

RIVERSIDE LAWYER

April 2016 • Volume 66 Number 4

MAGAZINE

FORMS & INSTRUCTION

In This Issue

Death and Taxes

What the Pfizer is a Corporate Inversion?

QDRO Cash Outs, Equalizations, and Tax
Ramifications

Taxing Awards

Liberty, Equality and Flatery:
Re-Thinking Our Income Tax System

We Are Better Than This:
How Government Should Spend Our Money



The official publication of the Riverside County Bar Association



Palm Springs Seminar

OMNI RANCHO LAS PALMAS RESORT & SPA
RANCHO MIRAGE, CALIFORNIA

MAY 20 - 22, 2016



MICHAEL A. KELLY
LUNCH KEYNOTE



MICHAEL J. BIDART
WILLIAM SHERNOFF
TRIAL LAWYER
OF THE YEAR



YOSHIAKI C. KUBOTA
MERIT AWARD

CONFIRMED SPEAKERS

Ashleigh E. Aitken, Wylie A. Aitken, Gregory L. Bentley, Michael J. Bidart, Timothy G. Blood, Bruce A. Broillet, Deborah Chang, Brian D. Chase, Cynthia Chihak, Matthew W. Clark, Cynthia A. Craig, Donald M. de Camara, Christopher B. Dolan, Ricardo Echeverria, Don A. Ernst, Hon. Bryan F. Foster, Hon. Janet M. Frangie, Mark J. Geragos, Robert B. Gibson, Thomas V. Girardi, John H. Gomez, Browne Greene, Cynthia D. Hafif, Daniel M. Hodes, Vincent D. Howard, Casey R. Johnson, Brian S. Kabateck, Jennifer L. Keller, Michael Kelly, Justin H. King, Yoshiaki C. Kubota, Patricia A. Law, Micha Star Liberty, Daren H. Lipinsky, David R. Lira, Clare Lucich, Geraldine G. Ly, Lisa L. Maki, Hon. Brian S. McCarville, Jill P. McDonnell, Valerie McGinty, John A. Montevideo, Hon. Gilbert G. Ochoa, Brian J. Panish, R. Rex Parris, Craig Peters, V. Andre Rekte, John J. Rice, Gregory G. Rizio, Mark P. Robinson, Jr., Jason R. Sanchez, William D. Shapiro, Amy Fisch Solomon, Christine D. Spagnoli, Eric Traut, Kimberly Valentine, Geoffrey S. Wells, Alexander Wheeler, Daniel E. Wilcoxon



Omni Resorts Rancho Las Palmas

41-000 Bob Hope Dr., Rancho Mirage, CA 92270
 Reservations: (866) 423-1195 • Room Rate: \$199
 Refer to: Consumer Attorneys of California -
 2016 Inland Empire
 Cut-Off Date: 4/20/16 or until the block is sold

SEMINAR CHAIR: Gregory L. Bentley • CAOC PRESIDENT: Elise R. Sanguinetti • CAOC EDUCATION CHAIR: Micha Star Liberty • COMMITTEE: William D. Shapiro, Gregory G. Rizio, Geraldine Ly, Casey Johnson, Jason Sanchez, Cynthia Craig, Vincent Howard, Nancy Drabble, Lori Sarracino, Wendy Murphy

2016 PALM SPRINGS REGISTRATION

RETURN WITH PAYMENT TO:
 CAOC, 770 L Street, Suite 1200 Sacramento, CA 95814
 T (916) 442-6902 x129 • F (916) 442-7734

1 PLEASE PRINT CLEARLY OR TYPE:

CAOC # _____ State Bar # _____ Bar Date _____
 Name _____
 Firm _____
 Address _____
 City _____ St _____ Zip _____
 E-Mail _____
 Phone(_____) _____ Fax(_____) _____

CAOC has permission to communicate with me by fax and email.

2 LUNCH: MICHAEL A. KELLY No. of tickets: _____ \$20pp

3 PRE-REGISTRATION: Registration includes CD syllabus, Welcome Reception (Friday), Judges Reception (Saturday) and MCLE Certificate.

ATTORNEYS	PRE-REG THRU 2/8	REGISTRATION 2/9 - 5/8	LATE REG 5/9 - 5/21
CAOC or OCTLA Member or Retired Judge	<input type="checkbox"/> \$250	<input type="checkbox"/> \$275	<input type="checkbox"/> \$305
Add'l CAOC or OCTLA Member of same firm	<input type="checkbox"/> \$240	<input type="checkbox"/> \$265	<input type="checkbox"/> \$295
Non-Member Attorney	<input type="checkbox"/> \$360	<input type="checkbox"/> \$385	<input type="checkbox"/> \$410
LAWYERS ADMITTED TO THE BAR SINCE 2014:	<input type="checkbox"/> \$190	<input type="checkbox"/> \$230	<input type="checkbox"/> \$280
<input type="checkbox"/> Please assign me a mentor.			
LAW OFFICE SUPPORT			
CAOC Law Office Support (LOS) Member	<input type="checkbox"/> \$150	<input type="checkbox"/> \$175	<input type="checkbox"/> \$205
Add'l LOS Member from the same firm	<input type="checkbox"/> \$130	<input type="checkbox"/> \$150	<input type="checkbox"/> \$180
Non-Member Law Office Support	<input type="checkbox"/> \$200	<input type="checkbox"/> \$225	<input type="checkbox"/> \$250
LAW STUDENT (MUST SUBMIT COPY OF ID)	<input type="checkbox"/> \$40	<input type="checkbox"/> \$50	<input type="checkbox"/> \$75
CURRENT SITTING Judges/Justices*	<input type="checkbox"/> FREE	<input type="checkbox"/> FREE	<input type="checkbox"/> FREE

*In conformance with judicial ethical policies, ticketed events must be paid.

4 METHOD OF PAYMENT:

Check enclosed. Check # _____
 Charge my credit card: MC Visa Amex
 Card No. _____ Exp. Date _____
 Signature _____

REFUND POLICY: Refunds will be honored only if a written request is submitted to CAOC before April 20, 2016 and will be subject to a \$75 service charge. Registration substitutions may be made only when the substituting party holds the same membership category as the original registrant.
 AD

Publications Committee

Sophia Choi
 Julianna Crawford
 Donald Cripe
 Melissa Cushman
 DW Duke
 Abram Feuerstein
 Stefanie Field
 Alexandra Fong
 Betty Fracisco
 Krista Goodman
 Amy Guldner
 Boyd Jensen

Robyn Lewis
 Juanita Mantz
 Christopher Marin
 Dorothy McLaughlin
 Sarah Mohammadi
 Chad Morgan
 Charlene Nelson
 Dawn Saenz
 Mohammad Tehrani
 Jamie Wrage
 Lisa Yang

Editor Jacqueline Carey-Wilson
Copy Editors Yoginee Braslaw & Juanita Mantz
Design and Production PIP Printing Riverside
Cover Design PIP Printing Riverside

Officers of the Bar Association

President

Kira L. Klatchko
 (760) 501-0923
 kira.klatchko@lewisbrisbois.com

President-Elect

Jean-Simon Serrano
 (951) 682-6400
 jserrano@heitingandirwin.com

Vice President

L. Alexandra Fong
 (951) 955-6300
 lafong@co.riverside.ca.us

Chief Financial Officer

Jeffrey A. Van Wagenen, Jr.
 (951) 955-1309
 JVanWagenen@rivcoeda.org

Secretary

Jack B. Clarke, Jr.
 (951) 686-1450
 jack.clarke@bbkllaw.com

Past President

Robyn Lewis
 (951) 682-0488
 rlewislaw@yahoo.com

Directors-at-Large

Sophia H. Choi
 (951) 955-6300
 sochoi@co.riverside.ca.us

Kelly A. Moran
 (951) 955-6300
 kmoran@co.riverside.ca.us

Nicholas Firetag
 (951) 684-2171
 nicholas.firetag@greshamsavage.com

Brian C. Unitt
 (951) 682-7030
 brianunitt@holsteinlaw.com

Executive Director

Charlene Nelson
 (951) 682-1015
 charlene@riversidecountybar.com

Officers of the Barristers Association

President

Christopher B. Marin
 (951) 823-5140
 christopher@riversidefamilylaw.com

Treasurer

Kris Daams

Vice President

Ben Heston

Members-at-Large

Mona Amini
 Shumika Sookdeo

Secretary

Erica Alfaro

Past President

Scott H. Talkov

Riverside County Bar Association
 4129 Main Street, Suite 100
 Riverside, California 92501

Telephone
 951-682-1015

Facsimile
 951-682-0106

Internet
 www.riversidecountybar.com

E-mail
 rcba@riversidecountybar.com

RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

- 3 **President's Message** by *Kira L. Klatchko*
 4 **Barristers President's Message** by *Christopher Marin*

COVER STORIES:

