffirmation pursuant to Federal Rule of Bankruptcy Procedure Rule 4008(a) and rest assured the discharge will not be entered if the motion is pending. See Federal Rule of Bankruptcy Procedure 4004(c)(1)(J). The motion can be filed ex parte which streamlines the process. Usually, the parties only need a day or two to get the reaffirmation filed. That means counsel can request additional time to file the reaffirmation and actually file the reaffirmation before the court has a chance to rule on the motion. The motion will be moot once the reaffirmation is filed.

Agreement Contemplated But Not Signed, Discharge Entered

What happens if the reaffirmation was contemplated but not fully executed before entry of the discharge? Often, after discharge the debtor is told by a lender that he/she “needed to sign a reaffirmation” and the debtor is asked to contact counsel. Counsel then initiates contact with the lender regarding the situation. Bankruptcy code section 524(c) requires a reaffirmation be “made” before entry of the discharge. Federal Rule of Bankruptcy Procedure 4008(a) gives the court latitude to allow late filing of a reaffirmation. The distinction between when a reaffirmation is “made” and when it is filed is unresolved by the statute. Generally courts consider a reaffirmation made if it appears the parties reached an agreement prior to discharge.[2] Factors to consider: did the Statement of Intentions indicate the intent to reaffirm? Was a reaffirmation prepared prior to discharge? Did the creditor execute the reaffirmation prior to discharge? Did the debtor(s) execute the reaffirmation prior to discharge? Did the parties perform under the terms of the agreement? Are there other facts to indicate that a meeting of the minds was reached prior to signing of the formal agreement?

Agreement Not Contemplated, Discharge Entered

In this situation, nobody considered reaffirmation prior to the discharge being entered. This might occur if the debtor intended to surrender the collateral initially but due to a change in circumstances (i.e. found a job) is able to afford the payments. This is the most difficult scenario for the debtor(s) and counsel. Counsel should consider a motion to vacate the discharge so the agreement can be made and filed, and thereafter the clerk of court can reissue a discharge. The courts are split on whether the statutes and rules allow the court to vacate a discharge for this purpose.[3]

Counsel should also carefully review the flawed wording of Bankruptcy Code section 524(d) which appears to allow the court to approve a reaffirmation after discharge if the debtor was not represented by counsel in negotiation of the reaffirmation. Perhaps the debtor can act without counsel for the purpose of negotiating a reaffirmation? One snag - many courts, including the Bankruptcy Courts for the Northern District of California, have local rules or guidelines requiring debtor’s counsel to negotiate reaffirmation agreements as part of “bundled” chapter 7 representation. In the Northern District of California, the applicable guideline is entitled “Guideline for Legal Services to be Provided by Debtor’s Attorney In Chapter 7 cases” which is found on the court’s website at www.canb.uscourts.gov/rules/guidelines.

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[1] Reaffirmation is not required for a HAMP modification. See www.makinghomeaffordable.gov. For other types of mortgage modifications, the rules vary and a complete discussion is beyond the scope of this article.

[2] In *Bankruptcy of Bellano*, 456 B.R. 220, 228 (Bankr. E.D.PA 2011) the court collects cases where the parties reached an agreement to reaffirm prior to discharge but filed the formal agreement post-discharge.

[3] See *In Re: Edwards*, 236 B.R. 124, 126-7 (Bankr. D. N.H. 1999)(permissible to vacate) *But See, Rigal v. Fleet Mortgage Corp. (In Re Rigal)*, 254 B.R. 145, 148 (Bankr. S.D. Tex 2000)(impermissible to vacate).

Social Security Benefits for Divorcees and Surviving Spouses

Saturday, December 01, 2012

Everyone seems to know that Social Security is a retiree benefit. Anyone 55 or older today, who is not wealthy, generally counts on these benefits to assist with retirement - even if worried whether Social Security will still be around when s/he retires.

Counting on benefits and knowing how they work, however, is another thing. For example, most may know that a person may claim benefits at age 62 for a lesser amount compared to getting benefits at age 66. The difficulty is that many claimants are unaware of how much less it will be and what the consequences are for retirement income. For surviving spouses and divorcees facing a reduced income, it is essential that they understand the options for when and how to claim their benefits.

Divorcees and surviving spouses often struggle financially. In either case, their income is usually reduced and their lifestyle has probably not changed. 80% of widows living in poverty were not poor when their husbands were living (LIMRA International, 2005). Social Security, often the only fixed income source, becomes an essential planning tool that typically is overlooked. Yet, this is the only income source most retirees can count on for their lifetime. This article touches on some of the ways a divorcee or surviving spouse can maximize Social Security benefits.

