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practice tips

By Marshall S. Zolla

An Interdisciplinary Approach to Modern Family Law Practice

Understanding Developments in many legal specialties is now essential

Just a generation ago, many of the issues that family law practitioners confront today did not exist. Issues including surrogate parent contracts and rights,[1] custodial and visitation rights when a divorced parent relocates some distance away,[2] religious differences affecting child custody and visitation disputes,[3] and characterization and testamentary disposition of retirement plan benefits as careers change and life expectancy increases[4] reflect fundamental changes in societal norms and the evolving complexities of modern interpersonal relationships. Indeed, clients today seek advice concerning not only their money but the rights of grandparents,[5] stepparents,[6] nonmarital partners,[7] same-sex relationships,[8] premarital agreements,[9] elder law and aging parents,[10] termination of parental rights and adoption,[11] and domestic violence,[12] to name just a few.[13]

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Family law practitioners will only be able to provide guidance, sound legal advice, and wise counsel to a clientele presenting such diverse problems if they understand that attorneys—counselors-at-law in the true sense—must view families in transition as a multidimensional problem. Family law questions must be approached in an interdisciplinary manner that invokes creative, practical solutions drawn from a variety of legal disciplines.

Estate Planning

No attorney should consider a divorce proceeding complete without advising the client to update his or her estate plans. Indeed, the impact of divorce upon estate planning is so profound that the California Judicial Council has inserted an admonition on the face page of family law judgments warning litigants to review their wills and other financial planning documents.[14] Clients should be encouraged to change beneficiary designations on retirement plans and life insurance policies, transfer titles to real property, and provide evidence of their current testamentary intent in updated estate planning documents.

Marital settlement agreements and judgments often include explicit estate planning provisions. Unless practitioners understand some basic principles of estate planning law, they run the risk of drafting these provisions erroneously, which can lead to adverse results. For example, in *In re Marriage of Edwards*,[15] the marital settlement agreement required the husband to maintain a will providing that half his net estate at the time of his death would go to the parties' two children. To enforce her ex-husband's compliance with the agreement, the wife filed an Order to Show Cause to compel enforcement of the inheritance provision. The trial court, however, refused to compel an immediate change in the husband's will, and the court of appeal affirmed the trial court.

The appellate court held that the wife could only enforce the inheritance provision after the husband's death. The court explained that generally a court cannot compel persons to make wills, and specifically, individuals may change their wills prior to death, regardless of agreements. Further, the court argued, individuals have their entire lives to comply with agreements to make wills, and so breaches cannot occur—if at all—until after death. And, because living persons can dispose of their property as they wish so long as it is not done in bad faith to defeat the terms of a contract, property owned by a promisor at death cannot be identified until the promisor's death.

Edwards did not strike down the provision requiring a particular testamentary disposition, but the decision instructs practitioners that any such provision is not enforceable until the death of the testamentary spouse. Since it is not a goal of a martial settlement simply to have a claim against the other party's estate if he or she dies "out of compliance" with the agreement, more creative, concrete, and practical tools should be used to achieve the goal of ensuring that a part of the husband's estate passes on to the couple's children. For example, the marital settlement agreement could require the contemporaneous creation and funding of an irrevocable trust. However, a trust can only be created by agreement; family law courts lack jurisdiction to compel the creation of a trust for the future care or expenses of children.[16]

Practitioners also need to be mindful of how an inheritance that a spouse providing child support receives can affect the level of support. In *County of Kern* v. *Castle*,[17] the district attorney sought a child support order against a father who had inherited $240,000 in rental properties and other real estate. The trial court, which ruled that the inheritance was not income for determining child support, was reversed on appeal. The court of appeal directed the trial court to consider interest, rent, dividends, or other yield from the inheritance as income. The appellate court further instructed that if the inheritance was placed in a low-yield investment, had been used to reduce the father's debt substantially, or had improved his standard of living, the trial court has discretion to impute income that is equal to a reasonable rate of return when calculating child support.[18]