- 6 **Death and Taxes**
 by *Brandon Lee Spivack*
 8 **What the Pfizer is a Corporate Inversion?**
 by *Mohammad Tehrani*
 10 **QDRO Cash Outs, Equalizations, and Tax Ramifications**
 by *David T. Ruegg*
 12 **Taxing Awards**
 by *Edward A. Shepherd*
 14 **Liberty, Equality and Flaterny:
 Re-Thinking Our Income Tax System**
 by *Abram S. Feuerstein*
 18 **We Are Better Than This:
 How Government Should Spend Our Money**
 A Book Review by *William C. Sias*

Features:

- 20 **Poly High School is Mock Trial Champion**
 by *John Wahlin*
 22 **The RCBA Elves Program 2015:
 You Did It! You Broke the Record**
 by *Brian C. Percy*
 25 **Judicial Profile: Commissioner Belinda Handy**
 by *Juanita E. Mantz*
 26 **First Annual Mock Trial Luncheon**
 by *Judge Helios Hernandez II*

Departments:

Calendar 2
 Classified Ads 28

Membership 28

MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

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

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

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

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

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

CALENDAR

April

12 Civil Litigation Section

Noon – 1:15 p.m.
RCBA Gabbert Gallery
Planning Meeting
Contact chairperson
Dorothy McLaughlin for
more information (951-686-1450)

13 Criminal Law Section

Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Luigi V. Monteleone
Topic: “Digital Trial Preparation,
Organization, and Presentation”
MCLE
Lunch sponsored by Trey Roberts of
Breathe Easy Insurance Solutions, will be
provided to those that RSVP by April 11.
RSVP to rcba@riversidecountybar.com

15 General Membership Meeting

Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Mark J. Geragos, Esq.
Topic: “The Role of an Attorney in Public
Affairs: The Armenian Genocide”
MCLE

19 Family Law Section

Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Christopher Celentino
Topic: “Family Law and Bankruptcy Cross-
Over Issues”
MCLE

26 Appellate Law Section

Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Don Davio
Topic: “Insider Basics”
MCLE





President's Message

by **Kira L. Klatchko**

This year, as in past years, the RCBA is working with our local courts, legislators, and with the judicial branch, in an effort to secure additional resources. I recently joined Presiding Judge Harold Hopp in Sacramento as part of an organized effort by the Bench-Bar Coalition to advocate for new steady investment in the judicial branch and in our local courts.

As most of you know, for years the courts in the Inland Empire have been underfunded and under-resourced relative to most other courts in California. The disparities are evident in workload statistics, which show our judges and justices are responsible for more cases than judges in the state. They are evident in recent assessments by the judicial branch showing that Riverside and San Bernardino have the most acute need for judgeships, relative to all other California counties.

To give you some idea of what "acute need" means, the Judicial Council determined in 2014 that fifty-one additional trial judges were needed in Riverside County Superior Court to hear the current caseload. That is, per data generated nearly two years ago, Riverside needs fifty-one new judges to bring it to parity with other counties, a not insignificant number given there are currently only seventy-six authorized judicial positions. San Bernardino needs fifty-six new authorized judgeships; they currently have eighty-six authorized judicial positions.

The Riverside-based Fourth District Court of Appeal, Division Two, also has the most acute need for justices of any appellate court in the state. The seven-justice court issued 998 opinions during fiscal year 2014, an average of 142 opinions per justice. During the same period, the ten justice Fourth District Court of Appeal, Division One, based in San Diego, issued 965 opinions, an average of 96.5 opinions per jus-

tice, and the eight justice Fourth District Court of Appeal, Division Three, based in Santa Ana, issued 818 opinions, an average of 102.25 opinions per justice. During that period, both San Diego and Santa Ana were accepting overflow cases from Division Two, but not a sufficient number to overcome the significant backlog of fully briefed appeals.

It is in the context of these numbers, and many others, that the Judicial Council is making it a priority to request funding for additional judgeships for Riverside and San Bernardino courts, and other under-resourced courts throughout California. Senator Richard Roth, a former RCBA Board member, has been leading the charge, with support from other local legislators. The RCBA is supporting these efforts, and is also supporting efforts to increase overall funding for California's trial courts, which face a funding gap of over \$400 million this year.

Securing support for our courts, and for programs critical to their success, will continue to be a top priority for the RCBA. For that reason, the Board will be creating a new advocacy committee comprised of local stakeholders and RCBA members. Unlike past efforts, which have varied from year to year, this new committee will, I hope, be a permanent addition to the RCBA, and will ensure outreach efforts are unflagging. I look forward to hearing from anyone who has an interest in becoming involved with the RCBA's advocacy efforts, or with the Bench-Bar Coalition, or Open Courts Coalition, all of which aim to improve access to justice in our communities.

Kira Klatchko is a certified appellate law specialist and co-contributing editor of Matthew Bender Practice Guide: California Civil Appeals and Writs. She is also a vice chair of the appellate practice at Lewis Brisbois Bisgaard & Smith, where she is a partner.





Larry L. Hines

MEDIATION & ARBITRATION SERVICES

Traditional Mediation Plus Issue Analysis
Emphasis on Trust/Probate, Family Law,
and Employment Litigation

Serving Ventura and Riverside Counties

- ▣ Over 42 years of civil and appellate experience
- ▣ Practice devoted primarily to complex family law, probate/trust, business and employment law
- ▣ Participated in hundreds of mediation and settlement conferences
- ▣ Lead trial lawyer in over 200 jury and court trials
- ▣ AV Rated/California Super Lawyer
- ▣ Served as mediator, arbitrator and temporary judge
- ▣ Attended the Straus Institute for Dispute Resolution, Pepperdine School of Law

Larry L. Hines

5941 Terra Bella Lane, Camarillo, CA 93012
Call (805) 479-0994 or Email: LarryHinesMediation@gmail.com
See website for more details and Curriculum Vitae

www.lhinesmediation.com

BARRISTERS PRESIDENT'S MESSAGE

by Christopher Marin



I've never really thought of myself as depressed so much as I am paralyzed by hope.

-Maria Bamford

A lot of my colleagues know that I suffer from depression. What few of my colleagues don't know is that my depression got so bad that I had to be hospitalized in late 2014. While the causes of depression are varied and complex, I like to think that mine was attributable in some part to the difficulty I had in finding gainful employment as an attorney coupled with the stress of running a solo law practice.

That said, I really scaled back my law practice since my discharge from the hospital so that I would be able to provide competent representation to those clients I decided to keep. And now I am taking the ultimate step and shuttering my law practice entirely. I still plan on maintaining my law license and keeping my skills sharp with clinical work with Riverside Legal Aid and the free MCLE offered with membership in the RCBA. And if my second career fails to launch, I may just come back to the law.

I also plan to serve out my term as Barrister's President and next term as Past President. I was able to achieve many of the goals I set out at the beginning of my term, including more social outreach with other professional groups and generating interest amongst our members in reforming our bylaws. I am also thrilled by the turnout we had for our February and March events, as well as the fact that many of you expressed interest in forming committees to take on some of the work that has traditionally fallen on the shoulders of your Barristers Board of Directors, although I must express gratitude to the current board who was able to accomplish so much this year.

Now it is time to issue the call for members to become the next leaders for the Riverside County Barristers. Our nominating committee consists of me, Past President Scott Talkov, and Secretary Erica Alfaro. Please contact any of us by April 15th if you are interested in running for a position on next year's Barristers board. I will announce the slate of candidates next month in my May message, and we will have our elections at our June meeting. Keep in mind that the bylaws require that you be a dues paying member of the RCBA and you have attended at least two meetings before the election meeting in June. So if you have not attended any meetings this year, April and May are your last chances.

For April, our meeting will give you an idea of what it is like to serve on a board of directors. Eugene Kim from Gresham Savage

will present on legal considerations for serving on a nonprofit board. We will also be providing information on how you can become involved in a unique opportunity to get comprehensive training on how to effectively serve on a nonprofit board with Pick Group's Board Development Training Program (BDTP). I am an alumnus of the 2014-2015 class (and it's where I got my current headshot) and I now sit on the board of Riverside Legal Aid. Our Treasurer, Kris Daams, just graduated from the BDTP.

Since we are talking about nonprofits, we are also using this opportunity to raise money for one of Riverside's newest nonprofits – The RCBA Foundation, which supports the bar's charitable endeavors (read: donations are a tax write-off). So join us on Wednesday, April 13 starting at 5:30 in the RCBA's Gabbert Gallery. The suggested donation is \$5; dinner will be provided; and all proceeds will go to the RCBA Foundation's general fund.

Our March event was a great success thanks to Trey Roberts from Breathe Easy Insurance and the wonderful breakfast spread he provided. We are still looking for a sponsor for April to underwrite the dinner, but I would also encourage any firms out there to issue a matching grant to the money we raise. Remember the RCBA Foundation serves a similar purpose to the RCBA: to make our community a better place to live for everyone.

Christopher Marin, a member of the Bar Publications Committee, is a sole practitioner based in Riverside. He can be reached at christopher@riversidefamilylaw.com. Scott Talkov can be reached at stalkov@rhlaw.com. Erica Alfaro can be reached at emalfaro@scif.com.



😨 I just got served with a complaint for malpractice... I can't believe it!!!

You know what you should do?...right???