Social Security became law at a time women were generally not in the work force. When their husbands died, it left most women in serious financial straits. To provide a measure of financial security in old age, Congress provided spousal benefits equaling one-half of their husband's worker benefit. Fortunately, Social Security benefits are gender neutral. Any benefit applying to a woman, applies equally to a man.

Lifetime Benefits

Three major Social Security benefits apply to retirees. We start with lifetime benefits. Until the structure is changed, Social Security benefits last a person's entire lifetime. While it may replace only 25 - 33% of a retiree's needed income, it represents a sizable income component. Suppose your benefit is \$2,000 at the start of retirement. If you live just 10 more years, you will receive \$304,256 in lifetime benefits. Because annual payment increases are compounded, the benefit more than doubles in 20 years to \$673,256, and reaches almost \$1.2 million if you live 30 years. That is far more than the \$74,900 average 401(k) balance in 2011 (Bloomberg, 05/11/2011).

Inflation Protection

The second benefit is inflation protection. Unlike most remaining company pension plans, Social Security has an inflation protection mechanism. Social Security benefits generally increase annually based on a Cost Of Living Adjustment (COLA) calculation. The intermediate cost scenario done by the Social Security Trust Administration forecasts an annual increase averaging 2.8% through 2085. While we cannot be sure what the actual yearly increases will be, it is a fair number to use based on historical data. With a 2.8% COLA, the \$2000 monthly benefit discussed above will be worth \$2,636 in 10 years and \$3,474 in 20 years.

Survivor Benefits

Survivor benefits comprise the third retiree benefit. When a spouse dies, the surviving spouse and dependent children may receive benefits based on a deceased spouse's work record.

The average age for new widows is 56. Thus there are many younger widows and many have young children. Survivor benefits are especially important for families with young children if a breadwinner dies. However, they are keenly important for retirees, too, as they represent the largest group of spousal survivors. (The definition of a spousal survivor is someone who has been married to a person of the opposite sex. At this time, the Federal government only recognizes marriages between a man and a woman.)

If a deceased spouse qualifies for a higher benefit than the surviving spouse, the survivor's benefit will be increased to equal that of the deceased partner. For example, if the deceased spouse was eligible for a \$2,000 benefit and the surviving spouse qualifies for \$1,200 per month, the surviving spouse's benefit becomes \$2,000. To most surviving spouses, eight hundred dollars a month is a meaningful sum.

Effective survivor planning must include Social Security. Most surviving spouses need at least two-thirds of the income enjoyed when they were part of a couple. When one person dies, the survivor experiences an important income loss, even when it is the smaller check that is lost. Survivor planning and Social Security benefit planning should be part of an overall retirement plan.

What if a person is divorced at the time an ex-spouse dies? If a marriage has lasted at least 10 years, a divorced person has two work records to consider - his and hers. Most divorcees are unaware the ex-spouse's work record could serve them, too. In fact, multiple exes of the same person may participate in a Social Security benefit. The ex's own benefit is not affected one penny. Nor is the benefit diminished for the current spouse. As an additional plus, the ex-spouse need not die for the divorcee to receive benefits. Many divorcees find it quite helpful that the ex-spouse need never know they are claiming benefits on the ex's work record.

Rules for Receiving Benefits as a Divorcee or Surviving Spouse

There are a few simple rules for receiving benefits as a divorcee or surviving spouse. S/he must have been married for 10 years to the same person and must not be remarried. If a remarriage occurs, the benefit stops.

For either a surviving spouse or divorcee, the survivor must be at least 60, or 50 if disabled. If the survivor applies for benefits prior to the survivor reaching full retirement age, benefits will be reduced.

A key planning consideration is determining when to apply for benefits. Should s/he take early benefits? Can s/he afford to wait? As importantly, on whose work record should the divorcee or surviving spouse claim benefits? To determine answers to these questions requires a complex set of analyses based on factors such as whether the claimant is working, relative benefits derived from a spouse's work record, personal health status and the availability of other income sources.

There are, however, some general observations that may influence one's decision to claim benefits. Taking early benefits can decrease a benefit by 25 - 30%. This loss is not

erased when a person reaches full retirement age. It is carried throughout one's lifetime. COLA adjustments apply - but on a smaller benefit base.

For persons born between 1943 and 1954, waiting until age 70 to take benefits increases the payout by 32%. If it is possible to wait, then the income realized is substantially higher. A \$2,230 monthly benefit at age 66 will increase to \$2,943 at age 70. Not everyone can delay this long, either due to financial considerations or health concerns. Nonetheless, it should be part of the discussion of not only when to take benefits, but also how to make any delay work financially. When considering survivor benefits, delayed benefits can have a significant impact on the survivor's quality of life.