Probate, real estate, and family law intersect—perhaps unexpectedly—when Automatic Temporary Restraining Orders (ATROs), which take effect upon the filing and service of a petition for legal separation or dissolution of marriage, are implemented.[19] ATROs are a statutory creation, enacted to protect the status quo of the community estate until it is disbursed by

agreement or judgment. An ATRO prohibits a party from "transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, whether community, quasi-community or separate, without the written consent of the other party or an order of the court."[20]

An ATRO, however, does not prevent or even stay a party's right to exercise testamentary control over his or her interest in community property, a principle illustrated by *Estate of Mitchell*.[21] In that case, the husband severed four joint tenancy properties by recording a Declaration of Severance of Joint Tenancy[22] at the time that a marital dissolution proceeding was pending and ATROs were in place. Approximately one month later, the husband died; his will bequeathed his interest in these properties to his son and other legatees. Acting on the wife's petition to determine title to the properties, the probate court ruled that the husband's severance of the joint tenancy violated the ATROs.

The court of appeal, however, reversed and remanded, holding that the severance of joint tenancy by declaration was not a transfer of property subject to an ATRO because the declaration had changed neither title to the real property nor who was entitled to possession and control of the properties.[23] Thus, the severance of a joint tenancy during the pendency of a marital dissolution proceeding does not violate the ATRO. Family law attorneys need to be aware of this point of law so that they can give appropriate advice to a party who wants to change the distribution of his or her estate at death.

In *Estate of Lahey*,[24] the husband died intestate after entry of a judgment of legal separation, and his wife then sought her intestate share of the estate as a surviving spouse. The trial court rejected her claims, explaining that she was not a surviving spouse according to Probate Code Section 78(d), which excludes as a surviving spouse a person whose marital property rights were terminated by court order.[25] Though not divorced, her marital property rights had been terminated, and the trial court was affirmed.

Family law practitioners need to be aware of the technical definitions of estate planning terms of art. Words such as "gross estate," "probate estate," "taxable estate," and "net distributable estate" have specific meanings.[26] Their proper use requires referral to or consultation with estate planning counsel.[27]

Retirement Benefits Law

As retirement plan benefits have become a larger and more important component of the net worth of divorcing couples, new and complex issues have arisen. For example, it is now a common practice for employers to offer enhanced retirement benefits—not contemplated in an original divorce proceeding—to induce an employee's early retirement. California courts of appeal were divided on what claim the early retiree's ex-spouse had on these enhanced benefits[28] until the California Supreme Court resolved the issue in *In re Marriage of Lehman*.[29] *Lehman* held that the nonemployee spouse was entitled to receive an appropriate community share of the enhanced retirement benefits and that they should be apportioned according to the time rule.[30] The time rule divides an asset between its separate and community components according to the ratio of years of employment during marriage to total years of employment.[31]

Another issue of growing importance in benefits law is whether a nonparticipant ex-spouse—the alternate payee—can pass expected benefits to his or her heirs if he or she predeceases the participant-employee spouse. This practical issue of estate planning was addressed in the landmark Ninth Circuit ruling in *Alblamis* v. *Roper*,[32] which held that the federal Employee Retirement Income and Security Act of 1974 (ERISA)[33] preempts a testamentary transfer by a nonparticipant spouse of his or her community property share of undistributed pension benefits.[34] The decision was based on the supremacy clause of the U.S. Constitution and the general rule that federal law preempts state law.[35]

More recently, in *Boggs* v. *Boggs*,[36] the U.S. Supreme Court came to a similar conclusion. By a 5-4 majority the Court held that ERISA preempts state community property laws that allow a predeceased nonparticipant spouse to make a testamentary transfer of that spouse's community property interest in undistributed pension benefits. The Supreme Court's reasoning was twofold: 1) ERISA's concern for the economic security of surviving spouses—both employee and nonemployee spouses—would be compromised by permitting a predeceased spouse's heirs to receive a community property interest in the undistributed retirement benefits, and 2) the absence of statutory authority in ERISA granting a nonparticipant spouse the right to control undistributed pension benefits supports the conclusion that this right does not exist.[37] While *Boggs* did not concern a dissolution of marriage proceeding, it partially abrogates Family Code Section 2610, the California statute that abolishes the terminable interest rule in California.[38]