I did everything RIGHT for this client... I got them great results!!! THIS IS CRAZY!!!

No worries... 😊 just send it to your malpractice carrier... they will take care of it!

Hmmmmmm...

You don't carry malpractice insurance??? NOW WHAT 😨 are you going to do??!!

Being RIGHT doesn't protect you...

**CALL
LMIC
NOW!**

**Lawyers' Mutual
Insurance Company**

The Premier Legal Malpractice Carrier

LMIC.COM or call (800) 252-2045

DEATH AND TAXES

by Brandon Lee Spivack

As a first year law student, I learned that a good attorney is not one who can merely recite the law, but one who can carefully and accurately identify the nuanced legal issues present in a case. Now, as an estate planner, this wisdom serves as a foundational “philosophy of practice” in my legal work. Most clients are aware of the frustrations that often come with probate, but they rely on attorneys such as myself to advise them about other relevant issues, such as “death taxes”. Frequently, attorneys and clients dismiss “death taxes” as an issue applicable to the super rich. However, such a limited understanding of the issues can expose attorneys and their clients to significant problems with the government and/or beneficiaries.

Chapters 11, 12 and 13 of the Internal Revenue Code detail the estate, gift, and generation skipping transfer tax (“GST”) rules. It is common to hear people refer to these rules as the “death taxes,” but this reference is inaccurate. The government imposes a tax on the transfer of assets, not the death of an individual. The best illustration of this distinction is Chapter 12 and the imposition of a gift tax. Specifically, the gift tax applies to all gratuitous transfers of *property* made during the donor’s life.¹ Congress created the gift tax as a backup to the estate tax, which imposes a tax on the transfer of assets at death. Together, the estate and gift taxes, along with the GST tax,² ensure that any transfer of property, during life or at death, will be subject to a transfer tax.

The computations of the estate and gift taxes are similar to other tax calculations: the tax liability is equal to the tax base multiplied by the tax rate, less any credits. The easy portion of this formula is identifying the tax rate—(essentially) forty percent (40%).³ The challenge is determining the tax base. For estate taxes, the starting point for determining the tax base is identifying the “gross estate.”⁴ In general, the gross estate includes everything owned or controlled by the decedent at death. In most cases, there is little trouble identifying what the decedent owned at death. Rather, the difficulty is identifying what the decedent “controlled.” For example, a decedent may have held a power of appointment over a trust. Identifying the power of appointment as a general or limited power will determine whether the assets of the trust are included in the decedent’s gross estate.⁵

Once the gross estate is determined, certain deductions may be taken to arrive at the taxable estate.⁶ The charitable deduction and marital deduction are the most significant deductions available. The charitable deduction⁷ reduces the ultimate tax liability while the marital deduction⁸ only defers the estate tax until the death of the surviving spouse.

After the deductions are applied, the taxable estate (if any) remains. The taxable estate is multiplied by the tax rate⁹ to determine the tax payable. The tax payable is then reduced by any credits available to the estate to reach the decedent’s final estate tax liability.

For most individuals and married couples, there is no estate tax liability due to the “Unified Credit.”¹⁰ The federal government provides U.S. citizens and residents a credit that shelters \$5,450,000 of assets from tax. A married couple can combine their tax credit to shelter \$10,900,000 of assets from tax. Any credit that is not used by a deceased spouse may be transferred to the surviving spouse if the surviving spouse makes a timely election on the decedent’s federal estate tax return (IRS Form 706).¹¹ Transferring the deceased spouse’s unused credit is referred to as “portability.” Portability allows significant estate and income tax planning opportunities.

The large Unified Credit amount, the availability of portability, and the absence of a California (state) estate tax gives some validity to the argument that estate taxes are only an issue for the super rich. However, that may not always be true. First, the Unified Credit can be reduced during the decedent’s lifetime by making lifetime gifts. Congress enacted the gift tax to ensure that lifetime transfers of property would not reduce the donor’s estate tax liability at death. Without the gift tax, donors could make gifts (including gifts shortly before their deaths) to avoid the estate tax entirely.

The current gift tax system allows for certain lifetime transfers, such as donations to charities;¹² payments towards an individual’s educational and healthcare expenses;¹³ and gifts below the annual exclusion amount¹⁴ to pass gift tax-free. Donors may also volunteer their services without incur-

1 26 U.S.C. § 2501

2 Generation Skipping Transfer (“GST”) tax is mentioned in this article for completeness; However, the rules related to GST tax are very complicated and beyond the scope of this article.

3 26 U.S.C. § 2001; 26 U.S.C. § 2502

4 26 U.S.C. § 2031

5 26 U.S.C. § 2041

6 26 U.S.C. §§ 2051-2058

7 26 U.S.C. § 2055

8 26 U.S.C. § 2056

9 26 U.S.C. § 2001

10 26 U.S.C. §§ 2010 & 2505. Additionally, there is a credit against the GST tax, but it is not considered part of the Unified Credit.

Rather, the GST exemption is a separate credit, currently equal to the same amount as the Unified Credit, under 26 U.S.C. § 2631(c).

11 26 U.S.C. § 2010(c)

12 26 U.S.C. § 2522

13 26 U.S.C. § 2503

14 *Id.* The annual exclusion amount in 2016 is \$14,000 per donee.

ring a gift tax.¹⁵ All other gratuitous lifetime transfers are subject to gift tax. However, the donor's Unified Credit can be used to shelter the gifts from taxes.

When a donor makes a lifetime gift, the donor's Unified Credit is reduced by the fair market value of the gift. All taxable gifts made during a donor's lifetime will reduce the donor's Unified Credit. An estate planner should not assume that a client has the full Unified Credit amount available when preparing a client's estate plan. If a donor has exhausted his or her Unified Credit through lifetime transfers, the

¹⁵ *Id.*

donor will be required to pay gift tax on any subsequent lifetime taxable gifts.

An estate planning client should also be concerned that Congress may reduce the Unified Credit in the future. Whether that actually happens is anyone's guess, but it is worth noting that for much of its existence, the Unified Credit amount was below \$1,000,000, including 2001 when it was \$675,000. If the Unified Credit returns to historical levels, many more of our clients will need to plan for estate taxes.

Brandon Lee Spivack is an associate with Gresham Savage Nolan & Tilden, PC.



Barry Lee O'Connor & Associates
A PROFESSIONAL LAW CORPORATION

REPRESENTING LANDLORDS EXCLUSIVELY
UNLAWFUL DETAINERS/
BANKRUPTCY MATTERS

951-689-9644
951-352-2325 FAX

3691 Adams Street
Riverside, CA 92504
Udlaw2@AOL.Com

NURSE EXPERT

BETTY A. LYONS, RN
951-551-4722

References, qualifications, and fees
at www.legalnursebetty.com

 951-926-4528 (Fax) 

legalnursebetty@roadrunner.com

LIVE YOUR DREAMS


TAKE CHARGE OF YOUR LIFE
TAKE CHARGE OF YOUR FUTURE

THROUGH **PERSONAL COACHING**

**CALL FOR A FREE 30 MINUTE
INTRODUCTION TO COACHING!**

Michael Gouveia
Attorney and Personal Coach
951-780-1972
AttorneyMentorCoach.com

**COURT APPROVED
ALCOHOL AND DRUG
EVALUATIONS**


Alcohol & Drug Treatment
PROFESSIONAL TREATMENT FOR ADOLESCENTS & ADULTS

**OUT-PATIENT PROGRAMS
DAY TREATMENT
EVENING PROGRAMS**

INTENSIVE OUT-PATIENT PROGRAM FOR ADOLESCENTS & ADULTS



Adults & Adolescents - Interventions - No Lost Work Time - Court Approved - State Licensed - Family Oriented
Pain Medication Addiction - Certified Court Evaluations - Drug Testing - Out-Patient Detox

IN NETWORK WITH MOST INSURANCE PLANS

951-719-3685 **www.hillrecovery.com**

RECIPIENT OF "UNITED HEALTHCARE'S OPTUM AWARD FOR EXCELLENCE"

ROCKY HILL, M.A. • DEB HILL, R.N.
Providing Treatment Services to The Valley Since 1986

WHAT THE PFIZER IS A CORPORATE INVERSION?

by Mohammad Tehrani

I. Introduction

On November 23, 2015, in the midst of the 2016 presidential campaign, the New York-based pharmaceutical giant Pfizer announced its intentions to merge with the Irish pharmaceutical firm, Allergan.¹ As part of the \$160 billion deal, the merged company would shed Pfizer's United States corporate domicile in favor of Allergan's Irish domicile.² The United States federal corporate tax rate for a company of Pfizer's size is 35%.³ After moving its operations to Ireland, the proposed newly-merged company would be subject to Ireland's 12.5% corporate rate.⁴

Presidential candidates from both sides blasted the deal. Bernie Sanders called it a "disaster" and asserted that it would "allow another major American corporation to hide its profits overseas."⁵ Donald Trump called the deal "disgusting," blaming the move on lawmakers for not preventing corporate inversions.⁶ Hillary Clinton accused Pfizer of exploiting loopholes to hide profits overseas.⁷

The Pfizer-Allergan merger has reignited debate on corporate inversions of multinational corporations. So, what are corporate inversions, and what should be done about them?

