by Marshall S. Zolla and Deborah Elizabeth Zolla

DIVIDED DUTY

The evolving mixture of fact and law in estate planning and family law compels closer communication and coordination between the two disciplines

The observation in Othello, "I do perceive here a divided duty," should teach us all a needed lesson.[1] When a married couple retains estate planning counsel to prepare their estate plan, the goal is to prepare for death and taxes, often cited as the only two certainties in life. Divorce is not within the customary scope of contemplation. "Ay, there's the rub[,]" as Hamlet reminds us.[2]

Unintended consequences often uncloak themselves incident to preparation of estate planning documents. How often have we heard that estate planning counsel characterized assets as one spouse's separate property in a transmutation agreement, property agreement, or a general assignment to a trust, without ascertaining whether such property was actually that party's separate property? Or that a client was asked to sign an agreement to transfer separate property to community property for purposes of gift tax exemptions or a step-up in basis? Or that a client transferred community property assets to a separate property irrevocable gift trust to remove such assets from a party's taxable estate? These are familiar

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stories, which have significant impact in a marital dissolution proceeding with respect to division of community property and Family Code Section 2640 reimbursement rights.

Prudent estate planning counsel look at such practical estate planning vehicles through their understandable lens of expertise. They often do not contemplate, however, how such estate plan documents can dramatically impact a spouse's rights in a future marital dissolution proceeding. It is difficult to foresee the future when a couple retains joint representation of estate planning counsel, but expanding peripheral vision to examine how such documents may impact spouse's rights and obligations in a potential divorce is not only advisable but also a practical necessity. Similarly, family law practitioners must expand their vision when a client first retains them so they can obtain and familiarize themselves with the client's estate planning documents. More often than not, family law practitioners do not reach out to a client's estate planning attorney to find out what, if any, transmutation agreements, property agreements, or irrevocable or revocable trusts exist and to carefully review these estate plan documents. Failure on the family law practitioner's part to educate him- or herself on what agreements or trusts the client signed prior to the commencement of a divorce proceeding is a fundamental mistake. It is also below the standard of care for family law practitioners to represent a client without the benefit of consulting with experienced estate planning counsel, since nearly every family law matter involves an overlay of crossover estate planning issues.

Unintended Results

A common scenario exists in which estate planning counsel represents both husband and wife. A less common scenario (but still a practical one) exists in which estate planning counsel represents both parties but advises one party in the context of a prenuptial or postnuptial agreement, or a divorce. An even less common scenario (one ridden with conflicts) occurs when an estate planning attorney represents one party to a prenuptial or postnuptial agreement yet creates trusts for the other party during negotiation of a prenuptial or postnuptial agreement, with the understanding that in the immediate future the estate planning attorney will represent both parties.

Many couples prefer to retain joint counsel for a matter on which they believe they have common interests, like their estate plan. Simultaneous representation of two clients is defined as "concurrent representation." Under Rule 1.7(a)-(b) of the California Rules of Professional Conduct, counsel may accept representation of clients whose interests do or may conflict, provided each client gives "informed written consent." What happens, however, if one spouse contacts the estate planning lawyer and wants to change his or her testamentary disposition or beneficiary designations? Does the joint lawyer have an obligation to advise the other spouse? Does the dual representation engagement letter define the duty of loyalty? How is the inherent conflict handled? To disclose, or not to disclose, "that is the question."[3]

The complexities, ambiguities, and practical realities of concurrent representation and attendant "informed consent" waivers

were given recent attention by the California Supreme Court. In *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Company, Inc.*,[4] the majority concluded that Sheppard Mullin's concurrent representation of J-M Manufacturing and South Tahoe Public Utility District violated then Rule 3-310(C)(3) of the California Rules of Professional Conduct, and therefore rendered the engagement agreement between Sheppard Mullin and J-M Manufacturing unenforceable.[5] The court stated that because Rule 3-310(C)(3) embodied a core aspect of the duty of loyalty, the disclosure required for informed consent to dual representation must be measured by a standard of loyalty. To be properly informed, a client's consent to dual representation must be based on disclosure of all material facts the attorney knows and can reveal.[6] An attorney or law firm that knowingly withholds material information about a conflict has not earned the confidence and trust the rule was designed to protect. The Sheppard Mullin firm, by asking J-M Manufacturing to waive current conflicts as well as future ones, did not put J-M Manufacturing on notice that a current conflict might exist.[7]