Is it worth the wait? We have seen that the benefit check is higher. What about all those missed checks? Wouldn't it be better to take benefits early? The answer is highly individual. On average, the breakeven point - the point where waiting for benefits exceeds the benefit of taking benefits early - is about age 77 or 78. If you believe you will live longer than the breakeven point it can be worth waiting.

Underlying this discussion is the point there is not one benefit available, but many. For couples engaged in survivor planning as part of their retirement strategy, there are ways to increase the family income and certainly the future survivor's benefits. For divorcees, options exist for which work record to use and when to use it. These choices can also increase income.

The Social Security Administration is not prepared to help claimants determine the strategy that best serves the persons receiving benefits. Their job is to provide the highest benefit on the day the claimant applies. The highest benefit is based only on the work record the claimant intends to use - her own, her deceased spouse's or the ex-spouse's record. The claiming strategy needs to be determined before applying for benefits. Optimally, five years prior to retirement future retirees will seek financial counsel that includes Social Security planning. This gives time not only to build a strategy, but to implement it, too. Because Social Security is given short shrift, most people do not begin the planning process at the optimal time, if at all. The last day to put a Social Security strategy in place is the day before applying for benefits. After benefits are granted, making changes is difficult and not assured.

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Adopt a Member Benefit Mentality to Retain and Grow Your Client Base

Saturday, December 01, 2012

I am a huge proponent of professional associations. Way back in the 1990s, I worked for the International Association of Business Communicators (IABC). In addition, I have been a member of the Legal Marketing Association and have worked with several associations and groups in the legal market throughout the country.

While working at IABC, I was amazed by the amount of care the staff gave their members. Business communicators do not have very easy jobs and must answer to

several constituencies. Just as most association members should expect, the IABC member professionals found real value in their association memberships.

This brings me to my point: I believe that if a law firm treated its clients and prospects as well as associations treat their members, that firm will stand out in a crowded market and achieve the result of winning more business, keeping attorneys at the firm, and retaining a larger percentage of its clients.

We Already Provide Excellent Legal Service, What More Can We Do?

If firm leaders took advantage of the various membership benefits offered by associations to which they belong, they would realize that there is a very high value associated with these benefits. Furthermore, if these leaders applied this approach to their own businesses and offered member-type benefits for their clients, their clients and prospects would be positively surprised and, I believe, more likely to do business with these firms.

Here are some suggested benefits that a firm can offer its clients and prospects.

Complimentary CLE Opportunities

Many firms offer sessions to their in-house clients and prospects. I have seen some very impressive efforts that are greatly appreciated. Two examples that come to mind are a full-day litigation trends conference that is hosted by a Missouri law firm that attracts close to one hundred clients and a three-day conference held at a luxurious desert resort where a large international employment firm holds a conference filled with substantive legal content.

Resource Library

Firms can make it a practice to provide complimentary periodicals to their key clients.

Business Building Networking Efforts

Firm leaders should take a look at their rosters of clients to see if there are any that complement each other. I heard an example of this fantastic idea years ago: A firm had a client that was a real estate developer specializing in multi-unit apartment buildings. Another client was an Internet-based grocery delivery service (you can tell how long ago this was). An enterprising associate went out of her way to introduce these two concerns and a fruitful relationship resulted.

Complimentary Research

Firms can provide their clients with useful research that is provided from companies such as MergerMarket, Hildebrandt, ALM and others.

Complimentary Association Membership

Firms can work with various associations to sponsor the memberships of their key clients.

This is easy for you to suggest, it's not your money

I agree with this statement but am suggesting that not only are these investments in time and money well worth it but the firms that begin to think this way will truly be adding value to their relationships.

Turn the Yacht

This is a mindset. I know that to shift a law firm of any size's mindset and attitude is a very long process, much like turning an 80-foot yacht. I also know that these kinds of changes are set from the top down. A managing partner of a fairly large firm once told me that it was going to be easy to shift his firm to focus on cross-selling to key clients. When I asked him how, he responded, "Because I am telling everyone in the firm that's what we are going to do." I have also seen prominent practice groups take hold of an attitude or a different way of doing business, and when that began to benefit the firm as a whole, the rest of the firm eventually followed. The point is, an individual attorney, practice group, and firm leaders can all begin to adopt the membership mentality. I am willing to bet that it will make a positive difference.

