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Fall 2017

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MESSAGE FROM THE PUBLISHER

We interact with family lawyers every day – whether it's an in-person meeting or a conversation via phone or email. This daily contact allows us to deepen our understanding of how their practices work, and the challenges they face in growing their businesses. It also provides a unique insight into how we can best serve our readership.

Divorce Marketing Group, our parent company, has been working with divorce-industry professionals – including forensic accountants, business valuers, and other financial professionals – for the last 21 years.

This issue has a special focus on financial matters – which can be a thorny subject for many lawyers. If this describes you, I recommend reading:

- Hiding Income & Assets at the IRS
- A “90 in 90” Collection Rate
- Next-to-Vest Coverture Formula
- 6 Financial Advice Mistakes
- Common QDRO Missteps
- Life Insurance and Divorce

As always, this issue also covers many other topics of interest to family lawyers. For instance, “Stop Wasting Billable Hours!” tackles how to work smarter instead of longer by using modern case management systems – which can greatly enhance a law firm's efficiency and profitability.

For tips on differentiating yourself from rival lawyers or firms, take a look at “Personal Branding for Family Lawyers” and “Stand Out from the Competition.”

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CYBERSECURITY IN 2017: BEST PRACTICES FOR LAWYERS

Why your firm needs to embrace technology and use it strategically to provide quality, secure representation to your clients.

By Nicole Black, Lawyer and Legal Technology Expert

In 2017, it has become increasingly clear that for lawyers, understanding technology is imperative (with 27 states now requiring it), and they can no longer ignore the steady march of advancement. Nevertheless, some lawyers continue to resist embracing unfamiliar technology, often voicing concerns about cybersecurity risks. The truth is that the benefits of adopting new technologies into your solo or small firm practice far outweigh the risks – as evidenced by the data from the latest American Bar Association Legal Technology Survey Report.

Solo/Small Firms Have the Best Cybersecurity Practices

According to the Report, solo and small firm lawyers were the least likely to experience a breach in the past year, with only 8% of solo lawyers reporting a breach, followed by 11% of firms

with 2-9 lawyers. Larger firms, on the other hand, were much more likely to experience a breach, with 26% of firms with 500 or more lawyers reporting security breaches in the past year, up 15% compared to 2012. Next in line were firms with 10-49 attorneys (25%), followed by firms with 100-499 lawyers (20%).

Larger firms were also far more likely to report that third parties had attempted to access their firm's data. There were no reports of this type in 2016 for smaller firms with fewer than 49 attorneys. However, for firms with 50-99 attorneys, 25% reported unauthorized access to client data, followed by 11% of firms with 100-499 lawyers.

Type of Firm Most Likely to Use Cloud Computing Software

Interestingly, not only were solo and small firm lawyers the least likely to

experience a breach or unauthorized attempts to access law firm data, they were also the most likely to use cloud computing in their law practices compared to their larger counterparts. According to the Report, 35% of solos used cloud computing software in their practices in 2016, as did 35% of firms with 2-9 attorneys, 29% of firms with 10-49 attorneys, and 19% of firms of 100 or more lawyers.

For solo and small firms, cloud computing offers a vast array of benefits – including security. In addition to providing secure online storage, geo-redundant data backup, and a built-in disaster recovery plan, cloud computing tools such as web-based legal practice management software provide solo and small firm lawyers with convenient, multi-device, 24/7 access to their firm's data, along with a secure client portal designed to facilitate collaboration and

Fear of the unknown should never deter you from using technology to provide better client service.

communication with clients, experts, co-counsel, and more.

So ditch your local server and move your law firm's client files into the cloud. Your data will undoubtedly be more secure in the cloud than it is on your law firm's old servers, which likely haven't been maintained or updated with security patches in years. Simply put, cloud computing provides the most secure way for small law firms to store and protect confidential client data.

The Importance of Strong Passwords

But there's more to cybersecurity than secure software. It's also crucial to secure your law firm's hardware – something that most, but not all, lawyers are doing. For example, according to the Report, the majority of lawyers take sufficient security steps with their laptop computers, with 98% of lawyers using passwords on their laptops in 2016. Firms of 500 or more lawyers lead the way at 100%, followed closely by solos at 97%.

Most lawyers were also taking steps to secure their mobile devices. For example, 95% reported using passwords on their smartphones, with large firms leading the way. 100% of firms with 100-499 lawyers reported using passwords, followed by 97% of firms with 500 or more and 93% of solos.

Of course, using passwords is important, but the more complex the password, the better. That's why I recommend using a password manager such as Lastpass or 1Password. These low-cost, multi-platform tools store your passwords via encrypted files and automatically populate sites with the correct passwords when you visit them. They can also generate secure passwords for you which you can then access from any device.

And, if you have an iPhone, consider

investing in an Apple Watch. In addition to its many useful reminder features and apps, the Apple Watch has a feature that helps you find a misplaced phone by causing the phone to emit a sound.

Enable Dual Factor Authentication

Two-factor authentication is a great example of a security measure that you can enable to protect your firm's data. This is because it adds an additional layer of security, making it that much harder for unauthorized users to access your online accounts. In fact, enabling two-factor authentication is one of the simplest – and most important – security measures you can take to secure your accounts. So make sure that all of the important tools and software that your firm uses incorporate this security feature, and then make sure to enable it!

Use Online Portals for Secure Communications

Email has been the communication method of choice for many lawyers since the 1990s, when bar association ethics committees gave email the green light. But a lot has changed since 1990, and email is now outdated and inherently unsecure. That's why a recent ABA ethics opinion (Formal Opinion 477, which was issued on May 11, 2017) warns against using email in some cases, requiring lawyers to balance the sensitivity of the information being discussed via electronic means with the security offered by the specific technology being used.

As the opinion explains, due to "cyber-threats and (the fact that) the proliferation of electronic communications devices have changed the landscape... it is not always reasonable to rely on the use of unencrypted email... Lawyers can consider the use of a well vetted and secure third-party cloud-based file storage system to exchange

documents normally attached to emails."

In other words, the ABA is suggesting that a better alternative to unsecure email is to communicate and collaborate using online client portals. Using the secure web-based client portals that are built in to law practice management software, attorneys can easily and securely communicate with their clients. The hassle of back and forth email conversations and losing track of attached documents becomes a thing of the past. Instead, you can communicate and collaborate in a secure, encrypted online environment, using any Internet-enabled device, 24/7.

Be the 21st Century Lawyer Your Clients Deserve

Cybersecurity is incredibly important, but fear of the unknown should never deter you from using technology to provide better client service. Unfortunately, some lawyers let fear stand in the way of progress and improved client communication. Don't be one of those lawyers. Embrace technology and use it strategically to provide quality, secure representation to your clients. That's what 21st century legal clients expect, and armed with the right tools, it's something that your firm can deliver. ■



Nicole Black is a Rochester, NY attorney and the Legal Technology Evangelist at MyCase.com legal practice management software. She is the nationally-recognized author of Cloud Computing for Lawyers (ABA, 2012) and the co-author of Social Media for Lawyers: The Next Frontier (ABA, 2010). www.mycase.com

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Can – and should – lawyers share confidential information via email?

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HIDING INCOME & ASSETS at the IRS

How one W-2 employee used the IRS to stash cash – thereby reducing his alimony payments and marital assets.

By Harriett Fox, CPA, Forensic Accountant

In family law, forensic accountants focus on valuing marital estates, determining which assets and liabilities may be non-marital, determining the parties' incomes, and calculating alimony and child support.

With clients (or their spouses) who receive a W-2, calculating net income should be easy. Many divorcing couples have at least one party who is employed, receives a regular paycheck, and has federal income taxes withheld from each paycheck. Within certain boundaries, the taxpayer determines the amount of tax withheld by filing a W-4 form with the employer.

Here is an example of how a W-2 employee tried to use the IRS to conceal marital assets for distribution, and to hide income for support.

Hiding Income

In 2014, my client (the wife), filed for divorce. The husband, who was pro se, was a marketing manager for a large corporation, and was, therefore, a W-2 employee. Through her attorney, the wife engaged me to value the marital estate and to determine her husband's income.

In 2014, the husband was ordered to pay the wife temporary support of \$800 per week, or \$1,600 bi-weekly. At the time, the husband's bi-weekly gross income was \$3,900 and his net income was \$2,675. After paying temporary support, he was only left with \$1,075 per pay period. The husband requested another hearing to reduce his temporary support obligation, which was reduced to \$400 per week, or \$800 bi-weekly.

The wife was not able to sustain at that level, so she requested another hearing, and the temporary support was adjusted to \$600 weekly, or \$1,200 on a bi-weekly basis. Under that scenario, the husband was able to retain \$1,475 bi-weekly from his \$2,675 net pay.

In 2015, the husband received a raise, bringing his bi-weekly gross wages from \$3,900 to \$4,400. His withholding should have been around \$350. After other deductions, his net pay should have been about \$3,150. After temporary support to his wife of \$1,200, the husband should have netted \$1,950 bi-weekly during the temporary support period.

However, the husband decided to increase his federal withholding taxes to \$875 per pay period. This had the

effect of reducing his bi-weekly net pay to \$2,625, or approximately the same level as 2014, thereby hiding his \$13,000 annual pay increase.

In December of 2015, the husband again wanted to reduce his temporary support obligation. He came to court with a pay stub that showed net pay of \$1,875, and claimed that his pay was reduced. With temporary support payments of \$1,200 to his wife, the husband claimed that he only had \$675 per pay period, while his wife had \$1,200.

Upon closer examination, there was a one-time adjustment of \$750 (net of taxes) that caused the husband's bi-weekly net pay to go from \$2,625 to \$1,875 that one pay period that he brought to court. Using the IRS as an accomplice, the husband was able to demonstrate, with his pay stubs, that his bi-weekly net income in 2014 was \$2,675 and his bi-weekly net income in 2015 was \$2,625, in spite of a 13% pay increase.

Hiding Assets

In addition to hiding income, this husband also managed to hide assets at the IRS.