There exists a distinct difference between waiver of an actual existing conflict and a blanket advance waiver. Retainer agreements of many estate planning counsel contain waivers of both existing conflicts and potential advance conflicts. The *Sheppard Mullin* majority, in Footnote 9, took occasion to comment that several federal courts applying California law have declined to enforce blanket advance waivers on grounds that they insufficiently disclose conflicts of interest. Because the *Sheppard Mullin* court dealt only with disclosure and waiver of a known existing conflict, the California Supreme Court declined to decide whether those federal decisions refusing to enforce blanket advance waivers are correct. The issue—one of practical importance—therefore remains open and deserving of continued careful scrutiny.[8]

The validity and enforcement of advance conflict waivers when estate planning counsel agree to dual representation and include in their engagement or retainer letter an advance conflict waiver, create risk and uncertainty because the issue is not free from doubt, according to Footnote 9 of the *Sheppard Mullin* opinion. California State Bar Formal Opinion 1989–115 provides that there is no per se ethical prohibition against an advance conflict waiver. Informed written consent is an essential ingredient of a conflict waiver, and that means that disclosure of the potential conflict must be specific enough and the consent must be properly informed. There must be an accurate level of disclosure of a future event posing a conflict and a reasonably accurate disclosure of the potentially foreseeable adverse consequences.

Family law and estate planning counsel can each provide more thoughtful and protective representation of their clients if they develop a more comprehensive understanding and appreciation of how their two worlds intersect.

Rule 1.7 of the California Rule of Professional Conduct illuminates the tension between adequate future prediction and informed written consent. For purposes of this rule 1) "disclosure" means informing the client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client, and 2) "informed written consent" means the client's written consent to the representation following adequate written disclosure. The *Sheppard Mullin* majority illuminated a fine point when it added:

> Whether the client is an individual or a multinational corporation with a large law department, the duty of loyalty demands an attorney or law firm provide the client all material information in the attorney or firm's possession…. Nor can it evaluate for itself the risk that it may be deprived, via motion for disqualification, of its counsel of choice….[9]

In any event, the *Sheppard Mullin* majority held that clients should not have to investigate their attorneys. Simply put, withholding available information about a known, existing conflict is not consistent with informed consent. The majority recognized, in Footnote 8 of its opinion, that client confidentiality may, in some cases, limit what a law firm can tell one client about its representation of another.[10]

A case highlighting the risks of concurrent representation in the family law context is *In re Marriage of Friedman*.[11] This was a case that mixed conflicting issues of dual representation, conflicts of interest, alleged ethical violations, interface of estate planning and family law, alleged breach of fiduciary duty, and undue influence. The wife was an attorney for a prestigious law firm. The husband was diagnosed with leukemia and about to start a forensic consulting business. Shortly after the marriage, the husband consulted his attorney, seeking advice to protect his new wife from potential creditors. The attorney met with both parties, recommended a postnuptial agreement and explained that he represented the husband alone and that the wife would have to retain separate counsel or represent herself. The attorney mailed an engagement letter and a draft postnuptial agreement. Representing herself, the wife made certain changes to the proposed agreement, which were incorporated into the final agreement that both parties signed. The attorney referred the couple to another attorney in his firm for creation of an estate plan. Thereafter, the husband recovered from his cancer diagnosis, and his forensic consulting business flourished, considerably beyond the couple's expectations.

Approximately seven to eight years later, marital problems arose. The wife eventually sought a marital dissolution in which she claimed that the postnuptial agreement was invalid and unenforceable because the attorney who drafted the agreement failed to obtain a written conflict of interest waiver pursuant to then Rule 3–310(C). The trial court found that the attorney who drafted the postnuptial agreement did not represent the wife, that she signed the agreement voluntarily, and held the agreement valid and enforceable.