Austin Holian has nearly 25 years of media and business development experience. Austin recently started Big Picture Business Development, focusing on helping attorneys, firms and legal service providers find the most effective and creative ways to get and remain in front of clients and prospects. Contact Austin at Austin@bigpicturebusinessdevelopment.com and (925) 849 2429

Communicating with Clients - Insights from Behind the Scenes

Saturday, December 01, 2012



I have worked for the Contra Costa County Bar Association for over 24 years. During that time, in my position as Fee Arbitration Coordinator and Lawyer Referral Service & Information Representative (LRIS), I have listened to many client complaints. Here are some insights that I hope you will find helpful.

The Initial Interaction

- When you answer the phone, identify yourself. Don't frustrate the caller. Present

yourself in a professional manner right from the start.

- Speak clearly and slowly (even on your voice mail message). Word intelligibility is lost over the phone due to many factors [1]. To compensate, you need to enunciate.

Your Fee Agreement

- Train yourself and your staff to state upfront what your fee is for the first consultation and what that consultation entails [2].
- At the beginning of the initial consultation, whether a free consultation or not, discuss the time limitations with the client. Does a ½ hour consultation mean that you will start billing them at the 31st minute? Fee arbitrations have been filed by clients because they received a bill for a “free” consultation.
- Before proceeding with any work, make sure the client understands that you are charging them from that point on.
- Remind them kindly that your relationship with them is a business arrangement. That they can help you to help them by acting accordingly. While you empathize with their plight, they have hired you and are paying you, the expert, to know the law and the procedures available through the legal system.
- Review your written fee agreement.
- Is it understandable to a lay person?
- Does it cover all your bases if a fee dispute arises? Check The State Bar of California’s website for the latest samples of fee agreements. They include a summary of the statutes that apply to fee agreements, along with advisory comments.

Client Relations - Uncertainty Reduction is Key

- Inform [3] your client about the process and the procedures that must be followed in handling their case. Keep them up-to-date on the progress of their case.
- Give the client a handout [4]. Suggestion: Prepare a flowchart that is a sample of the normal steps involved in their type of case, so they can track the progress of the case at home.
- When you notify them that there is a court date coming up, let them know why and what will be happening. Don’t wait until the last minute on the courthouse steps. That can be a daunting experience. Instead of being prepared, they will be confused and upset.
- Review your billing procedures to make sure you are in compliance with B&P Code § 6148(b).
- Make it easy for the client to read your bill. Clients need to understand why a billable item has been performed.
- Have a clear, workable procedure in place as to when and how a client should timely contact you or your office to dispute an item on their bill that they don’t understand or is perhaps a mistake in your bookkeeping. Respond to their concerns in a prompt, professional manner.
- Another thing clients don’t understand is why you charge them when they contact you with a dispute about the fees. Their reasoning is that it isn’t part of their case, so shouldn’t it be part of your doing business?
- Something to be aware of if you find yourself in in a fee arbitration, B&P Code 6203(a) states, in part, “*The award shall not include any award to either party for costs or attorney’s fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney’s fees...*”

- *An ounce of prevention is worth a pound of cure.* The State Bar of California website has a wealth of knowledge concerning professional, ethical, and fee agreement issues. You may find it beneficial to review the following information in relation to your practices.
- Arbitration Case Summaries
- Arbitration Advisories

Other Client Pet Peeves

- Clients get really upset when you discuss your personal and business life with them during a consultation and then charge them for the time.
- Clients don't understand why you charge them each time you review their file as they think you should be familiar with their case already.
- Clients think attorneys churn fees because all they see are mounting bills. This is an especially strong contention if they think "nothing is happening". Let them know if the other side is being overly contentious, or if this is just part of a long legal process. Take time to explain to your client what is happening and what your responsibility is in order to protect your client and how that will affect your fees.
 - Clients expect the attorney they hired to represent them to handle their case.
- It is especially disconcerting to a client when an associate takes over their case and the hourly rate is not adjusted accordingly; and they are billed for the associate reviewing the file in order to get up to speed on the case. They want to know why. After all, isn't that what they already paid you to do?
- And if you really want to be considered unprofessional, instead of the attorney that the client hired appearing at a court date, send an unprepared associate to court and then bill them for this "appearance".

It is important to communicate professionally and effectively with your client right from your first contact. Most clients (who, after all, are people first) will appreciate the efforts you extend to help them understand the process they are going through.