From 2013 to 2016, the husband's gross wages showed modest annual increases. During the same time period, the husband's income taxes were never more than \$8,200.

In 2014, the year that the wife filed for divorce, the Husband sent a \$20,000 estimated tax payment to the IRS. This unnecessary payment, plus some ordinary excess withholding, resulted in an overpayment of about \$27,000 in 2014. The husband received a refund of \$3,000, leaving \$24,000 to apply to the following year's (2015) taxes.

In 2015, the husband increased his withholding, adding about \$16,000 in overpayments to the IRS. After filing his 2015 tax return, the husband had almost \$40,000 in refunds available at the IRS, but not requested.

In 2016, the husband again

Summary of Husband's bi-weekly wages, taxes, deductions, and net pay

Year	Gross Wages	Federal Income Taxes Withheld	Other Deductions*	Net Pay
2013	\$ 3,800	\$ 250	\$ 900	\$ 2,650
2014	\$ 3,900	\$ 325	\$ 900	\$ 2,675
2015	\$ 4,400	\$ 875	\$ 900	\$ 2,625
2016	\$ 4,300	\$ 995	\$ 670	\$ 2,635

*Other deductions include social security taxes, Medicare taxes, and health insurance.

Summary of Husband's annual wages and taxes

Year	Gross Wages	Federal Income Taxes Due
2013	\$ 98,000	\$ 7,000
2014	\$ 100,000	\$ 1,500
2015	\$ 113,000	\$ 7,000
2016	\$ 111,000	\$ 8,000

over-withheld his (W-2) federal income taxes, adding an additional \$17,000, to his IRS "savings account." The funds secreted in the US Treasury totaled over \$57,000 at the end of 2016 – and some portion of those funds were marital.

Pitfalls for the Abuser

It would seem logical that the IRS should be happy when taxpayers overpay or withhold excess taxes. However, the tax code prohibits such behavior. The code identifies certain practices as frivolous, and applies penalties for filing frivolous tax returns. The Internal Revenue Code section 6702(a) lists positions (taken when filing a tax return) that constitute frivolous filing. Included in paragraph (22):

"...an amount of withheld income tax or other tax that is obviously false because it exceeds the taxpayer's income as reported on the return or is disproportionately high in comparison with the income reported on the return..."

The penalty for filing a frivolous tax return is \$5,000. Of course, it is safe to say that most judges do not look kindly on litigants who engage in such dishonest practices.

Conclusion

Just because your client is a W-2 employee does not mean that you don't need a forensic accountant on your team. ■



With an MBA from MIT and a Masters in Accounting, Harriett Fox specializes in complex financial analyses in divorce proceedings. She has served as an expert witness in numerous cases, and she is a Collaborative Financial Professional. www.harriettfoxcpa.com.

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Personal Branding for Lawyers

How to make personal branding and company branding work synergistically at family law firms.

By Martha Chan and Dan Couvrette, Family Lawyer Marketing Experts

Few family law firms go through the essential marketing exercise that is branding. It is almost unheard of for attorneys within a family law firm to market themselves through personal branding – unless it is a solo practice and the firm *is* the attorney. Even though promoting individual attorneys rarely happens at most family law firms,

we want you to consider the benefits of personal branding so that your firm can make an informed marketing decision.

Personal Branding Needs to Align with the Firm's Branding

Simply put, branding for a family law firm is a way of letting the world know what you do, who should hire your firm, and

why. Branding is a deliberate process to create a reputation so you may differentiate your firm from other family law firms and attract the kind of clients and cases you want. Done properly, branding will also help reduce the amount of time you spend on inquiries from the kind of prospective clients that your firm does not wish to take on; after spending

a relatively short time on your website, visitors will realize that you are not the lawyer or law firm for them.

A family lawyer's personal branding works much the same way. It's a way for you, a family lawyer, to let the world know what you do, who should hire you, and why they should choose to work with you and your firm. The focus is on you, and your personal brand can be somewhat different from your firm's brand. However, it must align with and include the firm's overall branding; if the two don't align, then you have a bigger issue.

The Synergy of Dual Branding

Some clients choose to work with a family law firm based on what they know about the firm, while others choose to work with a particular attorney – especially if the attorney is a rain-maker, a partner, or someone known for their expertise in the issues the client is facing. When branding and marketing is done correctly, both the family law firm and the attorney will benefit, and this means more business for the firm.

For example, your passion and expertise may be dealing with child custody disputes. When implementing personal branding, you will state that your law firm handles a wide range of family law issues and that you are the go-to attorney for child custody cases. Or you might be an exceptionally skilled lawyer and mediator at a family law firm that offers various divorce options including litigation, mediation, and collaborative law. By highlighting your mediation skills in your personal branding, you draw attention to the fact that your firm includes lawyers with a skill-set that goes beyond that of a traditional litigator.

Promoting Individual Lawyers Beyond Your Firm's Website

Most family law firms understand the benefits of promoting all of their attorneys on their websites, and they usually devote a page to each attorney. Unfortunately, for the majority of these firms, that's where the personal branding of their attorneys begins and ends.

For branding to achieve its maximum impact, you need to promote the firm

and the individual attorney(s) beyond your firm's website. Many attorneys already have their own social pages or blogs, pages on directory websites such as Lawyers.com or AVVO.com; this is where they can make their personal branding consistent with their bio page on the firm's website. If you want to be known as a custody lawyer, it would make sense that you blog about custody and/or post articles about it on LinkedIn. You should also join and provide comments on LinkedIn or Facebook groups about custody, seek speaking opportunities, publish articles in relevant publications or websites, and highlight these articles on your firm's website and newsletter.

Your Personal Attorney Website

Family lawyers almost never have personal websites – unless they are solo practitioners whose websites are really about them. However, we have successfully employed this personal branding tactic for ourselves and for a few of our clients.

The obvious domain name for your personal website would be your name: www.MarthaChan.com, for example. If you want to be known for custody, and you practice in Los Angeles, your domain name could be www.custodylawyerLA.com or www.LAchildcustodylawyer.com, for example. This only needs to be a mini-website of three to four pages – one of which should present the firm you work at in a way that is consistent with your firm's branding. Make sure you rewrite your bio and any articles that have already been posted on your firm's website to avoid being penalized by Google for using duplicate content. Don't forget to include links back to your firm's website on your personal attorney website!

There are a number of benefits – for you and for your firm – associated with your having a personal attorney website. The top three are:

1 Being found on page one of Google searches. When someone Googles your name because you have been referred to them, your personal website will likely show up on the first

page of Google's search results. To give you a sense of how powerful this is, if you Google "Martha Chan", you will get 875,000 results – and www.MarthaChan.com has consistently been on the first page for the past 10 years.

2 Online reputation enhancement. This tactic is particularly useful if there are web pages with bad reviews about you showing up on the first page when someone Googles your name. This will help push down the bad page and reduce its prominence.

3 Bring traffic to the firm's own website. A personal attorney website can increase the number of visits to the firm's website.

While there are valid concerns regarding encouraging a firm's attorneys to promote themselves through personal branding, the positive impact of personal branding on the overall law firm is undeniable. Besides, dual branding likely already exists due to the personal webpages attorneys already had before they joined your firm. When your firm takes on dual branding deliberately, you will be able to objectively and openly address any changes that need to be made. We hope you find the benefits of deliberate personal branding too great to ignore. ■



Dan Couvrette and Martha Chan are marketing experts for family lawyers and other divorce-industry professionals. The co-owners of Divorce Marketing Group – a one-stop marketing agency dedicated to promoting family law and divorce professionals – they offer a wide range of products and services that help their clients



attract quality prospects, turn those prospects into clients, and stand out from their peers.

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The divorce process can be long and grueling for matrimonial lawyers and their clients. Because of the length of time, degree of complexity, and number of legal participants involved in complicated or high-net-worth divorces, it is no wonder that divorce attorneys sometimes make mistakes when advising clients on their finances. Here are six examples.

1 Providing Inaccurate Post-Judgment Instructions

We had a case recently in which a client's matrimonial attorney specified the "opening of an IRA account" into which the client's spouse was to wire funds per the divorce decree. Upon examination, we discovered that the funds would be coming from a beneficiary IRA originally established by the ex-spouse's parent. This type of IRA has different tax implications than a regular IRA. We averted a potential IRS headache – as well as future litigation against the lawyer – by catching the error prior to opening the account.

2 Ignoring the Tax Consequences of Low-Cost-Basis Securities

Advising a client to retain a greater proportion of low-cost basis stock than their ex-spouse is one of the most common financial mistakes lawyers make when separating assets due to divorce – despite the fact that it's relatively easy to spot. Because the client may owe future taxes on unrealized gains, an attorney should seek advice from a financial expert when apportioning stocks.

3 Failing to Create a Budget for the New Home

After achieving a quality outcome for your client, why let them buy a more expensive home than they can afford? Providing a budget analysis prior to divorce is key to helping your client make intelligent financial decisions. Lacking a financial plan during the "how much house I can afford" discussion is a common oversight. A client may be forced to downsize, sometimes within just a few years after divorce, if not adequately advised on budget constraints.

6 Financial Advice Mistakes to Avoid

By Vincent J. Fiorentino
and Alexandra I. Mililli,
Financial Advisors

4 Liquidating then Repurchasing Portfolios

It may be costly to liquidate and later repurchase a proportionately smaller portfolio of common stocks and bonds. Early in the negotiations, ask an experienced financial advisor how to equitably divide a portfolio in one step vs. two; this could avoid unnecessary expenses later on. Ask: "How can marital securities be equitably split so my client ends up with a properly balanced portfolio after divorce?"

5 Overlooking the Six-Year Rule

Property transferred to an ex-spouse more than six years after divorce may be subject to

tax. Realizing the future value of restricted stock options, difficult-to-sell alternative investments, or illiquid securities may require creative strategies. Have you or your paralegal effectively communicated the importance of monitoring time limits and following your instructions? These are important questions to ask when assets are to be transferred incident to the dissolution of a marriage long after you are gone from the case.