The appellate court affirmed and rejected the wife's argument that the concurrent representation by the drafting attorney's firm on the couple's estate plan created a conflict of interest that rendered the postnuptial agreement unenforceable. The appellate court held that the couple had no actual conflict of interest at the time of the postnuptial agreement and that the drafter of the postnuptial agreement had advised the wife of the potential conflict. There was no misrepresentation, fraud, or overreaching, and, therefore, the wife signed the postnuptial agreement voluntarily. Citing *In re Marriage of Egedi*,[12] the *Friedman* court observed that any technical violation of then existing Rule 3–310 "was not serious enough to render the agreement unenforceable."[13] The arguments advanced by the wife to invalidate the postnuptial agreement, while having been rejected by both the trial court and the court of appeal, still serve as

a warning of the risks and dangers of concurrent representation in connection with estate plans and the danger of handling marital agreements in which one party is unrepresented by counsel.

A review of engagement/retainer letters of estate planning counsel reveals that many give the law firm the right, in the event of a future conflict, to elect to represent one of the two parties. A failure to disclose or advise the clients at the outset how and when the confidential privilege and the duty of loyalty will operate if and when a future conflict arises should be addressed and made clear in the initial engagement.

Transmutation Pitfalls

California case law informs us that documents prepared for estate planning purposes are not confined to the estate planning context. Unintended consequences can and often do occur and can materially impact both party's rights in an eventual marital dissolution proceeding.

Judicial interpretation follows the seminal transmutation case from the California Supreme Court in *Estate of MacDonald*,[14] which holds that a valid and enforceable transmutation of property requires a writing with an express reference to the change in character or ownership of the property. The agreements in *MacDonald* did not meet the test.[15] Since *MacDonald*, courts and practitioners have struggled with the question as to what language meets the requirement in Family Code Section 852 of an "express declaration." No magic language is needed, but a clear and definitive intent to transfer must exist. Courts have unanimously held that extrinsic evidence cannot be considered in determining whether or not a transmutation exists.[16] Transmutations can be effectuated in estate plans, transmutation agreements, deeds, and other instruments when there is clear intent to transmute property by the adversely affected party.

A trilogy of cases illustrates the nuanced inconsistency of estate planning-family law issues as to whether or not a valid transmutation has taken place in estate planning documents. In *In re Marriage of Starkman*,[17] husband and wife retained estate planning counsel to prepare testamentary documents. The attorney created a family revocable trust, and a general assignment was signed conveying all assets into the trust. "Settlors agree that any property transferred by either of them to the Trust…is the community property of both of them unless such property is identified as the separate property of either Settlor."[18] The attorney sent a letter nearly a month after the husband signed the general assignment outlining the estate plan and advising both husband and wife of the community property presumption unless separate property was clearly defined. Stock brokerage forms were later signed by the husband to transfer specific assets into the trust without any characterization regarding whether such stock was community or separate property.[19]

When the parties later separated, the husband revoked the family trust. The wife contended that the trust, the general assignment, and the stock brokerage forms taken together established her husband's express intent to change ownership of his separate property into community property. Both the trial court and court of appeal rejected that contention, finding that there was no express declaration of transmutation in any of the documents.[20] The letter sent by the attorney was inadmissible extrinsic evidence sent a month after the assignment had been signed, and the husband was entitled to all his substantial separate property contributed to the trust. This is a telling example in which family law and estate law intersect and conflict. The court of appeal made clear that "[a] party does not 'slip into a transmutation by accident.'"[21] The estate planning attorney attempted to avoid probate and ensure orderly administration of the settlors' property in the event of the death or incapacity of either settlor. A key lesson of *Starkman* is that all estate planning documents must be carefully reviewed for language that unambiguously changes characterization or ownership of property and not just the trust and the will but all documentation that purportedly transfers assets.