II. Corporate Taxes 101

Corporate taxation finds its origin in the Corporate Income Tax Act of 1909, an excise tax of one percent of net income above \$5,000.⁸ Currently, 26 U.S.C. § 11 imposes a 35% tax on taxable income that exceeds \$10 million.

1 Geoffrey Smith and Claire Groden, *Pfizer, Allergan Confirm \$160 Billion Merger Deal*, *FORTUNE* (November 23, 2015), available at <http://fortune.com/2015/11/23/pfizer-allerganmerger>

2 *Id.*

3 Victor Luckerson, *Here's How Much Pfizer Could Save in Taxes After Allergan Merger*, *TIME* (November 23, 15), available at <http://time.com/4124633/pfizer-allergan-merger-taxes-inversion>

4 *Id.*

5 Steven Rosenfeld, *Sanders Slams Merger of Drug Giants Pfizer and Allergan as Disaster for America*, *ALTERNET* (November 23, 2015), available at <http://www.alternet.org/economy/sanders-slams-merger-drug-giants-pfizer-and-allergan-disaster-america>

6 Chris Matthews, *Why Washington is Tackling the Tax Inversion Problem All Wrong*, *FORTUNE* (November 25, 2015), available at <http://fortune.com/2015/11/25/why-republicans-democrats-tax-plans-inversion-problem>

7 *Id.*

8 Ajay K. Mehrota, "The Public Control of Corporate Power: Revisiting the 1909 U.S. Corporate Tax from a Comparative Perspective" (2010), *Articles by Maurer Faculty*, Paper 47.

Our corporate tax system differs from the rest of the world in two significant respects. First, our 35% corporate tax rate is the highest among member nations of the Organisation for Economic Co-operation and Development (OECD), where the average corporate tax rate is 29%. The second is our treatment of multinational corporations.

A multinational corporation is a business that is incorporated and operates in one country, but also maintains operations of various kinds in other countries. Many factors influence corporate decisions about where to invest its sales, operations, production, and labor force. Among those factors are tax considerations.

Every developed nation taxes multinational corporations using a hybrid system that falls on a spectrum ranging from a worldwide approach or a territorial approach.⁹ Under a purely worldwide approach, the home country considers all of the income of its multinational corporations to be taxable, regardless of where that income is earned. In contrast, a territorial approach taxes only the income earned within its borders.¹⁰

The United States is unique among OECD nations in that its tax system leans towards a worldwide approach, with territorial concessions such as the ability to defer taxes owed to the United States on income earned abroad by subsidiaries until that income is remitted to the U.S. parent company.¹¹

III. Corporate Inversions, Generally

A corporate inversion is a process by which an existing corporation changes its country of residence.¹² Corporate inversions are achieved through three methods: the substantial activity test, a merger with a larger foreign firm, and a merger with a smaller foreign firm.¹³

Perhaps the most controversial of the three methods is when a U.S. corporation merges with a smaller foreign firm, and rather than absorb the smaller firm, decides to adopt the foreign firm's country of domicile. Tax considerations often drive this decision.

9 Congressional Budget Office, *Options for Taxing U.S. Multinational Corporations*. (January 2013)

10 *Id.*

11 *Id.*

12 Donald J. Marples and Jane G. Gravelle, *Corporate Expatriation, Inversions, and Mergers: Tax Issues*, Congressional Research Service (2015).

13 *Id.*

The U.S. tax issues which drive this decision are a combination of a high corporate tax rate and a worldwide approach to multinational taxation. Both of these factors incentivize large, multinational corporations to move their headquarters overseas to lower-tax jurisdictions, while maintaining their operations in the United States.

The harm of corporate inversions is threefold: the U.S. tax base is threatened, foreign-controlled firms obtain a cost advantage, and the public perceives the tax system as unfair.¹⁴ The impact on employment, at least in the short term, is negligible, as corporate operations generally resume as they had earlier. However, over time and with increased capital leaving the U.S. to now-foreign corporations, the reduced capital available to domestic corporations would likely produce a negative impact on the domestic labor market.

IV. Where the Candidates Stand

The candidates' positions are, not surprisingly, divided on party lines. Ted Cruz and Donald Trump seek a significantly lower flat business tax, 16%¹⁵ and 15%,¹⁶ respectively. Both Bernie Sanders and Hillary Clinton have proposed to make corporate inversions more difficult by requiring that the foreign corporation obtain 50% of the corporation's equity (an increase from the current 20% requirement).¹⁷ Both are also opposed to the ability of permitting corporations to defer their subsidiaries' domestic tax liabilities for foreign operations.¹⁸

V. Strengths and Weaknesses of the Candidates' Proposed Solutions

Both political parties seek to combat corporate inversions, but their approaches differ vastly. Republicans propose to reduce the tax rate, and Democrats propose to maintain the tax rate but make inversions more difficult.

A. Lower Tax Rate

The Republican candidates seek to reduce the incentive for corporations to change their domicile by offering a more attractive domestic tax rate. As noted earlier, the U.S. has the highest tax rate among OECD nations.

While this proposal would make the U.S. more attractive, this proposition alone could not succeed because neither the 16 nor 15 percent proposed tax rate would result in a domestic tax environment which is competitive with countries such as Ireland. Indeed, to be the most competitive, the corporate tax rate would have to

fall to 0%, just to match the benefits of incorporating in Bermuda.

Additionally, lowering tax rates by 20% just to stop corporate inversions is probably an overreaction caused by the perceived unfairness of wealthy multinational corporations getting away without paying their fair share of taxes. Taxes lost due to corporate inversions will account for estimated \$20 billion over the next ten years; total corporate taxes to raise over the next ten years is anticipated to be \$4.5 trillion.¹⁹ The loss to the overall tax base a decrease of this magnitude would cause in order to prevent perceived unfairness is probably not justified.

B. Making Corporate Inversions More Difficult

The Democratic candidates propose making corporate inversions more difficult by increasing the current requirement of 20% of a corporate equity to be held by foreign entities to 50%. This attacks the criticized "name only" corporate moves, which maintain substantially their operations and capital while evading taxes.

While this would make corporate inversions more difficult to obtain, the criticism is that corporations which determine that the tax benefits of leaving a high tax, worldwide system make inversion possible will not only leave in name only, but leave their operations as well. As a foreign corporation they would still have the ability to operate in the U.S., but under this system even more corporate capital will leave the U.S. than before, further exacerbating symptoms, and likely impacting the labor market negatively.

VI. Conclusion

While corporate inversions have the negative effect of reducing domestic capital and tax base, both of which makes our country poorer, the reactions and proposed solutions do not justify their relatively *de minimis* impact. Instead, policy appears to be driven by the perceived unfairness of the transaction, which may result in a substantially greater net loss than the evil itself. While the tax code should be updated to be more competitive globally, care should be taken to take a productive, rather than vengeful, approach.

Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.



¹⁴ *Id.*

¹⁵ https://www.tedcruz.org/tax_plan_summary

¹⁶ <https://www.donaldjtrump.com/positions/tax-reform>

¹⁷ <http://feelthebern.org/bernie-sanders-on-corporate-regulation>, <https://www.hillaryclinton.com/briefing/factsheets/2015/12/08/ending-inversions-and-investing-in-america>

¹⁸ *Id.*

¹⁹ Kyle Pomerleau, *Everything You Need to Know About Corporate Inversions*, Tax Foundation (August 4, 2014), available at <http://taxfoundation.org/blog/everything-you-need-know-about-corporate-inversions>

QDRO CASH OUTS, EQUALIZATIONS, AND TAX RAMIFICATIONS

by David T. Ruegg

Perhaps one of the most frequent questions that both attorneys and potential clients want to know about the QDRO (Qualified Domestic Relations Order) process is: Can we use the QDRO process to resolve XYZ obligation? The answer to this question, like the answer to many legal conundrums is: it depends. In discussing this topic, it is important to understand both the type of account and the type of obligation client is trying to satisfy.

I. Defined Contribution Accounts

Falling under the umbrella of defined contribution accounts are accounts such as 401(k), 403(b), 457(b), IRA, Thrift Savings Plan (TSP), and similar. These accounts are “investment in money” accounts because their value is completely dependent on how much money employee client (“Participant”) invested in the account. Employee’s final pay grade, rank, or years of service are irrelevant to the value of these accounts.

A. Cashing Out To Pay Bills

When a client on the receiving end of the QDRO (the “Alternate Payee”) asks if they can “cash out,” what they mean is: Can I spend my money right now? A “cash out” is different from a “rollover” where the client wants to maintain the tax-deferred status on the funds by transferring into another deferred tax account. A common question that comes up when discussing “cashing out” is whether or not Federal and State tax penalties will be assessed if Alternate Payee is under the age of 59 ½.