6 Not Obtaining Financial Advice

"That's a complicated issue. Let me consult with our financial expert and get back to you," allows an attorney to provide informed advice while avoiding costly mistakes. As one successful divorce attorney recently explained: "I have a high-quality team of (outside) advisors who are better qualified to advise my clients than me regarding investment matters, because they do it every day." Sounds like great advice from an experienced family law attorney. ■



Vincent Fiorentino and Alexandra Mililli are financial advisors with The Fiorentino Group at UBS Financial Services in Stamford, CT. Vincent is also the founding member of the Greenwich Chapter of the National Association of Divorce Professionals. Alex focuses on helping women in transition, specializing in financial issues. <http://financialservicesinc.ubs.com/team/fiorentino>



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David W. Echols is a fellow in the American Academy of Matrimonial Lawyers, and has over forty years of experience. **Jonathan Echols**, named for the third year as a Rising Star by SuperLawyers; **Amy Howe**, recognized for the fourth year by the National Trial Lawyers Top 40 Under 40, National Academy of Family Law Attorneys Top 10 Under 40 for 2015, 2016 and 2017, and American Institute 10 Best Under 40 for 2015, 2016 and 2017; **Ashley Rahill**, recognized by American Institute of Family Law Attorneys as one of the 10 Best Attorneys 2016-2017, and **Kyle Endicott**, the newest member of the firm, continue to provide our clients with knowledgeable and compassionate representation.



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How law firms can achieve a collection rate of 90% in 90 days.

By Claude E. Ducloux, Trial and Appellate Lawyer



As a veteran of nearly 39 years of broad general practice, I know the importance of cash flow. In my quest for financial security and success, I have perused every Bar Journal article, attended numerous practice management CLEs, and varied my approach to billing and collections to see what worked.

I have learned that getting money in the door promptly and securely is an art as well as a science. Last year, I had a billing collection rate of approximately 97%, which is far above the national average for solo-small firms. With a broad practice, there is no single magic secret to this achievement; instead, it is a combination of excellent communication, billing discipline, and intentional follow-up.

Here are eight tips I’ve put to work in my practice to help me achieve my high collection rate.

1 Learn to communicate in a way that will result in client confidence, reasonable expectations, and realistic time frames for completion of your work, as well as a realistic range of fees to get the matter completed.

2 Always execute a fee agreement. Clients take things in writing more seriously than handshakes. Also, you should rarely (if ever) start work until the promised retainer check clears.

3 Have billing systems in place that allow you to record time daily and produce comprehensible bills with necessary details.

4 Diligently record your time each day. You will forget tomorrow what you did yesterday. If you can’t remember what you worked on during a busy day, check your outgoing email for clues.

5 Know how to bill accurately and amicably. Use the client’s name: “Telephone call to Robert (rather than “to client”) concerning hearing.” Then review every bill for errors or double-billing before finalizing it.

6 Bill at least once per month; I recommend the first business day of the month, after most people have received their paycheck. If you don’t do this, clients might think you’re so rich you don’t need their money, or that there was no work done on their behalf that month. Also, clients are less likely to pay you months after you’ve completed their legal work than they are while the case is active, so make prompt billing a priority. Sending out late bills is a huge management error.

7 Follow up! When you are working on your bills, if you see client John Doe didn’t pay last month, then stop and

send him a friendly email reminding him that you haven’t received payment and offering the immediacy of an internet payment link. This works like a charm in my practice!

8 Be modern! Offer to email bills (more and more of my clients only want bills via email) and give your clients easy payment links to a secure online payment solution. Most of your clients will not only prefer the option to pay online with a credit card, they’ll expect it. Supercharge your cash flow and make your clients happy by giving them a fast, simple, and online way to pay for your services. ■



Claude E. Ducloux speaks regularly on legal ethics, law office management, and trial-related topics. He has a long legacy of bar service, including being president of the

Austin Bar Association, and serving as Chair of almost every major Bar-related entity as well as the Texas Bar Foundation. <https://lawpay.com>



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The Next-to-Vest Coverture Formula

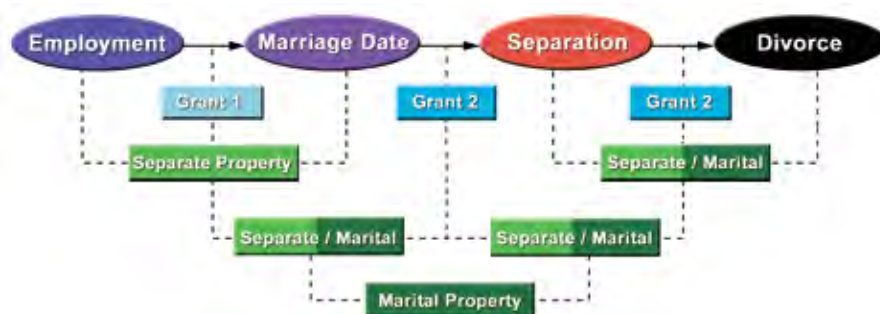
Beware of pitfalls in the next-to-vest coverture formula for valuing stock options.

By Arik Van Zandt,
Business Valuator

The value of stock options held by one or both parties in a dissolution offers unique challenges. If the stock option is out of the money as of the date of dissolution, is it really worthless? Likewise, is the full value of the stock option being captured by simply including the intrinsic “in the money” value at the time of dissolution? What element of post-separation duties (e.g. service or time) are required to achieve the value of the option? One of the fundamental items of a stock option that is generally overlooked is the vesting schedule itself. While many states use a next-to-vest coverture formula for determining the value of options during marriage, the vesting schedule itself creates differences, potentially significant differences, in the implied value based on the case law.

The coverture formula determines the separate v. marital allocation of shares based on a relationship between the date of separation and the grant date, as compared to the vest date and grant date. The timeline (above, right) displays what will be considered separate and marital property – or a combination of the two – based on the date of employment, marriage date, separation date, and various stock option grant dates.

Distinguishing Between Separate and Marital Property



Effect of Different Vesting Schedules

Changing the vesting schedule can have a significant impact on the separate v. community nature of a particular stock grant. Assuming a stock award of 2,000 shares with an award date of January 1, 2014 and a separation date of March 31, 2016, the difference in the shares allocation to community property would be over 20% less if the vesting schedule were quarterly rather than annually. One of the reasons for this is that the next-to-vest tranche of stock is significantly smaller when vesting occurs on a quarterly v. annual basis (125 shares v. 500 shares). Therefore, fewer shares are allocated to the community prior to separation by applying the next-to-vest coverture formula simply due to the vesting schedule. There are significantly different implied values, all while using the same formula. The above example is for one award that occurred during one year of marriage; if there were additional stock option awards granted during the course of the marriage, the effect of the vesting schedule on separate v. marital allocation would also carry a potential significant difference in value allocated

to the marital community simply based on the vesting schedule of the awards.

It is convenient to simplify a situation down to a formula, but with that comes the consequences of varying results. In this case, the various vesting dates created dramatically different separate v. marital outputs when simply applying the next-to-vest coverture formula. ■



Arik Van Zandt is a Managing Director with Alvarez & Marsal Valuation Services in Seattle. He specializes in the valuation of closely-held businesses and

other assets, acquisitions, sales, buy-sell agreements, ESOPs, and incentive stock options. www.alvarezandmarsal.com

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Stop Wasting Billable Hours!

Modern case management systems can enhance a law firm's efficiency and profitability.

By Katie MacKillop, Practice Advisor

Over the last few decades, advancements in data entry and computers have revolutionized the small law firm market. Instead of working harder and longer, firms have discovered how to work smarter. These legal leaders are now producing legal forms in one click, without human error. Key information is only entered in once to be automated across multiple documents with the push of the button. There's no time spent tracking down old forms to re-use, as these firms of the 21st century have access to an up-to-date, comprehensive collection of legal forms across all areas of law.

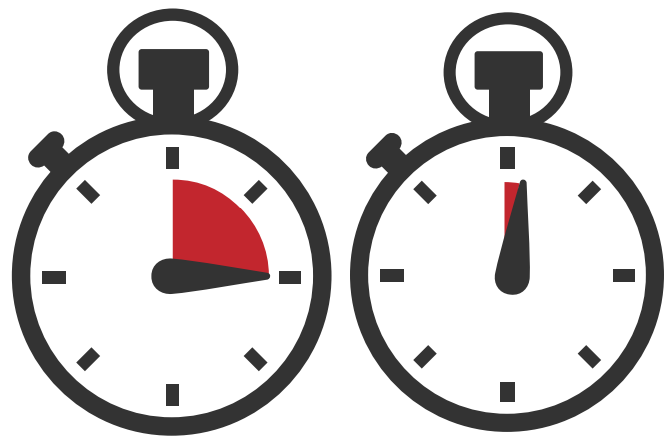
A Game Changer

The legal technology industry often focuses on providing accounting solutions for small law firms, rather than on creating advanced pre-configured and automated content that is key to a modern, paperless office. Contrary to the prevailing opinion, having an accounting system in place won't make a firm more profitable. An accounting system works to organize a practice, but it does not enhance efficiency and profitability. A case management system with document automation, on the other hand, allows firms to become more efficient and substantially increase their profits.

A law firm without an adequate case management system wastes valuable billable hours by doing manual, administrative tasks. A firm that falls into this category might open a file and only have the option to record contact details. Important information – such as court, property, and marriage details – is re-typed countless times throughout multiple forms. This information, which is essential to providing the correct advice to clients, and is also pertinent to the forms and templates you need to produce, must be continually re-typed throughout the life of the matter.

To generate a new form, the firm must hunt for it in the paper files and re-key the same information again and again

Amount of Time Spent Looking for Matter Information



Firms using software not specific to their area of practice

Firms using pre-configured matter types to record all matter-specific information

– which eats a large chunk of time. A good case management system transforms endless hours of re-typing and searching into minutes.