For information on the CCCBA Fee Mediation/Arbitration Program visit our website www.cccba.org. If you are interested in the information we provide to clients regarding fee disputes, or if you are representing a client in a fee dispute against another attorney, check out *Are You Having a Fee Dispute with Your Attorney?*

Also, we have prepared an article especially for the consumer: *Fee Arbitration Advice for Clients of California Attorneys* that addresses the following issues:

- Part I: Why is my attorney's bill so high?
- Part II: Help, I'm having a fee dispute with my attorney!
- Part III: How do I prepare for a fee arbitration hearing?

[1] This White Paper, *POLYCOM – The "BRAIN" Model of Intelligibility in Business Telephony* by Jeff Rodman offers an interesting technical description of this subject.

[2] The definition of consultation is the act of consulting; a conference for discussion or the seeking of advice. Advice: an opinion or recommendation offered as a guide to action, conduct, etc.

It is good to give a preamble to a prospective client to clear up any of their misconceptions. For instance, many LRIS clients assume that they are going to get all

their questions answered during their consultation, or they think that the attorney will help them fill out forms. Therefore, we have set-up a recorded message explaining that the LRIS Staff will do their best to schedule a ½ hour **meeting** with an attorney that specifically says, "If it is determined during the ½ hour consultation that you may need to hire them, they will discuss their fees with you." The staff reiterates this as necessary with the callers by saying that, "The attorneys are in private practice and charge their regular fees. They don't do any work for you during the consultation."

[3] ETHICS HOTLINER – *Connecting with Clients: Fee Agreements & Engagement Letters* by Timothy Toller

[4] No need to reinvent the wheel. The following websites offer easy-to-understand educational materials and forms that you can download and print. State Bar of California Pamphlets: <http://www.calbar.ca.gov/Public/Pamphlets.aspx>; Legal Information <http://www.calbar.ca.gov/Public/LegalInformation.aspx>; California Courts - The Judicial Branch of California SELF-HELP CENTER <http://www.courts.ca.gov/selfhelp.htm>

2013: The Year of the Taxpayer?

Saturday, December 01, 2012

The 2010 Tax Act effectively extended the Bush tax cuts (known formally as the Economic Growth and Tax Relief Reconciliation Act of 2001) through December 31, 2012. The temporary extension has not yet led to longer-term reform. If Congress does not act before the end of the calendar year, tax laws revert back to those set by the Clinton administration, in addition to the taxes related to the Affordable Care Act .

The tables below summarize the more significant changes in income and estate tax laws assuming no further legislation between now and the end of the year.

Personal Income Taxes

2012 2013 Marginal Income Tax Rates 10%, 15%, 25%, 28%, 33% & 35% Reverts to pre-2001 marginal tax bracket rates, with the top two rates at 36% and 39.6% Long-Term Capital Gains 15% (0% for taxpayers in the lowest 2 tax brackets) Top rate reverts to 20% (10% for taxpayers in the lowest tax bracket) (*Plus Investment Income Surtax*) Short-Term Capital Gains Taxed at ordinary income tax rates Taxed at ordinary income tax rates (*Plus Investment Income Surtax*) Qualified Dividends 15% (0% for taxpayers in the lowest 2 tax brackets) Taxed at ordinary income tax rates (*Plus Investment Income Surtax*) Investment Income Surtax [1] 0% 3.8% surtax on lesser of: 1) modified adjusted gross income above \$200,000 (single) or \$250,000 (married); and 2) net investment income [2] Hospital Insurance Tax 0% 0.9% surtax on earned income (part of Social Security payroll tax) above \$200,000 (single) or \$250,000 (married) [3] (Sources available on request)

[1] Also referred to as the "unearned income Medicare contribution" tax

[2] Generally, net income from interest, dividends, annuities, royalties, capital gains, certain rents, and some passive business income

[3] Impacts the employee portion of payroll tax only

Estate Taxes

2012 2013 Estate & Gift Tax Exemptions \$5,120,000 per individual (Estate and Gift Tax exemptions are unified) Reverts to 2001 thresholds: Gift Exemption = \$1,000,000; Estate Exemption = \$1,000,000 Top Estate & Gift Tax Rates 35% Reverts to 55% (Sources available on request)

Other Notable Changes in 2013

- The itemized deduction threshold for medical expenses goes from 7.5% to 10% of Adjusted Gross Income (AGI).
- The employee portion of Social Security payroll tax reverts back to 6.2% from its temporarily reduced rate of 4.2%.

Despite the myriad of potential outcomes and the excruciating amount of uncertainty, tax planning is critical. What we know about 2012 is that tax rates are favorable: marginal rates are low from a historical perspective and 2012 is likely the last year to avoid surtaxes related to the Affordable Care Act.