In contrast, *In re Marriage of Holtemann*,[22] the husband owned considerable assets, whereas his wife had few. To eliminate the need for probate and minimize taxes in the event of the husband's death, the parties consulted an estate planning attorney to prepare a living trust and signed a document titled "Spousal Property Transmutation Agreement." Such agreement transferred the husband's separate property to the community property of the parties and provided that the document was "not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties."[23] The trial court ruled in the marital dissolution proceeding that later ensued that the documents did constitute an effective transmutation and was affirmed by the court of appeal. The documents were prepared for estate planning purposes, but documents in numerous places contained the requisite express, unequivocal declaration of transmutation language, unlike in *Starkman*. The court of appeal found the husband's argument that the transmutation was only for estate planning purposes was an attempt "to have his cake and eat it too."[24] The appellate court was unsympathetic to the husband because the estate planning attorney sent a letter informing him of the consequences of the agreement and recommended that he retain separate counsel. The court of appeal also emphasized that notwithstanding the transmutation from his separate property to community property, the husband still retained his Family Code Section 2640 reimbursement rights. This case is instructive for both estate planning counsel and family law practitioners. While the husband was attempting to secure a tax advantage, he lost significant assets. The threshold question to be confronted is: What must an estate planning attorney do to properly warn a client of the irreversible consequences of a transmutation? Is it sufficient to write a letter to recommend separate counsel? *Holtemann* underscores the importance of crossover issues in family law and estate planning and the paramount need for a collaborative and communicative approach. Estate planning counsel must be aware of the marital dissolution consequences of their documents and make certain that clients fully understand the consequences. The admonition that a transmutation is effective for all purposes, including dissolution of marriage, is an essential disclosure.

Likewise, in *In re Marriage of Lund*,[25] the court of appeal followed the reasoning and conclusion of *Holtemann* in finding a valid and effective transmutation in the estate planning documents at issue. The trust document provided:

> [It was] intended as a document of transfer for estate planning purposes to the extent necessary to conform the record ownership of the property of the parties to the within Agreement. It is not intended by this Agreement to make any transfer of property between the parties…but this Agreement is executed solely for the purpose of recognizing as between the parties the type of ownership of the properties acquired and now owned by them.[26]

The trial court had determined that the written instrument did not qualify as a valid transmutation because the agreement was ambiguous. The court of appeal reversed, finding that the agreement was not ambiguous and constituted a valid transmutation. The court of appeal also found that no undue influence existed. The *Lund* court of appeal, interpreting the agreement as a

whole and analyzing it in the shining light of *Holtemann*, concluded that it unambiguously effected a transmutation of the husband's separate property into community property.

An emergent trend in recent years is that courts carefully scrutinize transmutations and often find that no effective transmutation exists. In 2015, *In re Marriage of Lafkas*[27] was a situation in which the husband, during marriage, modified a partnership agreement in which he owned a one-third interest in a real estate partnership to add his wife onto the title. The court of appeal found:

> The modification agreement does not meet the requirements for a valid transmutation of Lafkas's separate property to community property under Section 852, because it does not contain any express declaration that the characterization or ownership of the property is being changed. The modification signed by Lafkas simply added Doane's name as owner of an undivided one-third interest as husband and wife. A valid transmutation requires more than simply naming one or both spouses as the owner in a title document. [Citation.] Additional language is required to show that the adversely affected party understands the character of his or her property is being changed. The language of the modification agreement is not sufficient to meet the requirements of an express declaration under Section 852.[28]

Also decided in 2015 was *In re Marriage of Bonvino*,[29] in which the court of appeal found that no transmutation existed with respect to the husband's Westlake Village home merely because the loan in connection with the property was community property. The court summarized the cases when it determined that no transmutation existed.[30] In addition to citing to *In re Marriage of Starkman*, *Bonvino* discussed *In re Marriage of Barneson*,[31] in which documents signed by the husband directing a brokerage account to transfer stock into the wife's name was not effective to create a transmutation because a direction by a spouse to transfer stock into the other spouse's name did not unambiguously indicate the ownership of the stock was being changed. *Bonvino* also discussed *Estate of Bibb*[32] in which registration of a separate property automobile in the name of the husband "or" wife was not a valid transmutation, because the DMV printout was not signed by the adversely affected spouse and did not contain an unambiguous expression of intent to change character. A deed granting property from husband to husband and wife as joint tenants, however, was a valid transmutation, because it was signed by the adversely affected spouse.[33] *Bonvino* further cited *In re Marriage of Leni*[34] in which escrow instructions to split proceeds from the sale of community property 50/50 did not satisfy transmutation requirements because there was no express declaration that the character of the property was being changed.