Preconfigured Forms

With a range of pre-configured matter types to select from, a modern case management system allows you to choose a preconfigured matter type that fits your area of law. A pre-configured matter type acts as a checklist of required information and a case intake form that is used to capture all the information needed throughout the duration of the case. These preconfigured forms have input screens that are specific to the matter a firm is working on. For example, family law attorneys can access separate screens to capture marriage, financial, and child support details. The vital information entered into the checklist is then auto-populated across multiple forms and templates within seconds. By entering key details into the input screens once, they can then be used over and over: for letters, forms, and time-recording, for example.

Content Teams

There are few legal tech companies that allocate resources to employ a skilled content team with legal backgrounds. This team is solely devoted to conducting heavy research to build the intuitive software that automates information into multiple forms. Every form has been automated to work with the data recorded in the matter type input screens. With content-driven legal software management systems, lengthy forms that require financial information – such as those forms in divorce, bankruptcy, probate, and real estate closing matters – can be automated.

The behind-the-scenes content team, which acts like your back-end staff, accurately completes all calculations and automates them throughout these complex forms. Small law firms are saved from manually re-entering the information more than once.

These dedicated content teams also provide a comprehensive library of up-to-date forms that spans across all areas of law and states. To keep forms current, content teams forge close relationships with authorities so that they can be informed of changes before they are enacted. Most content teams also have automated systems in place that scan websites for any updates to forms. Small law firms can now have access to their own archive of even the most complex forms, with mergeable fields, at their fingertips. ■



Katie MacKillop has been helping attorneys at small law firms transform their practices and make more money for over seven years. www.leap.us

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5 Tips for a Successful Initial Consult

The initial consult with a client is a make-or-break meeting. Follow these critical tips to help guarantee that this first meeting results in a new client.

By Jennifer Brandt, Family Lawyer

New clients are the lifeblood of the family law practice. Let's face it, we don't get too much repeat business, so we are on the constant lookout for new cases. And once we get the call from a potential client, we have an opportunity to grow or sustain our book of business.

It all comes down to one important event. Love it or loathe it, the initial consult with a client is a make-or-break meeting. Since it is determinative of whether the client will hire us or search elsewhere, let's consider five critical tips to help guarantee that this meeting results in a positive outcome.

1 Charge a Fee for the Initial Meeting. When a potential client asks for a free consultation, tell them that they get what they pay for! Charging a fee

for a consult sends the message to the potential client that they are getting something of value from the meeting. In turn, make sure that they are given substantive information for their fee. The client walks away from the meeting with a greater understanding of the legal process and what they may face if they decide to pursue the action. It is a great source of comfort to have this knowledge as divorce brings with

it so much uncertainty. The amount of the fee can vary depending upon your marketplace. Some lawyers charge a flat fee for an initial meeting, others charge an hourly rate. What is most important is to explain the fee to the client when scheduling the meeting so that they are prepared to pay at the conclusion of the meeting.

2 Interview the Client As They Interview You. We are often so interested in securing a new client that we overlook some warning signs that this client may not be right for us. For example, has the client worked with multiple lawyers prior to you and is critical of their performance? Although we all like to think we can save the day, truthfully, this may be a client who can never be satisfied.

While crucial to growth, the initial consult should not be viewed as a win-or-lose prospect.

Similarly, does the client have expectations that are completely unrealistic? Clients sometimes come in with ideas of revenge and other notions that are out of line with the law, however, once they are educated, they should adjust their expectations accordingly. If they do not, they may not be the right client for you.

3 Take the Time to Truly Listen. While we routinely handle family law matters, keep in mind that this is probably the client's first and only matter, and may be their first meeting with an attorney. Instead of bragging about our burgeoning caseloads at our initial meeting, it is more important to truly listen to the client's concerns and take the time to answer their questions. A client will value our insight and advice more than our popularity. Additionally, make sure to schedule a little extra time for the meeting so you will not feel rushed or pressured. The client will appreciate your focus and attention.

4 Set the Expectations. No one likes surprises from their attorney. That is why it is critical at the first meeting to let the client know what to expect if he or she hires you. If you have staff that will work on the case, let the client know their names and roles in the representation. If you don't plan on being involved in the day-to-day handling of the matter, let them know that as well. Similarly, give the client information about your fee structure, retainer requirements, billing, etc. Let the client know how to best communicate with you – e.g., phone or email – and how quickly you will respond to their inquiries. Find out what is the best way for you to get in touch with them. With this exchange of information, the

client knows what to expect and will be prepared to proceed accordingly.

5 Emphasize the Team Mentality. Let the client know that their professional relationship with you is a two-way street. You will educate them on the law and help guide them through the process, but you want them to participate in the decision-making as well. After all, they will live with the outcome of the matter. You also want to encourage them to be honest and upfront with you so that you can help them make informed and wise choices. Clients will appreciate knowing that they will have some control over their matter and ultimately, their destiny.

While crucial to growth, the initial consult should not be viewed as a win-or-lose prospect. Rather, it should be an opportunity to communicate to a potential client what you can offer as their lawyer – and what they should expect as your client. Assuming that there is a meeting of minds, the likely outcome will be a long-term and successful representation. ■



Jennifer A. Brandt is a shareholder in the family law department of Cozen O'Connor, a national law firm with over 600 attorneys. She practices in both Pennsylvania and New Jersey, and she is a frequent commentator on national and local news networks. Jennifer is the author of the Family Law Focus blog. www.familylawfocusblog.com

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10 Case-Winning Witness Prep Tips

Inexperienced lawyers routinely fail to adequately prepare witnesses, focusing instead on their own trial responsibilities. Use these tips to make your client a star witness.

By Brad Litchfield, Trial Lawyer

1 No Lies. No Exaggeration. All Truth.

Tell witnesses to offer the shortest, most truthful answer possible, and that lies or exaggerations are regularly exposed in court. Trial judges intuitively follow the maxim, "*Falsus in uno, falsus in omnibus*" (false in one thing, false in everything) when he or she believes a witness has lied.

2 Answer the Question Asked.

Self-serving, non-responsive answers annoy judges, destroy witness credibility, and often backfire. Experienced lawyers will move to strike and re-ask the same question, now with the judge's full attention. Prepare witnesses to anticipate detrimental questions with appropriate damage-control responses, and remind them that you can rehabilitate during re-direct.

3 Look the Judge in the Eye.

Many witnesses fail to connect with the judge. Witnesses often respond to the lawyers, mistaking them for the person who really matters in the courtroom: the

judge. Credibility is best established by eye contact.

4 Control Your Emotions.

Emotions often surface during family law cases. Measured emotion can help reinforce a point, but unchecked emotion almost always damages your case. A

touch of righteous indignation about missed parenting time is preferable to overt anger over the same issue. A minimally emotional moment may emphasize a positive attachment, but uncontrolled tears suggest witness instability.

5 Be Positive.

Judges dislike unnecessary personal attacks in court. Mudslinging or taking cheap shots sullies the witness and rarely accomplishes the goal of discrediting another party. Encourage unembellished factual statements on negative issues; allow the judge to extrapolate facts and make his or her own negative inferences.

6 The Judge Sees Everything.

Caution witnesses that the trial judge notices everything and everyone in the courtroom. This includes facial responses to perceived negative statements from others, grooming, posture, respect for lawyers and the court, interactions at counsel table (including incessant whispering, shoulder tapping, or aggressive note-taking).



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Common QDRO Missteps

Some of these can have serious consequences, so avoid these nine pitfalls.

By Theodore K. Long, Jr., Pension Analyst



In most cases, dividing a retirement account requires a Domestic Relations Order (DRO) or Qualified Domestic Relations Order (QDRO) that must be properly prepared, approved by the pension plan administrator, and issued as a court order. Some mistakes can have serious consequences while others simply slow an already protracted process with multiple revisions to correct errors. Retirement account law and QDROs are among the most complex and difficult parts of family law. Some of the most common QDRO missteps include:

Misunderstanding the type of account being divided.

There are three basic types of retirement assets: Defined Contribution Plans (DC plans), Defined Benefit Plans (DB plans), and Cash Balance Plans (CB plans). In a DC plan – such as a 401(k) – the worker makes pre-tax contributions (or after-tax contributions in the case of Roth 401(k) plans) to an account in his or her name. At retirement, the worker uses the money in his or her account to supplement income. However, there

is no guarantee of how much money will be in the account at that time. In a DB plan, the worker receives a monthly benefit based on a formula set forth by the plan administrator. A CB plan is a DB plan with features similar to DC plan. The language in the settlement agreement and QDRO should be applicable to the type of retirement benefits being divided. Furthermore, plans may or may not be subject to ERISA (Employees Retirement Income Security Act) and REA (Retirement Equity Act), the federal statutes that govern the division of private plans. The rules for an order are different depending on the plan's ERISA status. Practitioners must know the plan's status and the rules that govern its division.

Assuming once a judge signs off, the agreement is enforceable and the QDRO can be drafted.

ERISA and REA, the two laws that govern the division of private retirement assets, are federal statutes. Although the division of marital property is generally governed by state domestic relations law, any assignments of retirement interests must also comply with federal

law. A state judge does not have jurisdictional discretion with regard to dividing retirement assets that are subject to federal law.

Attempting to use a QDRO to divide plans that cannot be divided.

Some retirement plans cannot be divided – such as some supplemental benefits and some municipal plans. “One of the most difficult post-divorce situations to deal with is when the parties discover, after the final judgment (in some cases, several years after the divorce), that one of the retirement assets they have agreed to divide is simply not divisible or assignable,” says the American Bar Association (ABA).

Failing to specify the correct name of the plan.

The number-one reason QDROs are rejected is referencing the wrong plan name. The Department of Labor states that a plan administrator is not required to reject an order if it fails to correctly specify factual information that is easily obtainable; however, the reality is plan

Cont. on page 26



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administrators will fail an order for the slightest error in the plan name. If the name has an ampersand, the word “and” may cause the order to be rejected.

Failing to set a cut-off date for marital property rights.