Whether we do get another last minute temporary extension, the 2013 rates summarized in the tables below, or something in between, taxes are likely to trend upward in one form or another.

Below are some of the many planning considerations to review when applicable. Until finality is reached from a legislative standpoint, none of the potential strategies are without risk. All must be considered carefully based on the unique facts and circumstances applicable to each client and the risk/reward trade-off implicit in one strategy versus another.

Planning Considerations

- Converting assets to Roth IRA accounts in 2012 may potentially avoid Medicare surtaxes on the conversion. Taking this step will also reduce future surtaxes on Required Minimum Distributions (RMDs) applicable to pre-tax retirement accounts (post age 70 ½). Additionally, reducing future RMD income can potentially reduce Medicare Part B and Part D premiums for active participants in the Medicare program.
- Deferring use of capital losses until 2013 may result in the offset of capital gains subject to higher tax rates.
- Increasing salary deferrals into qualified plans post-2012 and/or increasing the allocation to tax-exempt bond securities in taxable accounts may help reduce exposure to Medicare surtaxes by lowering taxable income.
- Scheduling planned medical operations in 2012 may result in a higher tax deduction if the AGI threshold is allowed to increase in 2013 to 10%.
- For clients with large estates, utilizing the unused portion of the 2012 lifetime gift exemption of \$5,120,000 (single); \$10,240,000 (married) may prove to be a one-time opportunity.

In summary, regardless of what actions, or lack thereof, Congress takes in the future, we advocate pragmatic strategies that will prove effective over time irrespective of the timing and direction of events beyond our control.

Email Aaron at aaron.waxman@bosinvest.com

What Are the CPAs Up To?

Saturday, December 01, 2012



While CPAs are not known for exciting activities, we do have a couple of interesting programs for the family law community.

CalCPA Pro Bono Program

After a lengthy hiatus, the CalCPA Pro Bono Program is back! This is truly a win/win for the CPA community, the courts and lower-income clients.

The courts benefit because CPAs will donate up to 28 hours to provide assistance in making financial determinations for support cases. The accountants win because the program allows the emerging staff and other CPAs interested in family law to gain experience working for the courts. The lower-income clients win by gaining access to resources that otherwise would not be affordable.

If you have a low-income support case, please visit www.calcpa.org/eb/probono for more information on how to have a CPA appointed by the court. There are volunteers ready and willing to work on a pro bono case. Entering a case requires completing the FamLaw-228 form located on the court's website and submitting it at the first hearing.

Tax Issues in Divorce Mini-Conference

Then on January, the 9th annual afternoon-only "Tax Issues In Divorce" conference will be returning to Concord. This year's program will be held on Thursday, January 31, 2013. As with prior years, we are presenting timely, in-depth topics affecting many of our family law cases. This year's topics include:

- Nuts and Bolts of preparing RDP tax returns
- Divorce Tax Update and Odd Consequences
- Tax Debts In Divorce
- International Tax Issues in Divorce
- Annual "Stump The Experts" panel

This program is designed to provide both accountants and attorneys with information

necessary to navigate the often overlooked aspects of family law cases. The conference is always well attended and received by the audience. Mark your calendars and register early. Quality education is a great way to start 2013!

New IRS Requirements Regarding the Reporting of Credit Card Transac...

Saturday, December 01, 2012

The ABA brought to our attention that new IRS requirements regarding the reporting of credit card transactions have the potential to negatively impact IOLTA accounts and lead to ethical violations by lawyers.

Here are the key points you should be aware of if you accept credit card payments, courtesy of the ABA Commission on IOLTA:

- Pursuant to the Housing Assistance Tax Act of 2008, credit card processing companies are required to verify and match each merchant's federal tax identification number and her legal name with those found on file with the IRS. An EXACT match is required.
- For the purposes of this requirement, lawyers who accept credit card payments are considered "merchants."
 - If there is NOT an exact match between the information provided to the credit card processing company and the information on file with the IRS, there are serious consequences:
 - Beginning January 2013, the IRS will impose a 28% withholding penalty on all credit card transactions, including those that the lawyer directs to her IOLTA account.
 - If client funds that should be in the IOLTA account are withheld due to the lawyer's failure to act and thus are not available to the client on demand, ethical issues are raised.
 - The credit card processing company should have received information from the IRS if a mismatch occurred and already notified the lawyer of the problem. However, it is not known if all processing companies have provided such notice.
 - Steps lawyers can take now to avoid an ethical violation in 2013:
 - Contact the credit card processor to determine that a match occurred
 - Correct mismatches if informed of one

For more information on this issue, see <https://www.lawpay.com/news/irs60502.pdf>

2012 MCLE Spectacular [Photos & Videos]

Saturday, December 01, 2012

Thank you to all of our speakers, presenters, panelists, sponsors, volunteers and attendees who made the 2012 MCLE Spectacular extra spectacular! Below are some pictures and video of our plenary speakers: Professor Rory K. Little, Richard North Patterson, and Carmela Castellano-Garcia.