If payment is made pursuant to a QDRO, then pursuant to Internal Revenue Code 72(t)(2)(c), Alternate Payee falls within an exception to the normal penalty rules; meaning no tax penalties are assessed. However, ordinary income taxes will apply based on Alternate Payee’s tax bracket. As required by IRS rules, Plan Administrators withhold 20% of the funds distributed to Alternate Payee for estimated taxes. Actual taxes are determined after Alternate Payee files his/her tax return. Depending on Alternate Payee’s personal tax bracket, the 20% withholding may be an overestimate or underestimate-resulting in a refund or additional tax liability.

This tax exception does not apply to IRA accounts [See Internal Revenue Code 72(t)(3)]. IRA funds can be transferred pursuant to Internal Revenue Code 408(d)(6), but funds cannot be “cashed out” via the same “divorce exception” of a true QDRO. An Alternate Payee should talk to a CPA to find out if special IRA exceptions apply which would

allow for an early distribution, such as first time homebuyers or higher education expense exceptions.

TIP: Oftentimes, the Alternate Payee is not the only party that is seeking a “cash out.” Many times, the Participant also wants to know if he/she can take money out of his/her own account via the QDRO process to avoid tax penalties. The answer is “maybe” because it depends on how willing both parties are to work with each other.

Under the Employee Retirement Income Security Act of 1974 (ERISA), an Alternate Payee cannot be anyone other than a spouse, former spouse, child, or other dependent of the Participant [ERISA § 206(d)(3)(K), IRC § 414(p)(8)]. As Participant cannot also be an Alternate Payee of his/her own plan, Participant cannot directly “cash out” via the QDRO order.

However, there is nothing stopping Alternate Payee from voluntarily turning over funds received to a third party, even back to Participant. You might be able to guess what I am hinting at... For example: Participant and Alternate Payee agree that Alternate Payee shall receive 50% of the community interest in the 401(k) plus \$50,000. They further agree that after the QDRO is complete, Alternate Payee will pay back to Participant the net on \$50,000. While there are no tax penalties triggered in this fact pattern (only ordinary taxes on funds received), there is a real danger if the parties are not completely cooperative. ERISA provisions have strict anti-alienation rules which prevent Plan Administrators from turning over funds except in very specific circumstances. Translation: If Alternate Payee decides to break the agreed arrangement and roll over the funds into a traditional IRA account, Participant is going to have to overcome some additional hurdles for a safe return of funds.

Also, calculating proper allocation of income tax can be a real headache when this “creative” procedure is employed. Alternate Payee is still personally responsible for ordinary income taxes on all the funds Alternate Payee receives. Since the Plan Administrator withholds 20% of the funds payable for estimated taxes and actual taxes will not be determined until tax filing in the upcoming year, figuring out who should pay what for income taxes, and at what rate, can be quite confusing.

B. Equalizing Against Other Assets

The most important question that needs to be asked when talking about utilizing a defined contribution account

for equalization against other assets is: Is the asset we are equalizing against pre- or post-tax?

Fox example, when a vehicle is sold, the funds received for that vehicle are after-tax, since the vehicle was purchased with after tax money. This means if an equalization is made for a vehicle, the equalization should be adjusted up to account for the fact that the funds received from the defined contribution account will be pre-tax (the exception is Roth accounts).

By contrast, equalization for spousal support arrears would be a pre-tax payoff from a pre-tax account. Just as recipient spouse must include timely spousal support payments as additional gross income, the recipient spouse must include received QDRO funds for support arrears in his/her gross income (included at the time the funds are cashed out).

TIP: Judicial Council Form FL-460 is an excellent form for collection of child, spousal, and family support. It is very detailed regarding the proper tax allocations and withholdings the Plan Administrators should make depending on the type of support. This form can be a very useful tool and should not be neglected when considering options regarding child, spousal, or family support arrears.

C. The Equalization Trap Between Retirement Accounts

Often times I see dissolution judgments that lump together large retirement accounts with the intent to “simplify” the QDRO process by reducing the number of QDROs required. While it may seem like a smart idea to combine multiple accounts into one QDRO to save on QDRO Attorney fees and Plan Administrator fees, consider this hypothetical:

Husband has a 401(k) worth \$150K as of date of separation September 1, 2015 and all \$150K is comprised of large index fund holdings. Wife also has a 401(k) worth \$100K as of date of separation September 1, 2015 but all of her \$100K is comprised of employer company stock. In an effort to “simplify” the process, Husband and Wife’s attorneys agreed that as of date of separation the community property interest is \$250K and in order to equalize, Husband shall pay to wife via QDRO \$25K. Fast forward to March 1, 2016, the parties are now ready to proceed on the QDRO. Neither party invested further money into their respective accounts after date of separation because “the divorce process was so expensive.” Husband’s account stayed relatively the same and is now valued at \$151K. However, wife’s company recently lost a huge contract and as a result her company stock took a significant hit. Wife’s account is now valued at \$79K. Although both accounts should still be categorized as 100% community property (combined \$230K), because of the way the judgment is written, Wife ends up with only \$104K after receiving \$25K and Husband ends up with \$126K.

The point being: be very careful when equalizing larger retirement assets. A 401(k) held at one company is not the same as a 401(k) held at another company, unless they are invested the exact same way. When possible, retirement assets should be divided in kind and equalization should be used sparingly or only for smaller accounts where the risk is lower that a market swing will cause a grossly inequitable result, as in the hypothetical above.

II. Defined Benefit Accounts — What About Buyouts?

In general, defined benefit accounts have much less flexibility for “creative ideas” when talking about equalizing or offsetting for other assets. The main reason for this is that these accounts are difficult to accurately obtain an exact value before retirement. Many defined benefit plans are based on final pay, rank, or position in a company. Who can accurately predict how quickly or slowly an employee will climb the “career ladder”?

That being said, agreeing to a buyout of a pension plan is common in many divorce cases and will likely continue to be common. I would encourage any party or attorney considering a buyout not only to seek a valuation through a licensed actuary, but also to make sure the client understands how benefits are accrued and the potential monthly income that is being waived by the buyout.

An understanding of the pension plan means knowing if the plan offers Alternate Payee a separate versus shared interest division approach, offers a lump sum payout of Alternate Payee’s share directly from the Plan, and what happens in the event of employee’s death; i.e., are survivor benefits available to former spouse? These are just a few of the questions that should be discussed for purposes of trying to evaluate a pension buyout as part of a global settlement.

A partial buyout is also within the realm of possibility for purposes of global settlement. Alternate Payee may agree to give up some, but not all, of Alternate Payee’s community interest in the Participant’s pension plan for a certain sum of money. For purposes of calculating what that buyout scale should be, an actuary should be hired to convert percentages of future streams of income into present values such that each percentage point Alternate Payee is willing to give up is worth a specific dollar value.

When dividing retirement accounts, if a “creative” proposal is made that deviates from a standard 50-50 split of the community property, it is imperative that the attorney and client understand how that retirement account functions and is valued, before signing off on that division method.

David T. Ruegg is a Riverside QDRO attorney and Co-Chair of the RCBA Family Law Section with his wife, NaKasha S.D. Ruegg. David can be reached through his website – www.qdrodivision.com.



TAXING AWARDS

by Edward A. Shepherd

A jury recently awarded Sports caster Erin Andrews \$55 million in a judgment against a stalker and the owner of a hotel where the stalker filmed secret nude videos of Andrews. The stalker had called the hotel to find out if Andrews was staying in the hotel. The hotel confirmed that Andrews would be staying at the hotel and allowed the stalker to book the room next to hers. Andrews was never notified that someone had inquired about her room or that the hotel had given the stalker the room next to hers. The stalker altered the hotel door peephole so that he could film Andrews. He then distributed the videos on the internet.

There are a number of legal issues to explore in this case, but this is the April Tax Issue of the *Riverside Lawyer Magazine*. We want to investigate whether Andrews will have to pay taxes on this \$55 million judgment.

According to 26 U.S. Code Section 104, taxable gross income does not include “the amount of any damages (other than punitive damages) received (whether by suit or agreement) . . . on account of personal physical injuries or physical sickness.” It goes on to clarify that “emotional distress shall not be treated as a physical injury or physical sickness.” This means that payments for damages will be taxable if they are the result of punitive damages or if they are for damages other than personal physical injuries or physical sickness.

Thankfully, in Andrews’ case, there were no physical injuries. With no physical injuries, her \$55 million judgment will be taxed as ordinary income. The federal income tax rate for a single filer with income over \$415,050 is estimated to be 39.6% in 2016. Assuming Andrews is paid the full amount of the judgment in 2016, she would owe \$21,780,000 (39.6%) in federal income tax, leaving her with the remaining \$33,220,000 (60.4%).

Sometimes a judgment involves payment for both physical and emotional damages. In *Justin W. Hansen v. Commissioner*, taxpayer Hansen was assaulted by his employer, a mine operator.¹ Hansen received bruises (physical injuries) in the assault. Hansen complained to the Mine Safety and Health Administration. Hansen’s employer then terminated Hansen’s employment and Hansen filed a discrimination claim against the employer. The parties reached a settlement that included \$20,000 for

wages and \$100,000 for “emotional distress and attorney’s fees.”