Most states utilize a specific date that serves as the line of demarcation for marital property rights – which may or may not be the date of divorce. The agreement must set a specific date as to when the rights to the retirement asset as marital property end.

Failing to define the method for calculating a marital coverture.

For those states that incorporate the concept of marital coverture, the QDRO should fully define the calculation of the fraction. Typically, the numerator of the fraction is calculated from the later of the date of the marriage to the cut-off date for marital property rights.

However, the denominator of the marital coverture fraction can be calculated through the cut-off date or through the date of retirement, if the worker is still participating in the plan.

Failing to address critical issues specific to the plan.

Gains and losses on DC plans, survivor benefits and COLAs on DB plans, and conversions on CB plans are just a few examples of issues that need to be addressed. If not, the party responsible for having the order drafted can make decisions skewed in his or her own favor.

Bungling the “equalization” of multiple plans.

When spouses have several plans, lawyers sometimes try to save money by combining the values of all of the plans and transferring an equalizing amount to one account. This can work – if the parties provide statements for each account on the specific date set forth in the agreement and include how the

calculation is to be completed.

Failing to stipulate who is responsible for drafting the QDRO.

Hard as it may be to believe, some separation agreements fail to assign responsibility for drafting the QDRO. QDROs are often the last items completed in a divorce. Frequently, clients have discharged their respective attorneys and either do not know the QDRO hasn't been done or do not know that a QDRO needs to be done. This crucial task can easily fall through the cracks. ■



Theodore K. Long, Jr. is a nationally recognized expert in all issues relevant to valuing and dividing retirement benefits in divorce. He is the founder and president of Pension Appraisers, Inc., which has served family law attorneys and their clients nationally since 1989.
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7 Defang the Opposing Party's Arguments.

Every witness has weaknesses. Use dry-runs with witnesses to avoid the cross examiner's "gotcha" moment by formulating truthful responses to explain, or simply acknowledge potentially damaging testimony. For example, a witness should acknowledge prior substance abuse, show genuine remorse, and also discuss a sober date and steps taken to avoid relapse. Where the negative facts are already in evidence, confront the testimony head-on to deny or minimize.

8 Listen (and Think) Before Answering.

Tell witnesses how critically important it is to listen to the question as phrased, and to take the time to respond thoughtfully. Explain the "stand your

ground" concept to help them fight a cross-examiner's re-characterization of their answers – and that they must carefully consider and acknowledge truthful statements.

9 Go with Your Horses.

In high school, one coach regularly reminded me to "go with your horses" – meaning at critical moments, get the ball to the person most likely to score. In the courtroom, this means focusing relentlessly on your case theory. Repeatedly remind witnesses of the case theory and only ask the witness questions consistent with the theory, so as to avoid straying into collateral, unnecessary testimony.

10 Be the Source of Reason.

Witnesses should present the judge with thoughtful, cohesive solutions and be the courtroom's voice of reason. Judges appreciate an unbiased answer,

objectively reasonable options, and problem-solving attitudes. ■



Brad Litchfield has practiced law in Canada and the U.S. since 1993. He has an LL.M. cum laude from Brigham Young University, and he recently completed service as the Chair of the Oregon State Bar State Professional Responsibility Board. www.eugenelaw.com.

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A HOLISTIC APPROACH TO THE FINANCIAL ASPECTS OF DIVORCE

In divorce, valuing the business in isolation may cause you to miss key financial information. A comprehensive, 360-degree approach could yield radically different – and more accurate – results.

By Stacy A. Statkus, Business Valuator and Litigation Expert

You have hired a firm to do a business valuation for divorce purposes. The valuator requires documents related to that business: financial statements, tax returns, shareholder agreements, etc. But what about other financial documents and information – such as marital assets, liabilities, and lifestyle? They could be very relevant to the case.

Imagine a business for which the tax returns show consistent net income of \$100,000 to \$125,000 per year. However, the financial disclosures filed by each of the parties show a lifestyle of significantly more than that (after tax). This will likely prompt a series of questions:

- **Is the other spouse working?**
- **Are the parties receiving gifts from family members to help support the lifestyle** (e.g., monetary gifts and/or payment of certain expenses such as private school tuition, summer camp, etc.)?
- **Do the parties have significant passive income from other assets** (whether marital or separate)?
- **Are the parties borrowing money or selling assets in order to fund the marital lifestyle?**

You may require a forensic analysis in order to determine the parties' true lifestyle, the sources of income and the expenses being paid (as well

as the sources of funds used for those expenses). Depending upon the case, the analysis may be limited or more extensive in scope. You may discover that certain items are regularly being paid in cash and/or certain personal expenses are being paid through the business.

Personal vs. Business Expenses

Normalization of expenses is customary in a business valuation; however, without understanding the whole picture, you may not realize that the housekeeper for the parties' residence is being paid through the business payroll, the real estate taxes are included in business expenses, and the utilities paid by the

business are for the residence as well as the company. These are just a few examples of such expenses.

The non-titled spouse may be an unreliable source of information about how business and personal expenses are funded and paid. They know their lifestyle is paid for, but not necessarily whether expenses are paid in cash, through a personal checking or credit card account, or through a business checking or credit card account.

Consider a business that does home building and/or construction. Many expenses for the parties' residence may be run through the business, but finding them may require further exploration. For example, the non-titled spouse knows that they did a significant remodel of the home in a certain year, but the parties' personal checking and credit card statements for that time show no payments for renovation expenses and no significant changes in cash withdrawals. Unless you can trace the funds to a gift or bequest, then the

expenses were probably paid by the business. Or you may notice that all of the building materials for the business are ordered from vendors in "Area A." The parties' residence is in "Area B," and during the remodel, the business placed significant orders with vendors in Area B. If this does not fit the company's normal pattern, then those Area B orders were likely for projects related to the residence.

Alternatively, there may be artwork hanging in the family home, but it does not appear on the personal net worth statement of either party. When one spouse questions why it was excluded, the other spouse states that it is owned by the business. However, it was not significant enough to be listed on the financials of the business; instead, it is included in "other assets." As such, an adjustment may be warranted for non-operating assets.

These are just some examples of ways in which it may be useful to have a more holistic understanding of the

financial aspects of a case where a business is involved. ■



Stacy Statkus, CVA, CDFA, CFE, JD is a Senior Vice President with MPI. She has more than 16 years of experience in litigation consulting, forensic analysis, and business valuation. Her areas of expertise include matrimonial litigation involving high-net-worth individuals.
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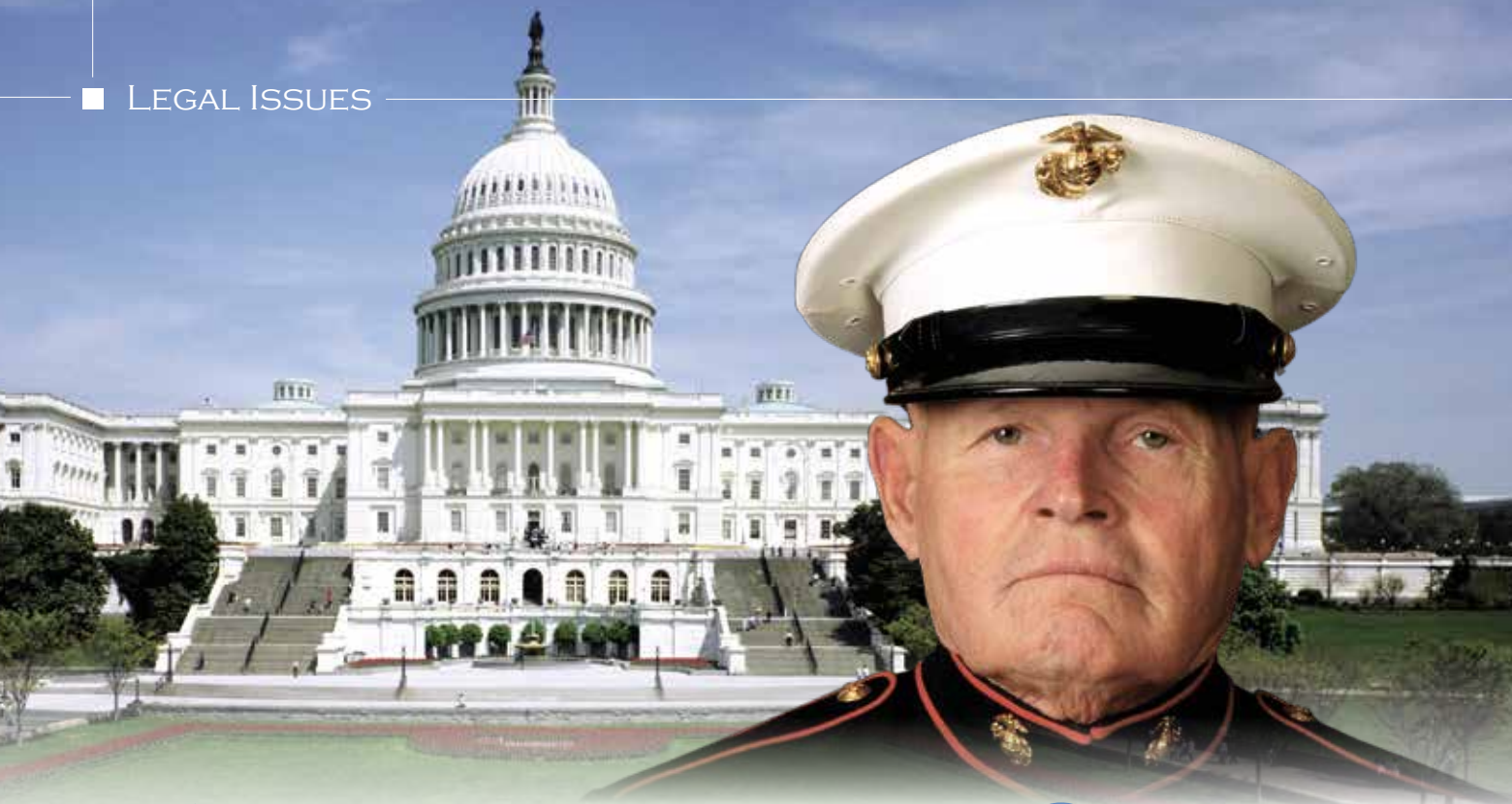
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The Frozen Benefit Rule

This new rule upends the law regarding military pension division in almost every state.