In California, a substantially similar issue was addressed in *In re Marriage of Shelstead*.[39] Consistent with *Boggs*, *Shelstead* held that a nonemployee spouse may not name a third party to receive undistributed pension benefits upon his or her death because the designation of the alternate payee was not permitted by ERISA. The issue in *Shelstead* was whether a Domestic Relations Order providing that Janet Shelstead could name a successor-in-interest to receive her share of community property pension benefits upon her death constituted a Qualified Domestic Relations Order (QDRO).[40] The court of appeal concluded that Shelstead's order was not a *qualified* domestic relations order, because it recognized an additional class of persons entitled to receive pension benefits beyond the specific statutory definitions provided in ERISA.

These cases do not fully resolve the issue, however, for the appeals court pointedly stressed the narrowness of its decision in *Shelstead* and expressly stated that the opinion did not hold that all testamentary devises contained in QDROs are invalid.[41] Thus, with the assistance of a benefits law expert and after clarifying the type of pension plan involved, the methods of apportionment, the naming of beneficiaries, and other sophisticated nuances, a nonparticipant ex-spouse may be able to transfer his or her community property share of benefits to third parties under a carefully crafted QDRO.

Other Disciplines

In re Marriage of Reuling[42] presents a classic example of the intersection of securities law and family law. In *Reuling*, the court addressed the tension between the duty imposed by the state to disclose assets and their value in marital dissolution proceedings and the strict nondisclosure requirements imposed under federal securities laws. The court concluded that federal insider trading prohibitions preempted state disclosure requirements. The court argued that it "flies in the face of the supremacy clause" to allow one party to invoke the authority of state law to vitiate federal law.[43]

In *d'Elia* v. *d'Elia*,[44] the court of appeal held that a marital settlement agreement to divide stock in a community estate was not a "sale" of that stock for purposes of state securities fraud law.[45] Specifically, the court held, state securities laws do not apply to marital settlement agreements.[46]

Since stock options have become a major component of compensation packages in the volatile, new e-commerce economy, their nuances have created complex issues of characterization and valuation[47]—such as the cumulative or sequential approaches to apportioning stock options in a marital dissolution context.[48] These issues were recently discussed in a case of first impression by the California Court of Appeal. In *In re Marriage of Kerr*,[49] the court addressed how and in

what manner a grant of future stock options should affect child and spousal support. The case involved the husband's unexercised Qualcomm stock options, which had enjoyed a staggering twentyfold increase in value. Underneath the glitzy facts were sound legal principles. The court held that the trial court had properly considered the husband's unexercised stock options when determining funds available for child and spousal support. Still, the court held that the amounts of the support orders were too high because the spousal support award exceeded the marital standard of living and the child support award exceeded the reasonable needs of the children.[50] The court endorsed assigning a percentage of the stock increase to support, but held that a cap on the amount is necessary to prevent an inequitable result.[51]

The significant advancements in the availability of empirical data for valuating small businesses and professional practices is another area that family law practitioners can ignore only at their peril.[52] These advancements are increasingly accepted and relied upon by courts, attorneys, fiduciaries, business brokers, and business owners.[53] The valuation of a professional practice includes fixed assets (such as equipment and leasehold interests), accounts receivable, and intangible assets (such as goodwill).[54] Valuing goodwill, in particular, has proven to be one of the biggest challenges facing the profession. Today several generally accepted methods used to determine goodwill are available: the excess-earnings approach, the multiple-of-gross-receipts approach, and the comparable-sales approach.[55] Case law now recognizes the concept of professional or business goodwill but lacks symmetry and consistency in its application.[56] Even more problematic is the valuation of executive or celebrity goodwill, an issue on which family law practitioners and their clients continue to be confronted by the absence of clear appellate guidance. Despite its advances, the business valuation profession remains as much art as science, and virtually all business valuations are potentially subject to challenge.[57]