A more recent case continuing the trend finding that no effective transmutation exists is *Begian & Sarajian*.[35] In that case, the court of appeal held that a trust transfer deed signed by the husband, which granted certain real property to the wife, was not a valid transmutation because it did not expressly state what interest in the property was being transferred and could have been interpreted in more than one way. The wife contended that use of the word "grant" unambiguously demonstrated the intention of the parties to change the characterization and ownership of the subject real property. The husband maintained that the document was prepared and signed in connection with an estate plan, as demonstrated by the document's title, and that the document made no mention of the exact property rights being changed. The trial court found that the trust transfer deed was a valid transmutation because the use of the word "grant" is the historically operative word for transferring interests in real property. It reasoned that the parties' use of that word in the trust transfer deed satisfied the explicit express declaration requirement of Section 852. The court of appeal reversed, holding that the deed was fairly susceptible of at least two interpretations, which left the court with the default presumption that the interspousal transaction was not a transmutation of the husband's community property interest.

The *Begian* opinion determined that the rule and rationale of *In re Marriage of Barneson*[36] (where no transmutation was found by a direction of a spouse to transfer stock into the other spouse's name) was more applicable than the finding and rationale in *Estate of Bibb*[37] (in which a grant deed's language transferring property from the husband's separate property to the parties as joint tenants where the property would become the wife's separate property upon the husband's death), which met the express declaration requirement of Section 852(a). *Begian* also cited the recent case of *In re Marriage of Kushesh & Kushesh-Kaviani*,[38] in which the court of appeal opined that an interspousal transfer deed reflecting an interspousal transaction was even more persuasive for a transmutation to exist than *Bibb*. Citing both *Starkman* and *Lund, Begian* echoed that in deciding whether a transmutation has occurred, the written instruments must be interpreted independently, without resort to extrinsic evidence. Further, the court of appeal is not bound by the interpretation given to the written instrument by the trial court. The correct standard for review is de novo, exercising the independent judgment of the appellate tribunal to determine whether the proffered writing contains the requisite language to effectuate a transmutation under Section 852(a).

Another trap inherent in transmutation documents is that even with effective language of intended transmutation, the spouse who transmutes the property is still entitled to Family Code Section 2640 reimbursement in the event of a marital dissolution, unless that spouse waives such reimbursement right in writing. The right of reimbursement, and its waiver, are often overlooked in the estate planning context, leading to more potential conflicts and disputes in subsequent and often unanticipated marital dissolution proceedings. A debate exists whether Section 2640 reimbursement rights continue after death. The 2640(b) provision, "In the division of community estate under this division," is understood as limiting reimbursement rights to division of the community estate under the Family Code, but inapplicable after a death, because the words "under this division" means the reimbursement right applies here but nowhere else.[39] A contrary view holds that no authority exists for this narrow linguistic interpretation, and that seminal California Supreme Court authority rejects this overly restrictive construct.[40] This lack of clarity makes the absence of an express Section 2640 waiver in estate planning transmutation instruments even more fraught with potential peril.

No Undue Influence Presumption

Here again the two disciplines intersect. Assembly Bill 327 amended Family Code Section 721 and added Probate Code Section 21385 relating to estates and trusts.[41] This legislation prevents application of the presumption of undue influence regarding testamentary transfers, including wills and trusts. The legislation establishes that in the testamentary context (i.e., when one spouse makes a donative transfer to the other spouse and that transfer only becomes effective at death), a presumption of undue influence must come from some other statutory or common-law source, not from Section 721. The legislation was sponsored by the

Executive Committee of the Trusts and Estates Section of the California Lawyers Association.[42]