By Mark E. Sullivan & Kaitlin S. Kober, Family Lawyers

On December 23, 2016 Congress passed the National Defense Authorization Act for Fiscal Year 2017 (NDAA 17), which dramatically altered how military pension division orders are written. Instead of allowing the states to decide how to divide military retired pay, Congress imposed a single uniform method of pension division on all the states: a fictional scenario in which the military member retires on the day that the judgment of divorce is entered. This new rule upends the law regarding military pension division in almost every state.

The new rule applies to those still serving (active-duty, National Guard, or Reserve) who divorce after December 23, 2016. Going forward, what's divided will be the hypothetical retired pay attributable to the rank and years of service of the military member at the time of the divorce. The only adjustment will be cost-of-living adjustments

that occur under 10 U.S.C. § 1401a (b) between the date of divorce and the time of retirement.

Hypothetical Clause

The new rule requires the use of a "hypothetical clause" when submitting a military pension division order. The hypothetical clause is the most difficult to draft of the pension clauses available. The retired pay center requires specific information to be included – which varies slightly based on the date the member entered service and whether they expect to receive an active duty or reserve component retirement. For example, with a "High-3" and CSB/REDUX retirement, the order must specify the hypothetical years of service and the hypothetical retired pay base. Without the proper wording, attorneys who submit their pension orders to the retired pay center will receive rejection letters

and end up with frustrated clients.

The Time Rule

The "time rule" for pension division, used in most states, is based on the "marital foundation theory," which recognizes that the individual's final retired pay is based on a foundation of marital effort. The idea is that a service-member would have never attained the rank of sergeant major with 30 years of service if it hadn't been for the efforts expended during the marriage up to the rank of sergeant first class over 20 years, when the parties divorced. The time rule provides the fairest approach to pension division, which is why the majority of states have adopted it for dividing every type of pension. The time rule approach goes out the window under this new NDAA 17 rule because the share of the former spouse (FS) is frozen as of the date of divorce.

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We Can Help You Collect Your Attorney's Fees

Even a client with assets may find it difficult to pay attorney's fees after a divorce settlement that offers them a fair share of equity in unsold properties. Facilitating your clients' access to cash will increase your chances of collecting your attorney's fees.

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Your client can get cash immediately

Instead of needing to wait years to receive payment from an ex on the matrimonial home, we can pay your client cash for their divorce lien. The proceeds are tax-free and can be used to pay attorney's fees, support payments, and money towards a new home. A lien can also end financial dependence on an ex.

Your client can keep the matrimonial home

Suggest a divorce lien if they don't have the cash to buy out their ex. The lien allows them to stay in their matrimonial home, keep their children in the same environment, and focus on other aspects of their new life.



Free up your client's largest asset

A divorce lien is a way of splitting properties without needing to sell them. Divorce liens can be created on the family home, investment properties, and on businesses.

Avoid the wait on collecting your attorney's fees

When your client sells us their divorce lien, they have immediate access to cash that can be put toward attorney's fees, support payments, and a new home.

When a divorce lien is in place the client keeping the matrimonial home will avoid relocation costs, have peace of mind, and stability.

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Effective Immediately

How much time is allowed for states to revise their laws to accommodate this new rule? None. There is no interim period to allow the majority of the states to write up, propose, and enact laws consistent with the new rule. This is especially troubling for the FS who will suffer a double discount if the denominator of the marital fraction is

not revised.

The double discount occurs as follows: First, the benefit to be divided with the FS is frozen at the rank and years of service at the time of the divorce. Second, the marital fraction is still based on years of marital pension service divided by total pension service years (marital service years ÷ total service years) rather than years of marital pension service years divided by service years up to

the date of divorce. An example of the double discount is illustrated in a 2014 Texas case, *Douglas v. Douglas*, which held that the denominator in a “hypothetical clause” is the months of creditable service during marriage up to the date of divorce, rather than the date of retirement. The Texas Court of Appeals stated that accepting the husband’s proposition that the denominator should be total years of service would impermissibly dilute the ex-wife’s share acquired during the parties’ marriage.

Although the method of dividing pensions – as well as the date of valuation and classification of marital or community property – has always been a matter of state law, that will change in the military case. Since no time has been allowed for state legislatures to adjust to the change and rewrite state laws, lawyers will need to make adjustments to deal with military pension division cases that are presently on the docket or that come to trial before their state legislature can act.

For a list of additional resources, go to: www.familylawyermagazine.com/articles/frozen-benefit-rule ■



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Mark and Kaitlin Kober practice family law with Sullivan & Tanner, P.A. in Raleigh, N.C.; they work with attorneys nationwide as consultants on military divorce issues and in drafting military

pension division orders.

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Life Insurance and Divorce

7 common pitfalls to avoid when negotiating life insurance for your client.

By Steven Vaphiades,
Life Insurance Professional



Financial disentanglement in divorce cases can be both high-stakes and high-effort for attorneys representing either spouse involved in the matter – especially considering the impact even the smoothest of divorces may have on a client’s financial well-being.

With the focus on investments, retirement plans, executive compensation, and real estate when negotiating a Settlement Agreement (SA), an attorney can underestimate the importance of finding mutually favorable terms for mandated life insurance. However, failure to procure the right kind and amount of insurance can have disastrous consequences for your clients – whether they are the insured ex-spouse or the beneficiary. Here are seven mistakes to avoid when negotiating life insurance requirements.

1) Relying on a workplace insurance policy. It may be a nice

perk from your client’s employer, but relying on workplace insurance to satisfy the requirements of a SA is very risky. Even if the workplace policy provides the coverage specified in the SA, this type of insurance can be ephemeral: leaving an employer may cause the policy to lapse, potentially putting the insured ex-spouse in breach of their obligation and leaving beneficiaries without coverage.

2) Going to extremes. Choosing the biggest company or the cheapest rates could come with a hidden price. Large providers may have longer underwriting times, which can be a problem when your client is facing a deadline for coverage. Before selecting any insurance provider, consider the company’s longevity, reputation, and financial strength ratings to ensure their promise to pay is backed up by adequate customer service and a track record of

paying claims quickly and efficiently.

3) Using a monolithic approach. Coverage requirements usually decline as dependent children are emancipated. A “laddering” strategy – which employs a series of smaller, overlapping term policies – could save your client a substantial amount of money over time. Some insurers also offer term policies that include features designed to reduce the coverage amount over time.

4) Choosing the wrong product. In some situations, such as permanent alimony, whole life insurance may be the right product. But in many cases, term life or a blend of term and whole life policies presents a more cost-effective solution. One important consideration when determining the right product is

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Stand Out from the Competition

How are you different from other lawyers? Why should someone retain you – or pay your higher fees?

By Liz Wendling,
Business Development Coach

A major danger to your practice right now is not being able to define what sets you apart in a world that is cluttered, competitive, and crowded. It is becoming harder and harder to stand out – and if you do not stand out, you blend in.

It has never been more challenging for lawyers to find new business. To gain a substantial advantage, what differentiates you from your competitors must also be important to your prospective client. Otherwise, you will fall head-first into the commodity trap.

Every attorney and every practice area brings something unique to the value table. The burden of proof is on you: without guidance, prospects may not be able to recognize the value that you bring to the table, calculate what your services are worth, or decide to retain you.

How are you different from other attorneys? Many think that what differentiates them is where they went to law school, or how long they have been practicing, or the prestigious firms where they work. All of these things help, but they are not what separates the average attorney from the rainmakers.

The Process of Differentiation

Spend time thinking about what makes you different. This will give you clarity about who you want to be for your clients, and how you want to show up in your profession.

Here are some questions to ask yourself as you begin the process of differentiation:

- What is my unique offering to the marketplace? What is that one thing I do that I know your competition does not?

- What are my distinct characteristics, expertise, skills, and attributes? Do I have a specialty or added expertise that my competition does not?
- What could I do to stand out in my client consultations? Could I create a unique opening or use different language to engage prospective clients?
- How can I show prospects my unique value? Does it appear prominently on my website and in my marketing materials?
- Once defined, how can I make my unique value recognizable in a consistent and sustainable way? How can I integrate it into all of my messages, marketing materials, and services?
- Who is my biggest competition? What do they do that makes them different or unique?

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Putting Gold in Your Golden Years

10 tips for lawyers to feel younger, stronger, smarter, and happier as they age.

By James Gray Robinson, Consultant and Speaker

*F*or lawyers, getting older means your thinking changes, your body changes, and your goals must change. As you start to realize that you are neither immortal nor bullet-proof, you need to change the focus of what you want out of life. Even if you have a healthy lifestyle, aging requires you to make allowances for a changing metabolism and health challenges.

At 64 years old, I have learned a thing or two about aging and being a lawyer that could help you feel younger, stronger, and more vibrant. Here are my top 10 tips for getting smarter and happier as you get older.

Check Your Hormones. I learned the hard way that our bodies change on a hormonal level as we age. Our thyroids decline and our testosterone/estrogen levels change during andropause/menopause. Many of the complaints of getting older are directly attributable to hormonal changes: sleeplessness, night sweats, chronic fatigue, lack of focus, memory loss, muscle loss, lack of stamina, and lack of libido. Consider going to a clinic specializing in hormone replacement therapy and get your levels checked out. Talk about a new lease on life! You might even feel 40 years younger!

Stretch. I exercise every day, but my

flexibility sucks. A doctor told me to stretch when I was eight years old. I ignored him. Now I spend 15-20 minutes stretching every morning before I get out of bed. My lower back is a mess and my hamstrings feel like concrete. I started doing some simple yoga moves to help my lower back, called the “5 Tibetan Rites” (Google it). I hate them. However, they do make my body feel better and I don’t hurt so much when I exercise. If you can (still) touch your toes, you are ahead in the game.