Hansen reported the \$20,000 on his taxes, but not the \$100,000 for emotional distress and attorney’s fees. The IRS sent Hansen a notice of deficiency for the \$100,000. In Tax Court, Hansen argued that the \$100,000 was the result of the physical injuries suffered in the assault. However, the settlement agreement made no mention of the physical injuries. Judge Carolyn P. Chiechi stated that “although petitioner had sustained some bruises as a result of the mine assault . . . none of the claims that petitioner asserted in those complaints . . . was for damages on account of those bruises or any other alleged personal physical injuries or physical sickness.”²

Because the settlement did not indicate that Hansen received any of the \$120,000 for his physical injuries or physical sickness, the entire amount that he received was counted as gross, taxable income.

The taxation issue may also be complicated in cases involving contingency fees. Going back to the Erin Andrews case, imagine that Andrews’ attorney is paid a 40% contingency fee for the case. That would be \$22 million of the \$55 million judgment.

Individuals owe taxes based on their gross income. They then deduct expenses as appropriate. If the \$55 million judgment is paid directly to Andrews, she will owe taxes on the full amount even though her attorney will receive \$22 million of the award. Andrews will be able to count the \$22 million paid in attorney fees as a miscellaneous itemized deduction, but this is limited to the amount that exceeds 2% of adjusted gross income and has other limitations as income rises. Furthermore, the Alternative Minimum Tax completely removes miscellaneous itemized deductions from its calculation.

	Net Proceeds Paid to Andrews	Full Judgment Paid to Andrews
Award	\$ 33,000,000	\$ 55,000,000
Legal Fees Paid to Attorney	\$ -	\$ 22,000,000
Net Proceeds	\$ 33,000,000	\$ 33,000,000
Ordinary Income Tax	\$ (13,038,463)	\$ (14,127,283)
Alternative Income Tax		\$ (1,282,539)
Proceeds After Tax Settlement	\$ 19,961,537	\$ 17,590,178
Tax Difference:		\$2,371,359

1 T.C. Memo. 2009-87. Doc 2009-9580, 2009 TNT 80-9

2 T.C. Memo. 2009-87, at p. 16.

The result is that Andrews would pay \$2,371,359 more in taxes if the full \$55 million award is paid to her directly. If she is paid only her \$33 million portion of the award, she would end up with \$19,961,537 after taxes. If she is paid the full \$55 million and then deducts \$22 million for attorney fees, she would end up with \$17,590,178. To avoid plaintiffs getting taxed on the full amount of a judgment, attorneys should ensure that the amount paid to the plaintiff does not include the contingency fee amount paid for legal services.

When a settlement or judgment is reached, there is often a feeling of relief. This feeling of relief may evaporate at tax time if the individual has to pay taxes on monies paid to attorneys, or if the settlement involved physical injuries or sickness and could have been tax-free, but the settlement agreement failed to mention these injuries or sickness.

Edward A. Shepherd, CPA is a full-time service accountant serving clients throughout Southwest Riverside County.



Edward A. Shepherd, CPA



We are available
to help people improve their
financial health and provide
“peace of mind”
tax compliance.

A full-service accounting firm dedicated to providing professional, personalized services and guidance in a wide range of financial and business needs for clients throughout Southwest Riverside County.

www.shepherd-cpa.com

Phone
Fax
Email

(951) 445-4499
(951) 445-4492

edward@shepherd-cpa.com

EDWARD A. SHEPHERD, CPA, 29995 TECHNOLOGY DRIVE, SUITE 304, MURRIETA, CA 92563



LAWYER REFERRAL SERVICE

of the Riverside County Bar Association

*How often do you get a call from a prospective client
with a legal need that falls outside your area of practice?
You need a resource to quickly refer that caller
to a qualified and reputable attorney.*

The LRS has been providing referrals to the community since 1968.
(951) 682-7520 or (760) 568-5555

State Bar of California Certification # 0038 • Recognized by the American Bar Association

LIBERTY, EQUALITY AND FLATERNY: RE-THINKING OUR INCOME TAX SYSTEM

by Abram S. Feuerstein

Emblazoned across the top of both the front and back covers of Steve Forbes' 2005 *Flat Tax Revolution: Using a Postcard to Abolish the IRS*,¹ is the following blurb: "A must read by anyone interested in the future of this country."

The shelves of used book stores are lined with volumes once touted as "must reads", and it seems hard to believe that a publisher ten years ago thought that such tired-sounding praise could help peddle significant copies of a book about taxation. Indeed, old political books usually are less "must reads" than they are musty reads. However, here the promotional words were supplied by Donald J. Trump, who, as this is written, is the leading candidate for the Republican presidential nomination. Given that the Trump tax plan²—as well as the plan of Ted Cruz, his leading Republican opponent—borrows heavily from plans promoted by flat tax proponents, a review of flat tax proposals and concepts seems warranted.

Although the flat tax generally is associated with Steve Forbes and his ill-fated 1996 and 2000 presidential campaigns, its origins really go back to a *Wall Street Journal* editorial published by Alvin Rabushka and Robert Hall 35 years ago in December 1981.³ The editorial had been accompanied by a graphic of a postcard to symbolize the relative ease with which taxpayers could file their tax returns,⁴ giving the idea a dreamy quality in those pre-Turbo Tax days.

As Hall and Rabushka fleshed out their idea over the years, the flat tax in rough outline involved the taxation

of all income, "once and only once,"⁵ at a uniform rate of 19 percent, while providing a generous exemption or standard deduction designed to eliminate poorer families from the tax rolls. The Forbes plan was a similar one, with a tax rate of 17 percent.⁶ When Jerry Brown challenged Bill Clinton for the Democratic nomination in 1992, he proposed a variation of a flat tax that promoted a 13 percent rate.⁷ Republican candidates in the past two election cycles have favored "flatter" tax systems. These include Herman Cain's famous 9-9-9 Plan from his 2012 campaign,⁸ and Ted Cruz's Simple Flat Tax from the current election season with its 10 percent rate on individual income.⁹ The postcard has remained a selling feature of most of the plans. For instance, the Cruz plan promises that "(t)he convoluted tax code will be replaced with new rules of the game—so simple, in fact, that individuals and families could file their taxes on a postcard or phone app."¹⁰

Through the years, the flat tax has been embraced by diverse politicians, newspaper editorial boards, and local taxing authorities, and it has been enacted in numerous countries. It also has received its share of

1 Forbes, *Flat Tax Revolution: Using a Postcard to Abolish the IRS*, 216 pp. (Regnery 2005) (hereafter, "Forbes").

2 The main features of the Trump tax plan include an increase in the standard deductions to \$25,000 for single filers, and \$50,000 for joint filers, and collapsing or "flattening" the current seven tax brackets, which range from 10 to 39.6 percent, into three brackets of 10, 20 and 25 percent. Also, under the plan, the corporate tax rate is reduced to 15 percent. See Jim Nunns et al, *An Analysis of Donald Trump's Tax Plan*, Tax Policy Center, Urban Institute & Brookings Institution, December 22, 2015, available at <http://taxpolicycenter.org/UploadedPDF/2000560-an-analysis-of-donald-trumps-tax-plan.pdf>.

3 See R.E. Hall and A. Rabushka, *The Flat Tax*, p. vii (Hoover Institution 2007) ("Hall & Rabushka"). The entire volume is available as a free download at: <http://www.hoover.org/research/flat-tax>.

4 *Id.*

5 Dividends and capital gains taxation would be eliminated. Hall & Rabushka, p. xiv.

6 Forbes, p. 60.

7 To maintain its low 13 percent rate, Brown's proposal did not eliminate low income families from tax rolls through a generous exemption or standard deduction, and imposed a "value-added tax" on corporations. See Opinion, "Mr. Brown's Flat Tax: Tilted," the *New York Times*, March 27, 1992, available at <http://www.nytimes.com/1992/03/27/opinion/mr-brown-s-flat-tax-tilted.html>.