Professor Rory K. Little, Professor of Law, University of California Hastings College of the Law

This year's Breakfast Kickoff Speaker, Professor Little is a "nationally recognized authority on criminal litigation ethics, federal criminal law, appellate litigation and constitutional issues". Locally, Professor Little is a frequent guest on KQED's Forum with Michael Krasny, offering expert insights on legal news. Introducing Professor Little is Audrey Gee, 2012 CCCBA President.

Richard North Patterson, Bestselling Author

In addition to writing international bestsellers, Patterson is also a former trial attorney, served as assistant attorney general for the state of Ohio, and was the SEC's liaison to the Watergate special prosecutor. This year's Luncheon Speaker, Richard North Patterson once said "I don't think I could have been a writer without being a lawyer. The surprise, the revelation of character - lawyers get a wonderful insight into people".

Carmela Castellano-Garcia, President and CEO, California Primary Care Association

Our Afternoon Plenary Speaker, Ms. Castellano-Garcia "leads an organization of over 650 nonprofit, community-based primary health care clinics". A graduate of the Yale Law School, she has been named in the Hispanic Business list of the 100 Most Influential Hispanics in the U.S.

Thanks again to all of our 2012 sponsors:

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See you next year!

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For more photos, please visit our Facebook page to browse the MCLE Spectacular photo album

One Million Dollars in Food from the Bar

Saturday, December 01, 2012

\$1,000,000? That's right! Next year, our Food from the Bar goal is to cross the one million dollar mark.

In 2013, our competitive food & fund drive benefiting the Contra Costa and Solano Food Bank will be in its 22nd year. Since its inception, we have raised over \$950,000 to help the Food Bank provide nutritious meals to the nearly 150,000 people the organization serves each month in our counties.



We are confident that, with your help, we can mark the million dollar milestone in 2013. To celebrate, we have a surprise in store for you:

To kick off our 2013 Food from the Bar Drive we invited Will Durst to headline our annual Res Ipsa Jokuitor Comedy Night in the Spring. Will has headlined the event several times in the past and we will be honoring our Million Dollar Man accordingly. Don't miss this fun event - more details about the Comedy Night will be announced in early 2013.

Don't want to wait until next year to support this vital cause? Visit www.foodbankccs.org today to find out how you can help now. Every donation helps, as the Food Bank can provide "the equivalent of two healthy meals" for each dollar donated. Your support is an investment in our future, as "1 in every 4 people receiving emergency food are children". Help today and then stay involved with Food from the Bar!

2012 Food from the Bar Winners

This year, our legal community raised nearly \$64,000 for the Food Bank of Contra Costa and Solano. For two weeks in May, law firms competed to raise funds and food through a variety of creative activities, including pay-to-wear-denim casual workdays, a Walnut Creek Walk-a-Thon, raffles, potluck lunches, and more. Four winners in categories based on the size of the law firms have emerged.

The winners of the 2012 Food from the Bar Competition are:

- 1 – 10 Employees: Law Offices of Suzanne Boucher
- 11 – 20 Employees: Bramson, Plutzik, Mahler & Birkhaeuser
- 21 – 50 Employees: Gagen, McCoy, McMahon, Koss, Markowitz & Raines
- 51 + Employees: Archer Norris



Recent Ethics Cases and their Impact on CA Lawyers

Saturday, December 01, 2012



A couple of recently decided ethics cases significantly impact California lawyers in practice. The first is *Kennedy v. Eldridge*, 201 Cal.App.4th 1197 (2011), which has an odd and complex fact pattern. Put simply, that case involved a custody dispute between Kayla Kennedy and Tyler Eldridge. Tyler's father, Richard Eldridge, represented Tyler in the custody dispute and Kayla brought a motion to disqualify Richard from representation, alleging that Richard had access to her personal information because Richard had represented Kayla's father in his divorce case, consulted with her stepmother who was an employee of Richard Eldridge's law firm at the time of Kayla's father's divorce, obtained prepared declarations from Kayla during the course of Kayla's father's divorce, and that Kayla had worked as a process server for the Eldridge firm.