Exercise in the Body You Were Given. I have run five marathons, but my feet can’t take running anymore. I

acknowledge that my feet are telling me something, like “Stop running, you idiot!” If you are 70 years old and still running marathons, I envy you. But I must live in the body I was given, and genetically, marathons are not a good idea for me. So I do some stretching and keep active with low-impact exercise every day. And if I do lighter weights with higher repetitions, I can get the same benefit as the gorillas in the gym.

Are You Really Going to Eat That?

Most people aren’t very conscious about what they eat. I remember skipping breakfast because I knew that there would be a dozen Krispy Kreme donuts waiting for me at the office. I have a sugar addiction, I admit. As I got older, I noticed that my body felt better when I consumed less sugar and more fresh vegetables. As you age, you may start facing things like insulin resistance, pre-diabetes, and diabetes. The more sugar you eat, the more real that becomes. Not only has my thyroid gotten lazy, but my pancreas is not having much fun either. Simple carbohydrates are not your friend.

The Sun is Not Your Friend. Who knew that getting that George Hamilton IV tan every year would have consequences? I just had a piece of my face carved off because I had a basal cell carcinoma, which likely started when I got a third-degree sunburn on a trip to Florida when I was 15. People much younger than me are now dealing with skin cancer, so wear a hat, cover up, and use 50 SPF with wide band protection (baby sun block) on exposed skin. The professional golfers I play with don’t leave home without it.

Let Go of Expectations. As we age, some of us seem to lose our patience and our sense of humor – perhaps because we hate growing old. However, we could think of aging as an increase in knowledge and wisdom gained from our younger self’s experiences. Unfortunately, aging also involves soreness, stiffness, expanding waistlines, and certain body parts succumbing to gravity. I have a pet theory that people get bent over with age because they are



carrying all their unrealized expectations on their backs. We all have regrets, but as we get older, they seem to calcify and get in our way. If you’re holding on to regret, realize that it interferes with your enjoyment of life. Let it go.

Get Naked. I realize that this will probably be a bit shocking to most lawyers, who are generally conservative in nature. Remember that you came into this life without clothing. Take off your clothes in the privacy of your home/cottage/whatever and enjoy the feel of the air on your skin. If there’s nowhere you can be naked outside without risking a public indecency charge, then walk barefoot on your lawn or at the beach. Spending a little time without clothes is cathartic to your skin and will wake you up! It also gives you the chance to appreciate that great body of yours.

Hug More People. As I got older, I started to feel like I was less attractive. The surprising truth is that as I got older, people wanted my hugs and appreciation more. I never knew my grandparents, so I never got many hugs from older people as I grew up. The best gift an elder can give to a younger is a hug. Does your law firm allow hugging? A hug raises your endorphin level and lowers blood pressure.

Check Your Blood Pressure. Hypertension is a silent killer. When I went to donate blood, I was shocked to discover that my blood pressure was 150/100. This was a wake-up call to start eating better, meditating, and exercising daily. I also take my blood pressure every day. My father had to quit practicing law

because he had a stroke. Don’t be like him – start reducing those risk factors within your control now.

Meditate. You can’t keep ignoring the benefits of meditation. If you’ve never tried it, you can ease into the practice slowly by just sitting down and silently counting your breaths to 500: “One in [inhale], one out [exhale]; two in [inhale], two out [exhale],” etc. You can get to more advanced stuff later. Your body and your brain will love it. Meditation makes you calmer, less frustrated, and more alert – and it will improve all of the issues raised above. ■



James Gray Robinson was a third-generation trial attorney specializing in family law for 27 years. In 2004, he became a consultant who works with a wide range

of people, professional organizations, and corporations. His mission is for all people to have fulfilling, peaceful career experiences and work environments. www.JamesGrayRobinson.com

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5 Key Strategies to Increase Productivity

You always feel busy, but not necessarily productive. Here's how to stop wasting your precious time and start increasing your output.

By Ozan Varol, Law Professor and Productivity Consultant

Before I started coaching overwhelmed, overworked lawyers on how to get their life back, I was a lawyer myself. To be more accurate, I was an overwhelmed, overworked zombie who had sacrificed all my hobbies and who thought of my life in six-minute billable increments. One phonecall/email/meeting/deposition after another, other people and never-ending tasks were hijacking my time.

If you're like most lawyers, work is coming at you faster than you can manage it – and if it isn't, you must add searching for new clients to that infinite to-do list. You always feel busy, but not necessarily productive. You're thinking too much, juggling too much, and doing too many of the wrong things.

1. Stop moving your pianos.

Frank Sinatra's tour schedule brought a new definition to the term "crazy." Yet he managed to maintain his sanity and create work that has stood the test of time. He had a simple trick, which was to focus on his one unique ability: singing. Everything else, he left to others.

Could Frank have become truly great if he were moving his own pianos and hustling to sell each concert ticket? No. He focused on the essentials so he could bring out the best in himself.

What "pianos" are you moving in your life? What are you doing that you shouldn't be doing? If something can

be done 80% as well by someone else, you should delegate it. Making dinner reservations, running errands, and figuring out how SEO works are not part of a lawyer's unique skill set.

We have a tendency to blame other people or other things, but often, you're the reason why things aren't happening in your business or in your life. You are the bottleneck. The easiest way to remove the bottleneck and get out of your own way is to become an effective delegator.

2. Just start.

Procrastination is the number-one problem for many unproductive lawyers.

The cure? Just start. Getting started on any major project is the hardest part. When you're having trouble starting a brief, just open a Word document and jot down your thoughts for five minutes, then save the document. You now have a lousy outline – and a lousy outline is much better than a completely blank page. The next time you open it, you won't be intimidated by an empty document. You'll be much more likely to pick up and keep going.

The best way to take away the power of procrastination is to begin.

3. Apply the 80-20 rule.

Vilfredo Pareto was an economist who also enjoyed gardening. He developed what's now known as the 80-20 principle (or the Pareto principle) by observing that 20% of the peapods in his garden contained 80% of the peas that he was harvesting.

This principle eventually became a rule of thumb in different areas. If you look carefully at your life, you'll notice that: (1) 20% of your efforts produce 80% of the results; (2) 20% of your clients produce 80% of your revenue; and (3) 20% of your clients produce 80% of your headaches.

You can use the 80-20 rule to determine the matters that require most of your focus and the junk that should be cut from your life.

4. Break down big tasks into small subcomponents.

Last year, I set out to write a 90,000-word book. Initially, progress was slow. I would make up excuses – like “I need to organize my sock drawer” to avoid the big, intimidating ‘Write Book’ task on my to-do list. I had one crappy paragraph to show for my first week of writing (and an impeccably organized sock drawer).

Many of my clients use email as their favorite tool of procrastination. Email is easy, quick, bite-sized, and you get the satisfaction and a burst of dopamine from crossing something off your to-do list. In contrast, other goals – like writing a major brief or drafting a contract – are big and intimidating. Your goal should be to break down these intimidating projects into small bite-sized pieces that look more like email.

After the first week of working on my book (and not getting anything done), I took a day and broke down the “write book” task on my to-do list into its smallest subcomponents. By the time I was done, that intimidating “write book” goal became nearly 100 separate to-do items. As a result, it became so much easier to say, “I’m going to work on Subsection A of Section I of Chapter 1,” instead of saying, “I’m going to write my book.” When I was done with Subsection A, it was something I could check off my to-do list.

If you start small, you remove the resistance to starting, which is the hardest part. The goal of reaching out to 30 lawyers or financial professionals to network seems really daunting. But if you contact one person to network every day, you will have contacted 30 of them by the end of the month.

As Seth Godin says, “A small thing, repeated, is not a small thing.” Before you know it, the distance in front of you will be shorter than the distance behind you.

5. Say “no” more often.

A few years ago, I realized I had been saying “yes” too much. I was accepting all sorts of conference invitations,

speaking engagements, marginally useful projects, and offers to “grab coffee,” “get lunch,” and “hop on a call.”

Think about it: How many times have you committed to doing something six months from now only to regret it later? Ego had a lot to do with the way my schedule looked. “They want me at this meeting or conference? I must be important,” I thought. With my schedule jam-packed with events, I could humble-brag about how busy I was.

Then I adopted this philosophy from writer and entrepreneur Derek Sivers: “If it’s not a hell yeah, it’s a no.” We say yes to so much stuff that we allow little mediocre things to fill our lives. When the “hell yeah” thing comes along, we don’t have time to give it the attention that we should. Each “yes” comes with a huge opportunity cost.

Before you commit to anything, ask yourself, “If I say yes to this, what am I saying no to?” If you’re saying “yes” to a phone call or a meeting, you’re saying “no” to everything else you could be doing during that time. If you’re saying “yes” to checking your email four times in the span of an hour, you’re saying “no” to an hour of deep work on an important task. ■



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CIRCUMVENTING A TRIAL COURT'S RULING

A surprising Supreme Court decision allows a disabled veteran to override an ex-spouse's right to receive their court-awarded share of retirement pay.

By Laura Morgan, Family Lawyer and Consultant

In October 2016, the United States Supreme Court ruled on a very significant family law case, *Howell v. Howell*, 581 U.S. —, 137 S.Ct. 1400 (2017). www.supremecourt.gov/opinions/16pdf/15-1031_hejm.pdf

In 1991, a court awarded Sandra Howell half of Air Force veteran John Howell's retirement pay when the couple was divorced. However, after becoming aware in 2005 that he was eligible for disability benefits, John, who had received a 20% disability rating from the

Department of Veterans Affairs, elected to waive \$250 of his \$1,500/month in taxable retirement pay in order to receive \$250/month in non-taxable disability pay from the VA. This waiver reduced Sandra's monthly divorce settlement by \$125, so she filed a motion to enforce the divorce decree's division of military retirement pay, arguing that she should get half of what it would have been had John not opted for disability pay.