8 See generally, https://en.wikipedia.org/wiki/9%E2%80%939%E2%80%939_Plan.

9 See generally, https://www.tedcruz.org/tax_plan/. Under the Cruz plan, the tax rate would be applied to income above a standard deduction of \$10,000 and a personal exemption of \$4,000 (*i.e.*, the first \$36,000 of income for a family of four would not be taxed), and there would be a corporate "Business Flat Tax" of 16 percent. The Cruz plan also eliminates many other taxes, including estate taxes, the Social Security and Medicare payroll taxes, and the Alternative Minimum Tax. *Id.*

10 *Id.* Commentators have questioned the alleged simplicity of a flat tax, asserting that the taxpayer would still need to expend time in calculating his or her adjusted gross income. See Robert H. Frank, "The Problem with Flat-Tax Fever," the *New York Times*, November 5, 2011, available at <http://www.nytimes.com/2011/11/06/business/flat-tax-doesnt-solve-inequality-problem.html>.

criticism, with opponents focused on the regressive effects of some of the flat tax plans. But all parties seem to agree on the need for reform. Why? The answer is simple. The Federal Tax Code and its attendant regulations contain 9 million words¹¹ and are thousands of pages in length.¹² The system is so complex that not even IRS employees appear capable of figuring it out.¹³ Compliance costs exceed \$100 billion each year. IRS publications literally deplete hundreds of thousands of trees annually.¹⁴ The current tax system encourages either outright cheating or the diversion of money from productive, risk-taking economic activities to shelter devices designed to lower or avoid taxes. The system widely is viewed as corrupt, with politicians feathering their campaign coffers with donations from lobbyists, lawyers, and accountants.¹⁵ The public perceives that an army of 84,000 IRS employees¹⁶ abuse the power with which they are entrusted. In short, the current system “is a complete mess.”¹⁷ And the anger it creates threatens what Hall & Rabushka call the “moral fabric that sustains (the) tax system, one of voluntary tax assessment and reporting.”¹⁸

Enactment of the First Income Tax in 1861

The current system evolved from the funding needs of the Civil War. Upon passage in 1861, the first income tax levied a 3 percent tax upon incomes between \$600 and \$10,000, and 5 percent on incomes above \$10,000.¹⁹ Within three years, the rates were increased to 5 percent on incomes up to \$5,000, 7.5 percent on incomes ranging between \$5,000 and \$10,000, and a rate of 10 percent charged to incomes above \$10,000.²⁰ However, the tax lapsed in 1872. An effort to enact a new income tax in 1894 was ruled unconstitutional by the Supreme

11 Forbes, p. 5.

12 Hall & Rabushka, p. 6.

13 According to Hall & Rabushka, based on the IRS's annual reports, the IRS telephone information services gives out wrong answers to taxpayer questions as much as one-third of the time.

14 In 2007, Hall & Rabushka estimated the tree loss at 293,760. Hall & Rabushka, p. 7.

15 Hall & Rabushka note that the Chairmen of the two congressional tax-writing committees—the Senate Finance Committee and the House Ways and Means Committee—typically receive more campaign contributions than any other members of Congress, while the rank and file members of the committees receive double the amount of contributions received by their Congressional colleagues. Hall & Rabushka, p. 8.

16 In fiscal year 2015, the IRS had 84,761 total workers as measured by a “full-time equivalent” or FTE standard. See Brooks Jackson, “Cruz Inflates IRS ‘Agents,’” *The Wire*, March 19, 2015, available at <http://www.factcheck.org/2015/03/cruz-inflates-irs-agents/>.

17 Hall & Rabushka, p. 1.

18 *Id.*, at 22.

19 *Id.*, at 29.

20 Forbes, p. 24.

Court one year later in *Pollock v. Farmers' Loan & Trust Company*.²¹

The constitutional impediment to an income tax gave way with the Sixteenth Amendment's ratification in 1913. However, tax rates were extremely low and only 4 people out of 1000 paid income tax.²² But, the financial demands of World War I raised the bottom rate from 1 percent to 7 percent, and the top rate from 7 percent to 77 percent.²³ Down again in the 1920s, and then up to a top rate of 63 percent in the Great Depression years – further clobbering economic activity – only to see the top rate climb to 94 percent during World War II.²⁴ Kennedy reduced tax rates, Reagan reduced them further and in his second term Tax Reform Act enacted a system with only two tax brackets: a 15 percent and 28 percent tax rate.²⁵ Tax rates climbed under George H.W. Bush notwithstanding his famous and emphatic pledge to “read (his) lips” that he would not raise taxes, and again under Bill Clinton to a top rate of 39.6 percent, where it stands today.²⁶ Income tax rates clearly have been a political football, subject to political winds and unpredictable bounces; and that is only one type of tax levied against individuals and businesses.

Benefits of a Flat Tax

In sizing up his situation after being shipwrecked on a desert island, Robinson Crusoe²⁷ famously lists the pros and cons of his plight. Although outlining some of the pro/cons of a flat tax, this article will resist a thorough review of the benefits and potential negative consequences of flat tax plans. Besides, policy think-tanks with capable economists can provide reputable analyses of the promises and potential effects of flat tax regimes.²⁸

In the plus column, it appears that the flat tax would boost the economy by improving incentives to work, eliminating compliance costs, and shifting resources from tax avoidance efforts to productive, risk-taking

21 157 U.S. 429 (1895), *aff'd on rehearing*, 158 U.S. 601 (1895). The Court determined on a 5-4 vote that the taxes imposed by the law violated Article I, Section 2, paragraph 3, which required “direct taxes” to be charged apportioned among the states according to their population.

22 Forbes, p. 25.

23 Hall & Rabushka, p. 31.

24 Forbes, p. 32.

25 Forbes, pp. 26-33; Hall & Rabushka, pp. 31-34.

26 *Id.*

27 Daniel Defoe, *Robinson Crusoe*, 1719.

28 See, e.g., J.D. Foster, “The New Flat Tax: Easy as One, Two, Three,” The Heritage Foundation, December 13, 2011, available at <http://www.heritage.org/research/reports/2011/12/the-new-flat-tax-easy-as-one-two-three>; W.G. Gale, “Flat Tax,” The Brookings Institution, October 1, 1999, available at http://www.urban.org/research/publication/flat-tax/view/full_report.

activities. Critics question the extent of the economic boost resulting from a flat tax, and contend that new tax revenues generated by the heightened economic activity are speculative and likely will come up short of expectations – thereby increasing budget deficits and jeopardizing the ability to pay for needed government programs. However, the inability to predict the specific effects of a flat tax or the amount of government revenues resulting from its implementation is inherent in the nature of any dynamic, decentralized economy in which hundreds of millions of consumer and business decisions are made daily by individuals based on market forces and incentives. Hence, the fact that measuring revenues resulting from a flat tax involves guesswork is hardly surprising or even interesting. Also, if footing the bill for government programs requires adjusting tax or spend policies, other than partisan gridlock, presumably future adjustments could be implemented.

Critics also focus on the effects that a flat tax and its elimination of most itemized deductions would have on home ownership and the real estate industry and charitable contributions. Flat tax proponents have ready answers. They note that the benefits of mortgage deductions flow to affluent taxpayers and that very few low income earners take advantage of the deduction.²⁹ Also, they contend that income gains from a reduction in tax rates would more than offset the benefits of the mortgage deduction.³⁰ Moreover, by increasing household income, home ownership would be enhanced. Finally, for individuals who made home purchase decisions based on the deductibility of mortgage interest, taxpayers would have the option of choosing to file under the old system or under a flat tax system, picking whichever system results in the lowest tax.³¹

With respect to charitable giving, the evidence appears to indicate that most individuals make charitable gifts out of a desire to donate to charity, and not because of the charitable deductions.³² Besides, half of charitable contributions are made by individuals who take the standard deduction. Flat tax proponents assert that the level of gifting depends on an expanding economy and growth in incomes, both of which they state will increase under a flat tax system.³³

Is a Flat Tax Fair or Is It a Windfall to the Rich?

Although efficiency, simplicity, and getting the numbers right is crucial to any tax system, the main

criticism of a flat tax is the charge that it is regressive and favors the wealthy. It is this question, tied up in ideology and competing fundamental views of the purpose of a tax code, that is the main obstacle to comprehensive tax reform.

At one point the concept of fairness meant equal treatment under the law, or from a dictionary perspective, “having or exhibiting a disposition that is free of favoritism or bias; impartial.”³⁴ From this perspective, the fairness of a flat tax is obvious, as is the unfairness of the current system. But this traditional notion of fairness has been displaced by a concept of equity rooted in a redistributionist approach. “Equating fairness and making the rich pay more is a modern invention of those who believe the tax system should be used to redistribute income to make everyone equal,” observes Hall & Rabushka.³⁵ The goal of a redistributionist approach is not to boost economic growth or to pay the tab for government, but to achieve a pre-conceived idea of equity or justice.

The way in which societies define “fairness” certainly changes over time. Certainly, flat tax advocates have attempted to address fairness concerns. They have eliminated millions of low-income earners from the tax rolls through generous standard deductions and exemptions. Under flat tax proposals, families with higher incomes will pay a larger fraction of their income in taxes. And, proponents contend that prior tax rate reductions in the 1920s, 1960s, and 1980s evidence that in all situations, the share of taxes paid by the rich increased.³⁶ This response to date has been insufficient to satisfy redistributionist notions of justice. Whether the response is sufficient for a majority of Americans to leave behind the current system and adopt a new approach to taxation remains to be seen.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.



29 Forbes, pp.128-131.

30 *Id.*; Hall & Rabushka, p. 164.

31 *Id.*

32 Forbes, pp.116-122; Hall & Rabushka, pp. 157-159.

33 *Id.*

34 Hall & Rabushka, p. 38

35 *Id.*, at 185.

36 *Id.*, at 185-186.