Although Kayla herself was not the previous client, the trial court reasoned that Richard Eldridge may have acquired confidential information that could put Kayla at a disadvantage during the current custody dispute and thus held that Kayla had standing to disqualify Richard, despite the fact that she was not a former client.

Interestingly, the court applied the ABA Model Rule of Professional Conduct 3.7, prohibiting an attorney from being an advocate at a trial in which he is a necessary

witness because Richard Eldridge might have to testify against Kayla. Under California Rule of Professional Conduct 1-100, the ABA Model Rules do not apply to California lawyers, however, the court ruled that California courts could look to other ethical guidelines for guidance.

This is a big change and the first case where a California state court has held that the ABA Model Rules can apply to California lawyers. I think they allowed this because our rules are out of date and the new proposed rules are still unapproved by the California Supreme Court. They were finished years ago but with the California Supreme Court backlogged they have not had time to approve the new set of rules. This case is indicative of how the courts and eventually the State Bar may analyze ethical matters.

Another case, *Cole v. Meyer*, 206 Cal.App.4th 1095 (2012), is also noteworthy for practitioners. There, the director of a company sued the attorneys of the company's shareholders for malicious prosecution and defamation. Attorneys that served as standby counsel were also included in the suit. The court found that the underlying claims brought in the original lawsuit were not supported by probable cause.

Standby counsel asserted that they were completely unfamiliar with the case, but the Court rejected their claim and asserted that as counsel of record who appeared in all the pleadings filed, the attorneys had a duty of care to their clients that required them to know the law and exercise informed judgment. Thus, although the attorneys could rely to a certain degree on their co-counsel's investigation of the claims, they themselves were obligated to become sufficiently informed on the subject matter and evaluate their co-counsel's work under California Rule of Professional Conduct 3-110(C).

The court found that the attorneys had signed all the filings in the original case and this supported an inference that they prosecuted that action along with the primary attorney. Thus, merely lending an attorney's name to pleadings and motions can trigger potential liability for malpractice. The onus is upon the attorney lending his name to the action to become properly familiar with the facts of the case and judge the quality of their co-counsel's work.

So, be prepared to accept full responsibility for any case that you co-sign.

Carol M. Langford is an attorney specializing in attorney conduct matters. She is also an adjunct professor at the University of California Berkeley, Boalt Hall School of Law. She is a part Chair of the State Bar Committee on Professional Responsibility and Conduct.

Coffee Talk: What did you do this year that you're most proud of?

Saturday, December 01, 2012

As an immigration law practitioner, the stakes can be very high when it comes to representing clients in deportation defense cases. One of the firm's most difficult, yet rewarding cases this year was defending an undocumented woman who was a victim of domestic violence and put in immigration deportation proceedings. While three months pregnant, her United States Citizen partner reported her to Immigration Customs Enforcement and she was put in detention for over four weeks. Our office vigorously fought her deportation and after exhausting every possible legal avenue, we were able to

get her released from Department of Homeland Security Custody and are now applying a U Visa for victims of Domestic Violence on her behalf. She is now home with her two year old child and six months pregnant and awaiting to get legal status in the United States.

Spojmie Nasiri, Law Office of Spojmie Nasiri

I spent more time with my family, less time working (especially out of town), and embarked on a healthier lifestyle.

Brian Zagon, Hunsucker Goodstein PC

I am most proud of completing two GoRuck Challenges www.goruck.com. They are 10-12 hour class based physical challenges carrying 45lb backpacks over night led by current and retired Special Operation Forces (Special Forces, Marine Recon and Surface Warfare). Looking forward to a 24 hour challenge this May in DC with all participants over 40 years old.

David S. Pearson, Law Offices of David S. Pearson

I am the most proud of the fact that I started my own practice. I feel successful!

JoAnne Biernacki, Esq., JB Legal Counsel

I retired from the full time practice of the law at the end of 2007. I am proud of the fact that I have been able to balance a limited practice, (small corporations, business & living trusts, no family law), with traveling around the world, China in 2011, Europe this year, spending time with family, watching the Giants and 49ers. Congratulations to you, Josanna, you will enjoy your retirement, whatever you do.

Len Kully, CCCBA member for 51 years

Being able to take both of my daughters fishing in a tournament at Stampede Reservoir in August where they each got a trophy in the junior division.

David A. Arietta, Law Offices of David A. Arietta



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Lawyers And Social Media: The Ever-Changing Landscape

Social Media is a rapidly changing landscape, with new developments happening every day. A new social media platform like Pinterest can suddenly appear seemingly out of nowhere, and become of value (and



Spotlight



What Are the CPAs Up To?
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News & Updates

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