The practice of family law is also affected by issues raised by advances in medical technology. Bioethical issues raised by medical practices such as artificial insemination, genetic engineering, cloning, surrogate parenting, birth control, living wills, euthanasia, organ donation, and autopsy[58] present critical personal, ethical, and legal dilemmas for the judicial system to resolve. Consider such recent cases as *Conservatorship of Angela D.*,[59] in which the court of appeal upheld the sterilization of an autistic woman; *Jacobsen* v. *Marin General Hospital*,[60] in which the appellate court held that when a coroner has custody over a brain-dead patient, neither the hospital nor an organ harvesting organization has a duty to seek familial consent for an organ donation; and *In re Marriage of Buzzanca*,[61] in which the court held that a married couple who had entered into a gestational surrogacy contract were the legal parents of the resulting child and that the woman implanted with an embryo created from the egg and sperm of anonymous donors and who carried the child to term was not the mother. On these and other issues, courts are called upon to guide us into a new era, to make determinations on issues unforeseen and, no doubt, unfathomable to the Framers of the Constitution and to our formative philosophers of old. Here, the legal counselor may need to rely on the wisdom of ethicists and clergy, if not other legal professionals.

Finally, the family law practitioner must always remember that the result in any case may well undergo further scrutiny in appellate courts. Most family law specialists are not familiar with either the basics or the technical nuances of appellate practice, so consultation with appellate counsel in the preparation of a complicated family law case for trial, which is not a common practice, should become one. A complete record on appeal is essential, and the best time to protect the record is at the trial court level, before any irremedial damage has been done and the case is compromised. Being aware of the proper standards of review should always be part of the strategy and presentation of a case at the trial court level.[62]

California appellate courts appreciate the depth of knowledge required of family law practitioners. As Justice David Sills of the Fourth District observed in *d'Elia* v. *d'Elia*:[63]

> Family lawyers do not get the respect they deserve. In terms of the potential breadth and complexity of issues which they face, family practitioners work in one of the most, and perhaps "the" most, exacting and demanding areas of concentration in the law. Under California's community property laws, every item of marital property presents a host of challenging issues. Not only must the family practitioner worry about the characterization and valuation of each asset, he or she often must consider future tax consequences involved in various items of community property. On top of that, support and custody issues involve different considerations, in which a human relationship—as distinct from a discrete event—is the subject of the litigation.

The diverse range of issues generated by the multiethnic, multifaceted, cyber-connected, and economically layered society of the new millennium mandate the need for interdisciplinary perception and wise counsel. ■

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[1] Scientific advances have not only required the legal system to resolve questions of uncharted complexities concerning surrogate contracts and determination of paternity but also to question the identity of the legal mother. *See* In re Marriage of Buzzanca, 61 Cal. App. 4th 410, 72 Cal. Rptr. 2d 280 (1998); In re Marriage of Moschetta, 25 Cal. App. 4th 1218, 30 Cal. Rptr. 2d 893 (1994); Johnson v. Calvert, 5 Cal. 4th 84, 19 Cal. Rptr. 2d 494 (1993).

[2] In re Marriage of Burgess, 13 Cal. 4th 25, 51 Cal. Rptr. 2d 444 (1996).

[3] *See* Marshall S. Zolla, *Religious Differences in Child Custody and Visitation Disputes*, LOS ANGELES LAWYER, Nov. 1998, at 23.

[4] In re Marriage of Shelstead, 66 Cal. App. 4th 893, 78 Cal. Rptr. 2d 365 (1998).

[5] Troxel v. Granville, 120 S. CT. 2054 2000 WL 712807 (U.S. June 5, 2000) (holding that a Washington state statute authorizing nonparental visitation rights was unconstitutional as applied to the children's mother and her family because it violated her Fourteenth Amendment due process right to make decisions concerning the care, custody, and control of her children). *See also* In re Marriage of DeRogue, 74 Cal. App. 4th 1090, 88 Cal. Rptr. 2d 618 (1999) (grandparents' motion to strike "unflattering allegations" in custody dispute declaration

denied).