The legislation was expressly designed to supersede the holding in *Lintz v. Lintz*,[43] which applied Section 721 and its presumption of undue influence to interspousal testamentary transfers. The reasoning for this legislation was that the *Lintz* holding harmed the public interest because it determined that the most common disposition in revocable trusts (i.e., leaving property to one spouse after one dies) is presumptively invalid. The concern was that the *Lintz* holding undermined both the Family Code and the Probate Code by applying the spousal fiduciary duty in Section 721 in a context traditionally governed by the Probate Code (i.e., the context of donative transfers that occur on death).[44] Other provisions of law with respect to the definition of and applicability of undue influence, aside from Section 721, remain in full force and effect.[45] These include the definitions of undue influence in Probate Code Section 86 and Welfare and Institutions Code Section 15610.70 as well as case law, which supplement the common-law meaning of undue influence without superseding or interfering with the operation of that law.[46]

The underlying substantive principles relating to undue influence are applicable to both wills and living trusts, as set forth by the California Supreme Court in *Rice v. Clark*.[47] Family law practitioners and estate planning counsel must be aware that the intent and purpose of new legislation, particularly in a sensitive crossover area such as estate planning and family law, may not be readily apparent from the mere text of the affected statutes. Careful review of the legislative history, intent, and the bill's analysis, is essential for a full understanding of new legislation in order to be properly informed and best serve clients.

Careful counsel—both estate planning attorneys and family law practitioners—must realize that language utilized in documents setting forth the intent of the parties is crucial, that trial courts react differently and unpredictably to the semantics involved, that reversals of trial court determinations of the validity of purported transmutations are not uncommon, that appellate courts reach different conclusions as to whether or not certain documents constitute a valid transmutation. This evolving mixture of fact and law compels closer communication and coordination between the two disciplines, so that clients are protected to the best extent possible and shielded from the unforeseen consequences of unintended ambiguity.

Family law and estate planning counsel can each provide more thoughtful and protective representation of their clients if they develop a more comprehensive understanding and appreciation of how their two worlds intersect. It is essential that family law practitioners obtain and review all existing estate planning documents at the outset of every case, including the entire file of estate planning counsel. It is equally imperative that estate planning attorneys realize the substantial impact that the documents they prepare may have in an eventual divorce. Enhanced careful planning can address and resolve numerous questions. Does the often-used marital property agreement (transferring marital property to community property to get a stepped-up basis upon the first to die) constitute a valid transmutation? Was there dual representation by estate planning counsel? Was there a signed conflict waiver letter? Was there informed consent by both clients? Is the conflict waiver valid and enforceable? Should an independent estate planning lawyer or family law practitioner be retained as a consultant?[48] Does an irrevocable life insurance trust exist? If so, what are its provisions and what are its legal effects on the spouses and their children? Should joint tenancy property be severed?[48] Family law lawyers and estate planning counsel have a legal and ethical duty to be cognizant of the impact of their advice as it affects the other discipline's frame of reference and area of expertise. Both would be well served to heed the instructive directive from the Book of Job: "Think! And then we will talk!"[50] ■