The Arizona Superior Court awarded Sandra arrearages and ruled that John

was responsible for ensuring that she receive her full 50% of his retirement pay without regard for the disability. The Supreme Court of Arizona affirmed the Superior Court's order.

The U.S. Supreme Court, per Justice Breyer, held that states were prohibited from increasing, pro rata, the amount a divorced spouse received from a veteran's retirement pay in order to restore the portion lost due to the veteran's post-divorce election to receive service-related disability benefits. The holding abrogated

Glover v. Ranney, 314 P.3d 535 (Alaska 2013); Krapf v. Krapf, 439 Mass. 97, 786 N.E.2d 318 (2003); Johnson v. Johnson, 37 S.W.3d 892 (Tenn. 2001); and Abernethy v. Fishkin, 699 So.2d 235 (Fla. 1997).

Relying wholly on *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989), the Court held:

We see nothing in this circumstance that makes the reimbursement award to Sandra any the less an award of the portion of military retirement pay that John waived in order to obtain disability benefits. And that is the portion that Congress omitted from the Act's definition of "disposable retired pay," namely, the portion that federal law prohibits state courts from awarding to a divorced veteran's former spouse. *Mansell*, supra, at 589, 109 S.Ct. 2023. That the Arizona courts referred to Sandra's interest in the waivable portion as having "vested" does not help. State courts cannot "vest" that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. § 5301(a)(1) (providing that disability benefits are generally nonassignable). Accordingly, while the divorce decree might be said to "vest" Sandra with an immediate right to half of John's military retirement pay, that interest is, at most, contingent, depending for its amount on a subsequent condition: John's possible waiver of that pay. (137 S.Ct. at 1405-06)

Two Major Loopholes

The Supreme Court left open two major loopholes, however, to avoid the hardship that this decision might bring:

[A] family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support. (137 S.Ct. at 1406)

Thus, a family court can compensate the non-military spouse for the waiver from other assets; it just can't compensate the non-military spouse dollar-for-dollar from the divisible military retirement disposable pay. A

family court can also compensate the non-military spouse for the waiver by way of alimony.

Until 2003, disabled veterans had to select either their full retirement compensation from the Department of Defense or their VA disability benefit with a reduced retirement annuity. This penalty became known as the "VA offset." Many veterans choose the offset, however, because disability payments are tax free. In the 2003 and 2004 defense authorization bills, Congress waived this offset in certain cases, and veterans with career-ending combat injuries or a disability rating of 50% or higher were allowed to concurrently receive both types of payments.

Unilateral Decisions Override Ex-Spouses' Rights

According to Colonel Mark E. Sullivan, ret., author of *The Military Divorce Handbook* (ABA 2d ed. 2011), the decision was a surprise. It allows individuals to make unilateral decisions, without the approval of the judge or the consent of the former spouse, that essentially defeat the former spouse's right to receive the amount of retired pay awarded by the court. By making a unilateral election for disability compensation, the retiree effectively circumvents the ruling by the trial court in setting what the former spouse will receive – after the court has approved the parties' settlement or made an equitable division of property that took all the facts and factors then present into account.

Attorneys who represent the non-military former spouse may want to forego sharing the pension in favor of a "present value set-off," that is, the valuation of the retiree's pension, the award to him or her of the present value of the marital or community share of the pension, and the award to the former spouse of other property acquired during the marriage – if any exists – of equal value.

The compensatory alimony remedy has already found favor. In *In re Marriage of Jennings*, 138 Wash.2d 612, 980 P.2d 1248 (1999), the wife was awarded \$813 in the property division decree as her share of the husband's military

retirement. The husband's subsequent VA waiver brought her payments down to only \$136 per month. When this occurred, she filed a motion asking the court to vacate the decree, modify it to provide her with spousal support payments equal to half of husband's disability payments, or clarify the decree to require the husband to pay her no less than \$813 per month. Based on the "extraordinary circumstances" presented, the court entered an order providing the wife with compensatory spousal support to make up for the loss caused by the VA waiver.

The Supreme Court approved the use of "compensatory spousal maintenance" that would not end if the ex-wife remarried. 138 Wash.2d at 626. See also *Longanecker v. Longanecker*, 782 So. 2d 406 (Fla. Dist. Ct. App. 2001); *Longo v. Longo*, 266 Neb. 171, 663 N.W.2d 604 (2003) in which the trial court granted the wife alimony of \$1 per year, modifiable only upon a potential reduction to the husband's future military pension because of a future disability offset. But in *re Marriage of Cassinelli*, 4 Cal. App. 5th 1285, 210 Cal. Rptr. 3d 311 (2016) held that the trial court could not use spousal support as a replacement for money lost to the former spouse because of a VA waiver.

Protecting Veterans' Retirement Rights

Both Congress and the Supreme Court protect the retirement rights of military members to the detriment of ex-military spouses. In late 2016, Congress made a very significant change to the definition of disposable retired pay under the USFSPA. Disposable retired pay is "the total monthly retired pay to which a member is entitled," less certain deductions. 20 U.S.C. § 1408(a)(4)(A). Previously, the total monthly retired pay was simply the amount due. Now, the total monthly retired pay is materially less:

(B) For purposes of subparagraph (A), the total monthly retired pay to which a member is entitled shall be –

(i) the amount of basic pay payable to the member for the member's pay
Cont. on page 54

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Insurance / Cont. from page 41

whether your client intends to keep his or her coverage in place beyond the terms of the SA for a new spouse, adult children, or grandchildren.

5) Being kept in the dark.

Insurance policies can lapse – without notice to the beneficiary – if the policy owner misses or stops making premium payments. Attorneys representing the ex-spouse beneficiary should consider establishing life insurance coverage on the opposite spouse so that the beneficiary is also the policy owner; this approach provides the beneficiary greater control, access to information, and security. Due to recent changes in state probate codes, attorneys should also consider affirmatively identifying any spousal beneficiaries on existing life insurance that will survive the divorce. Finally, be careful to specifically identify the subject policy in the SA (e.g., Policy Number, Face Amount, etc.).

6) Focusing only on income.

Replacing earned income represents a good baseline for SA insurance negotiations. But you should also consider future financial obligations that clients may face when considering insurance coverage amount – including college expenses and uninsured healthcare costs such as orthodontia.

7) Going it alone. As an attorney, you know the value of enlisting the help of qualified experts. So if life insurance will be a factor in a case, reach out to financial professionals who have specific experience with divorce. They might have a suggestion that could make you a hero to your clients. ■



Steven Vaphiades, LUTCF, has worked in the life insurance industry for over 24 years. He currently leads SBLI's Life Insurance Solutions Center; SBLI was founded in 1907 by future Supreme Court Justice Louis Brandeis. www.sbli.com

Stand Out / Cont. from page 42

- Who do I know that can give my firm an advantage in the marketplace? Can I create relationships with other attorneys and professionals to increase my referrals?

Three Examples of Differentiation

Example 1: A divorce lawyer stopped wasting precious time with superficial – and expected – small talk about the weather, traffic, etc. when he meets them for a consultation. By creating a personalized opening, he connects with a prospective client and demonstrates his unique value, which tips the scales in his favor.

Example 2: An estate planner sends a packet to prospective clients prior to their initial meeting. The packet includes tips, advice, resources, and the top ten questions to ask an estate-planning professional. This low-cost, high-impact packet sends a loud and clear message about how much this professional cares – without his having to say a word.

Example 3: Another divorce lawyer sends an impressive brochure to prospective clients prior to meeting them. This brochure offers vital information to know when choosing a divorce attorney, including questions to ask and a list of helpful referrals.

Get creative. Be adventurous. Do something that makes clients feel important and cared for. Conceive a personal and memorable initial consultation experience for your clients. Prospective clients will feel that you stand out from the rest – and that you are the best choice for them. ■



Liz Wendling is a nationally-recognized practice development coach for attorneys. She designs programs for divorce attorneys who want to attract more clients, close more business, and differentiate themselves from the competition. www.therainmakingcoach.com

Circumventing / Cont. from page 49

grade and years of service at the time of the court order, as increased by

(ii) each cost-of-living adjustment that occurs under section 1401a(b) of this title between the time of the court order and the time of the member's retirement using the adjustment provisions under that section applicable to the member upon retirement.

10 U.S.C. § 1408(a)(4)(B)

The effect of this language is to prevent state courts from dividing any increase in military retirement pay occurring after the date of divorce, except for cost-of-living increases.

The amendment changes the definition of the only type of military retirement benefit that state courts are permitted to divide: "disposable retired pay." Some of the limitations later in the USFSPA, see § 10 U.S.C. §§ 1408(d), (e), apply only when a spouse seeks direct payments from the military. But limitations on the definition of "disposable retired pay" are limitations upon a state court's ability to divide the more inclusive retirement pension provided by the United States military by any method – as stated in *Mansell* and affirmed in *Howell*. State courts cannot avoid the amendment simply by ordering payment from one spouse to the other. Post-divorce increases in military retirement pay (other than cost-of-living increases) cannot be treated as marital property. For an excellent discussion of the effect of the amendment and of *Howell*, see Brett R. Turner, *Equitable Distribution of Property* § 6.04 (3d ed. Supp. 2017). ■



*Laura W. Morgan is the owner/operator of Family Law Consulting, which provides research and writing services to family law attorneys nationwide. She is the author of numerous law review articles and two treatises: *Child Support Guidelines: Interpretation and Application* (Wolters Kluwer, 2012), and *Attacking and Defending Marital Agreements* (ABA, 2014). www.famlawconsult.com*

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Closing Date	10/3/2016		Mrs Stephanie Russell	Purpose	Purchase
Disbursement Date	10/3/2016			Product	7 ARM
Settlement Agent	Barlett & Bradley	Seller	Mr Merrick Burgess	Loan Type	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #	160204			<input type="checkbox"/> VA <input type="checkbox"/>	
Property	Desbrosses Street Apt	Lender	Wells Fargo	Loan ID #	12234
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