[6] In re Marriage of Lewis and Goetz, 203 Cal. App. 3d 514, 250 Cal. Rptr. 30 (1988) (holding that the trial court lacked subject matter jurisdiction to grant custody to a stepparent). Then-existing CIV. CODE §4351.5 (now FAM. CODE §3101) permits only visitation with respect to a stepparent. Perry v. Superior Court, 108 Cal. App. 3d 480, 166 Cal. Rptr. 583 (1980) (holding that a trial court does not have jurisdiction to award visitation to a stepparent with respect to a child not of the marriage).

[7] Marvin v. Marvin, 18 Cal. 3d 660, 134 Cal. Rptr. 815 (1976); Byrne v. Laura, 52 Cal. App. 4th 1054, 60 Cal. Rptr. 2d 908 (1997); Maglica v. Maglica, 66 Cal. App. 4th 442, 78 Cal. Rptr. 2d 101 (1998).

[8] Baehr v. Lewin, 852 P. 2d 44 (Haw SCT 1993); Jhordan C. v. Mary K., 179 Cal. App. 3d 386, 224 Cal. Rptr. 530 (1986) (nonbiological lesbian parent joined in paternity action brought by sperm donor). Curiale v. Reagan, 222 Cal. App. 3d 1597 (1990) (nonbiological parent in lesbian relationship lacks standing to seek custody or visitation with child).

[9] In re Marriage of Pendleton and Fireman, 2 Civ B113293, 62 Adv Cal. App. 4th 751, 72 Cal. Rptr. 2d 840, *rev. granted* (June, 17, 1998) (S070018); In re marriage of Bonds, 1 Civ A075328, 71 Adv Cal. App. 4th 290, *modified* 72 Adv Cal. App. 4th 94d, 83 Cal. Rptr. 2d 783, *rev. granted* (July 21, 1999) (S079760).

[10] Elder Abuse and Dependent Adult Civil Protection Act, WELF. & INST. CODE §§15600 *et seq.*; *Dying to Sue*, CAL. LAWYER, Feb. 2000, at 41; CALIFORNIA CONTINUING EDUCATION OF THE BAR, CALIFORNIA ELDER LAW: AN ADVOCATE'S GUIDE ¶1.2.

[11] Adoption of Kelsey S., 1 Cal. 4th 816, 4 Cal. Rptr. 2d 615 (1992); Adoption of Michael H., 10 Cal. 4th 1043, 43 Cal. Rptr. 2d 445 (1995).

[12] Domestic Violence Prevention Act, FAM. CODE §§6200-6390.

[13] It goes without saying that attorneys practicing in other fields of law, including real estate, estate planning, retirement plan benefits, corporation and securities law, and business and civil litigators must be aware of the family law issues that affect their respective areas of practice.

[14] Judicial Council Form 1287, Judgment (Family Law) contains the following notice: "Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse."

[15] In re Marriage of Edwards, 38 Cal. App. 4th 456, 45 Cal. Rptr. 2d 138 (1995).

[16] In re Marriage of Chandler, 60 Cal. App. 4th 124, 70 Cal. Rptr. 2d 109 (1997).

[17] County of Kern v. Castle, 75 Cal. App. 4th 1442, 89 Cal. Rptr. 2d 874 (1999), *modified and partial pub. ord.* (Oct. 28, 1999).

[18] *Id.* at 1453, 1454; *see also* In re Marriage of Reynolds, 63 Cal. App. 4th 1373, 74 Cal. Rptr. 2d 636 (1998), *reh'g denied.*

[19] FAM. CODE §2040(a); FAM. CODE §233(a).

[20] FAM. CODE §2040(a).

[21] Estate of Mitchell, 76 Cal. App. 4th 1378, 91 Cal. Rptr. 2d 192 (1999).

[22] Pursuant to CIV. CODE §683.2(a)(2).

[23] Estate of Mitchell, 76 Cal. App. 4th at 1395.

[24] Estate of Lahey, 76 Cal. App. 4th 1056, 91 Cal. Rptr. 2d 30 (2000), *rev. denied* (Mar. 1, 2000).

[25] *Id.* at 1058, 1060.