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[1] WILLIAM SHAKESPEARE, OTHELLO act 1, sc. 3.
[2] WILLIAM SHAKESPEARE, HAMLET, act 3, sc. 1.
[3] *Id.* (paraphrasing original).
[4] Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co., Inc., 6 Cal. 5th 59 (2018); Hance v. Super Store Inds., 44 Cal. App. 5th 676 (2020).
[5] Sheppard Mullin, 6 Cal. 5th at 87.
[6] *Id.* at 84.
[7] *Id.*
[8] Sheppard Mullin, 6 Cal. 5th at 86 n.9. An evolution of federal cases prior to the 2018 decision in the *Sheppard Mullin* California Supreme Court opinion, led to Footnote 9 in that case, leaving the correctness and applicability of those cases open for future determination. In *Visa USA Inc. v. First Data Corp.* (241 F. Supp. 2d 1100 (N.D. Cal. 2003)), the court held that the advance waiver in question was informed and effective. In *Concat, LP v. Unilever, PLC* (350 F. Supp. 2d 796 (N.D. Cal. 2004)), the court found the waiver in question was not fully informed and was nonspecific and overbroad both in its scope and subject matter, noting that the record lacked evidence of the law firm's discussion of the waiver with its client. In *Western Sugar Coop. v. Archer-Daniels-Midland Co.* (98 F. Supp. 3d 1074 (C.D. Cal. 2015)), the court applied the factors referenced in *Visa* and *Concat* to conclude that the waiver in question was too open-ended, nonspecific, and lacked identification of potentially adverse clients, the type of clients, or the types of possible future representations. In *Lennar Mare Island, LLC v. Steadfast Ins. Co.* (105 F. Supp. 3d. 1100 (E.D. Cal. 2015)), after reviewing prior federal court decisions and applying California law, the court concluded that several factors weighed against enforcement of the prospective conflict waiver.
[9] Sheppard Mullin, 6 Cal. 5th at 86.
[10] *Id.*
[11] In re Marriage of Friedman, 100 Cal. App. 4th 65 (2002).
[12] In re Marriage of Egedi, 88 Cal. App. 4th 17 (2001).
[13] Marriage of Friedman, 100 Cal. App. 4th at 71.
[14] Estate of MacDonald, 51 Cal. 3d 262 (1990).
[15] *Id.* at 273.
[16] *See, e.g.*, Estate of Bibb, 87 Cal. App. 4th 461 (2001); In re Marriage of Begian & Sarajian, 31 Cal. App. 5th 506 (2018).
[17] In re Marriage of Starkman, 129 Cal. App. 4th 659 (2005).
[18] *Id.* at 662.
[19] *Id.*
[20] *Id.* at 664.
[21] *Id.*
[22] In re Marriage of Holtemann, 166 Cal. App. 4th 1166 (2008).
[23] *Id.* at 1170.
[24] *Id.* at 1174.
[25] In re Marriage of Lund, 174 Cal. App. 4th 40 (2009).
[26] *Id.* at 45-46.
[27] In re Marriage of Lafkas, 237 Cal. App. 4th 921 (2015).
[28] *Id.* at 939-40.
[29] In re Marriage of Bonvino, 241 Cal. App. 4th 1411 (2015).
[30] *Id.* at 1429.
[31] In re Marriage of Barneson, 69 Cal. App. 4th 583, 589-90 (1999).
[32] Estate of Bibb, 87 Cal. App. 4th 461, 468-70 (2001).
[33] *Id.*
[34] In re Marriage of Leni, 144 Cal. App. 4th 1087 (2006).
[35] In re Marriage of Begian & Sarajian, 31 Cal. App. 5th 506 (2018).
[36] In re Marriage of Barneson, 69 Cal. App. 4th at 583.
[37] Estate of Bibb, 87 Cal. App. 4th at 468-70.
[38] In re Marriage of Kushesh & Kushesh-Kaviani, 27 Cal. App. 5th 449 (2018).
[39] In re Marriage of Walrath, 17 Cal. 4th 907 (1998); In re Marriage of Bonvino, 241 Cal. App. 4th 1411 (2015); CALIFORNIA PRACTICE GUIDE: FAMILY LAW, Ch. 8.D, 8.432, 8.795 (2020). [Note: The language of Family Code sections 2640(b) and 2640(c) is not identical.]
[40] Galland v. Galland, 38 Cal. 265 (1869).
[41] Assembly Bill 327 was approved by the Governor and filed with the Secretary of State on July 1, 2019, effective January 1, 2020. A.B. 327, 2019-2020 Leg. (Cal. 2019) [hereinafter A.B. 327].
[42] Executive Comm. of Trust and Est. Sec. of Cal. Law. Ass'n, S. Rules Comm., Off. S. Floor Analyses Re A.B. 327, 3d Reading (June 5, 2019), 26(1) CAL. TRUSTS AND ESTATES Q. 45 (2020) [hereinafter S. Rules Comm.].
[43] Lintz v. Lintz, 222 Cal. App. 4th 1346 (2014).
[44] S. Rules Comm., *supra* note 41.
[45] PROB. CODE §21385(b); *see also* A.B.327, *supra* note 40.
[46] Levin v. Winston-Levin, 39 Cal. App. 5th 1025 (2019).
[47] Rice v. Clark, 28 Cal. 4th 89, 96 (2002).
[48] Horne v. Peckham, 97 Cal. App. 3d 404 (1979).
[49] Raney v. Cerkueira, 36 Cal. App. 5th 311 (2019); In re Brace, 5 Cal. 5th 903 (2020).
[50] *Job* 18:2.