[26] "Gross estate" is defined for federal estate tax purposes in I.R.C. §2031; "probate estate" refers to those assets subject to probate administration (excluding, e.g., assets in a living trust, joint tenancy property, life insurance death benefits, or retirement plan benefits that are not subject to probate administration); "taxable estate" is defined for federal estate tax purposes in I.R.C. §2051; "net distributable estate" can be expressed as an amount equal to the gross value of assets, less applicable federal and state taxes, less liabilities—the term is a fact-specific provision as defined in the testamentary instrument. *See also* PROB. CODE §§20-88.

[27] *See* Horne v. Peckham, 97 Cal. App. 3d 404, 158 Cal. Rptr. 714 (1979) (holding that referral to a specialist is required when the responsible attorney has no special expertise on the legal issue involved).

[28] In re Marriage of Gram, 25 Cal. App. 4th 859, 30 Cal. Rptr. 2d 792 (1994) (enhanced early retirement benefit held community property; adjusted by time-rule formula); In re Marriage of Frahm, 45 Cal. App. 4th 536, 53 Cal. Rptr. 2d 31 (1996) (early retirement benefit held separate property of employee-spouse); In re Marriage of Oddino, 16 Cal. 4th 67, 65 Cal. Rptr. 2d 566 (1997) (enhanced early retirement benefits payable under "Rule of 75" subsidy to plan participants).

[29] In re Marriage of Lehman, 18 Cal. 4th 169, 74 Cal. Rptr. 2d 825 (1998).

[30] *Id.* at 187.

[31] In re Marriage of Brown, 15 Cal. 3d 323, 161 Cal. Rptr. 502 (1976).

[32] Alblamis v. Roper, 937 F. 2d 1450 (9th Cir. 1991).

[33] Employee Retirement Income and Security Act of 1974, 29 U.S.C. §§1001 *et seq.*

[34] Alblamis, 937 F. 2d at 1452, 1460.

[35] *Id.* at 1459 and n.16; U.S. CONST. art. VI, §2.

[36] Boggs v. Boggs, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997).

[37] *Id.* at 848.

[38] The terminable interest rule provides that community property interests in accrued pension benefits end on the death of either spouse and are not alienable, assignable, or inheritable.

[39] In re Marriage of Shelstead, 66 Cal. App. 4th 893, 78 Cal. Rptr. 2d 365, *opinion after transfer from Cal. Sup. Ct.* (Sept. 15, 1998).

[40] A QDRO is a type of domestic relations order that creates or recognizes an alternate payee's right to, or assigns to an alternate payee, the right to a portion of the benefits payable with respect to a participant under a plan. 29 U.S.C. §1056(d)(3)(B)(i).

[41] Shelstead, 66 Cal. App. 4th at 904-05.

[42] In re Marriage of Reuling, 23 Cal. App. 4th 1428, 28 Cal. Rptr. 2d 726 (1994), *reh'g denied.*

[43] *Id.* at 1437.

[44] d'Elia v. d'Elia, 58 Cal. App. 4th 415, 68 Cal. Rptr. 2d 324 (1997), *modified and reh'g denied* (Nov. 14, 1997), *rev. withdrawn* (Jan. 14, 1998).

[45] *Id.* at 425-427.

[46] *Id.* at 418.

[47] *See in this regard* In re Marriage of Hug, 154 Cal. App. 3d 780, 201 Cal. Rptr. 676 (1984); In re Marriage of Nelson, 177 Cal. App. 3d 150, 222 Cal. Rptr. 790 (1986); In re Marriage of Harrison, 179 Cal. App. 3d 1216, 225 Cal. Rptr. 234 (1986); In re Marriage of Walker, 216 Cal. App. 3d 644, 265 Cal. Rptr. 32 (1989).

[48] The cumulative approach treats each segment of options separately and applies a different time line to each segment. The sequential approach treats each option or grant of option as being earned sequentially with the period of earning for each option starting upon completion of earning of the previous option. Marriage of Hug, 154 Cal. App. 3d at n.36, established that trial courts have broad discretion to select an equitable method of apportionment of stock options between community property and separate property to achieve substantial justice between the parties in a given case. *See* George Norton, *Stock Options and Deferred Compensation Update 2000, in* L.A. COUNTY BAR ASSOC. FAM. L. REFERENCE BOOK 6077 (2000).

[49] In re Marriage of Kerr, 77 Cal. App. 4th 87, 91 Cal. Rptr. 2d 374 (1999).

[50] *Id.* at 90, 95, 97.

[51] Id. at 95, 97. The burden of establishing a reasonable ceiling is placed on the high income earner, that is, the holder of the stock options. *Id.* at 96. Nor should the tax treatment of stock options be overlooked in the analysis of this uncharted area. *See also* In re Marriage of Ostler & Smith, 223 Cal. App. 3d 33, 272 Cal. Rptr. 560 (1990).

[52] PRATT ET AL., VALUING SMALL BUSINESSES AND PROFESSIONAL PRACTICES (3d Ed. 1998).

[53] *Id.* at 13.

[54] *Id.*

[55] *See* Jack Zuckerman et al., *Legal Tender: Appraising a Law Practice Can Be the Most Contentious Issue in a Divorce Involving a Lawyer*, LOS ANGELES LAWYER, Mar. 1995, at 26.

[56] Mueller v. Mueller, 144 Cal. App. 2d 245, 301 P. 2d 90 (1956) (dental laboratory); Golden v. Golden, 270 Cal. App. 2d 401, 75 Cal. Rptr. 735 (1969) (solo medical practice); In re Marriage of Lopez, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974) (law practice); Marriage of Foster, 42 Cal. App. 3d 577, 177 Cal. Rptr. 49 (1974) (physician); In re Marriage of Aufmuth, 89 Cal. App. 3d 446, 152 Cal. Rptr. 668 (1979) (law practice); Marriage of Webb, 94 Cal. App. 3d 335, 156 Cal. Rptr. 334 (1979) (private investigator); Marriage of Winn, 98 Cal. App. 3d 363, 159 Cal. Rptr. 554 (1979) (horse slaughter and auction business); In re Marriage of Rives, 130 Cal. App. 3d 138, 181 Cal. Rptr. 572 (1982) (raising and selling queen bees); In re Marriage of King, 150 Cal. App. 3d 304, 197 Cal. Rptr. 716 (1983) (computer consulting business); In re Marriage of Hargrave, 163 Cal. App. 3d 346, 209 Cal. Rptr. 764 (1985) (manufacturer's representative); In re Marriage of Slivka, 183 Cal. App. 3d 159, 228 Cal. Rptr. 76 (1986) (partnership interest in Southern California Permanente Group); In re Marriage of Garrity/Bishton, 181 Cal. App. 3d 675, 226 Cal. Rptr. 485 (1986) (law practice).

[57] PRATT ET AL., *supra* note 52, at 13.

[58] ELLIOT N. DORFF, MATTERS OF LIFE AND DEATH: A JEWISH APPROACH TO MODERN MEDICAL ETHICS (The Jewish Publication Society 1998).

[59] Conservatorship of Angela D., 70 Cal. App. 4th 1410, 83 Cal. Rptr. 2d 411 (1999), *reh'g denied* (Apr. 28, 1999).

[60] Jacobsen v. Marin Gen. Hosp., 192 F. 3d 881 (9th Cir. 1999).

[61] In re Marriage of Buzzanca, 61 Cal. App. 4th 410, n.1, 72 Cal. Rptr. 2d 280 (1998).

[62] Honey Kessler Amado, *The Compleat Litigation Team: The Role of Appellate Counsel in Litigation*, L.A. COUNTY BAR ASSOC. LITIGATION NEWSLETTER, Fall 1994. *Early Warning: Planning for an Appeal Can Start as Early as the Inception of the Lawsuit and Must Continue Throughout the Litigation*, L.A. DAILY J., Mar. 1, 2000, at 7; Alex Kozinski, *In Praise of Moot Court—NOT!*, 97 COLUM. L. REV. 178, 188 (1997).

[63] d'Elia v. d'Elia, 58 Cal. App. 4th 415, 418 n.2, 68 Cal. Rptr. 2d 324 (1997), *modified and reh'g denied* (Nov. 14, 1997), *rev. withdrawn* (Jan. 14, 1998).