Please join us for our

Fall 2016 On-Campus Interview & Resume Collection Program

On-campus interviews will be held August 1 through September 30

>>> REGISTER TODAY

Please contact
Michelle Q. Nguyen,
Recruiting Program Manager,
at (714) 628-2648 or
minguyen@chapman.edu,
or register online at
chapman.edu/law/fall2016oci



PREPARING PRACTICE-READY LEGAL PROFESSIONALS

- Broad training in essential litigation and transactional skills
- Strong emphasis on drafting and legal research
- Rigorous legal education from a prestigious law faculty
- Excellent bar preparation and statewide pass rates
- Thorough professional development, ethics, and civility training



CHAPMAN UNIVERSITY
FOWLER SCHOOL OF LAW

WWW.CHAPMAN.EDU/LAW

One University Drive
Orange, California 92866

Department 3068-30710

WE ARE BETTER THAN THIS: HOW GOVERNMENT SHOULD SPEND OUR MONEY

A Book Review by William C. Sias

With the *Riverside Lawyer's* current focus on taxation, it seemed appropriate to introduce an informative and insightful book on taxation and government spending. Professor Edward Kleinbard, author of *We Are Better Than This: How Government Should Spend Our Money (We Are Better Than This)* explains how the “path forward to a better economic environment for all of us lies through more government involvement, not less. When we starve government of resources, it turns out that we largely are starving our own long-term prosperity.”¹ He argues, explains and demonstrates that the current level of taxation cannot be continued if we want to be responsible about building and sustaining a society that provides the fullest opportunities for everyone.

Everyone interested in developing a deeper appreciation of the arguments regarding taxation and fiscal policy would benefit from reading this book. Be forewarned, this is a long book, 411 pages, plus notes and index. Although the material is technical, the arguments and supporting data are carefully laid out and the conscientious reader will be greatly rewarded.

At the outset, Professor Kleinbard takes direct aim at “false economic syllogisms”²—the rationales underlying various arguments about taxation and public policy—that dominate public discourse. For example, he notes that some people have adopted the idea that individual personal economic liberty is the only value that can lead to overall happiness in society. A corollary to this starting point is that government’s proper role is restricted to protecting the sphere of personal economic liberty. Taxation, on the other hand, reduces the individual’s ability to pursue personal consumption and should be rejected outright. Professor Kleinbard comments that “the strand of contemporary American political thought that defines itself through its hatred of taxation is narcissistic self-pleading wrapped in a flimsy sheath of economic lingo.”³ As a result of the low-tax voices that dominate the public messaging, we are not funding current and future collective investments that

will help our economy grow and benefit our society in the future. The book examines the American experience and compares leading international economies to illustrate relative tax burdens and public expenditures.

The purpose of the book is “to provide readers with a fair and comprehensive review of how we collectively are doing in promoting the happiness of our society, to explain fundamental economic and political precepts relevant to evaluating our options, and to propose programs by which government spending can enhance our welfare—meaning both our material prosperity and the intangible values that contribute to our society’s tranquility and happiness. Finally, the book addresses how best to design tax systems to finance those spending programs, keeping in mind our national preferences for modesty in tax demands and the central importance of private enterprise.”⁴ The book spans 14 chapters to accomplish this purpose.

Before Professor Kleinbard presents his comprehensive review of federal tax policy and spending, he begins with a discussion of moral philosophy.⁵ “Any coherent fiscal policy ultimately is an exercise in applied moral philosophy.” I have expressed the view that the IRC is essentially a political document. It illustrates the allocation of benefits and burdens for economic activity. Professor Kleinbard illustrates the moral philosophy in the character of Homo Economicus — “the self-interest seeking individual in a competitive environment.”⁶ The individuals that equate their marketplace freedoms with political liberties are identified as “market triumphalists.”⁷

Professor Kleinbard examines Adam Smith’s *The Wealth of Nations* as the source of this idea – that the unfettered individual economic actor and the free market will produce the most efficient allocation of goods and resources viewed in the economic sphere. Professor Kleinbard criticizes this approach as being based on a powerful metaphor created in one sphere of activity and “overextended to answer questions in every corner of public policy, with results that actually are counter-

1 Edward Kleinbard, *We Are Better Than This* (2015) Oxford University Press, page xx.

2 *Ibid.* at page xx.

3 *Ibid.* at page 4.

4 *Ibid.* at page 4.

5 *Ibid.* at page 27.

6 *Ibid.* at page 28.

7 *Ibid.* at page 31.

productive to our prosperity and are inconsistent with any semblance of shared citizenship.”⁸ As Professor Kleinbard points out, Adam Smith also wrote a companion book—*The Theory of Moral Sentiments* which sheds substantially different light on Adam Smith’s better known economic actor. In this lesser known book, Adam Smith argued that a person’s happiness and prosperity are tied to the happiness and prosperity of the society at large. He observed that through education and socialization, people would develop a strong internal ethical compass. *The Theory of Moral Sentiments* accepts that men are self-interested, and explicitly rejects any criticism of self-interest, provided, critically, that it is challenged and expressed in a way that does no harm to others.⁹ The discussion of Adam Smith and the underpinnings of the “market triumphalists” core arguments form the jumping off point for the analysis of federal tax policy that follow.

I had the opportunity to talk with Professor Kleinbard regarding the book. He is remarkably soft-spoken and a

⁸ *Ibid.* at page 28.

⁹ *Ibid.* at page 35.

gentleman. His intellect and insight leap off the pages of this book and, in speaking with him, I witnessed his keen interest and personal connection with the moral philosophy and the technical policy arguments that he presents in this book. As I read Professor’s Kleinbard’s book I remembered the intellectual excitement when I first encountered the subject of federal tax policy. It was, and remains, a topic that dissects taxation in terms of fact, law, economic theory and politics. My prior educational experience probably explains my extraordinary interest in bringing this book to your attention. I hope you make the time to read this book because it makes an important contribution to our profession and our understanding of this challenging topic.

William C. Sias is a deputy county counsel with the Office of County Counsel, County of Los Angeles. He represents the Public Guardian in conservatorship proceedings. He is a certified Legal Specialist in Estate Planning, Trust & Probate Law by the California Board of Legal Specialization. Mr. Sias has an L.L.M. in Taxation and is an Eagle Scout.



SEEKING AN EXPERT TO EVALUATE OR SELL YOUR PROPERTY?



We offer both Real Estate & Appraisal Services

- Probate
- Bankruptcy
- Expert Witness Testimony
- Family Law Speciality Services
- Title Reports & Property Profiles
- Estate Planning, Foreclosures, Short Sales
- Residential, Commercial, Industrial, Vacant Land
- Retrospective Evaluations, Rental Surveys, Property Damages

Why Choose Us?

- 26 years of experience in Real Estate
- Licensed residential appraiser since 1992
- Short Sales and Foreclosure Resource Certification (SFR)
- Court Appointed \$730 Expert for both Real Estate & Appraisals
- Majored in Finance & Real Estate Law at Cal Poly Pomona University
- Real Estate Collaboration Specialist- Divorce (RCS-D) taken at Vanderbilt Law School



Call Us Today
(951)313.1746, (909)981.6677

Donald L. Mowery

Knowledge & Experience Make All the Difference!

Licensed Broker/Owner of RE/MAX® New Horizons, The Mowery Group
Certified Residential Appraiser #AR014657 CAL Broker #01898989 CalBRE #01193547

6331 Haven Ave Suite 6 Rancho Cucamonga, CA. 91737, www.mowerygroup.com, don@donmowery.com, Each Office is Independently Owned & Operated



POLY HIGH SCHOOL IS MOCK TRIAL CHAMPION

by John Wahlin



1st Place - Poly High School

Poly High School continued its dominance in the Riverside County High School Mock Trial Competition, winning the championship for the fifth time in the last six years. Poly's defense team faced a strong prosecution team from Murrieta Valley High School in a closely contested final round. The round was conducted before a full house in Department 1 of the Historic Courthouse with Federal District Judge Virginia Phillips presiding.

In this year's case, *People v. Hayes*, the defendant is charged with murder. The defendant, Ms. or Mr. Hayes, testified that she (or he) acted in self-defense. While the charge was second degree murder, the case this year permitted a guilty verdict based on a lesser charge of manslaughter. Verdicts throughout the competition varied with the lesser charge in some cases being the judge's verdict.

The format for the competition was the same as in the last several years. All participating teams first competed in four rounds of competition with their prosecution and defense teams each conducting two of the rounds. This year's program involved 30 teams from public and private schools from all regions of Riverside County. The first round was held in three venues—Riverside, Southwest and Indio; all teams then came to Riverside for the remaining rounds.

3rd Place - Hemet High School



2nd Place - Murrieta Valley High School

Following the first four rounds, the field of competing teams was reduced to the highest scoring eight teams (the "Elite 8") based on win-loss records and points. Teams qualifying for the Elite 8, in addition to Poly and Murrieta Valley, included Martin Luther King Jr. High School from Riverside, Hemet High School, Palm Desert High School, Great Oak and Chaparral High Schools from Temecula, and Santiago High School from Corona.

In the Elite 8 round, Poly defeated Chaparral, King defeated Santiago, Murrieta Valley defeated Great Oak and Hemet defeated Palm Desert. This set up semifinal rounds which included Poly vs. last year's champion, Hemet, and King vs. Murrieta Valley. Poly and Murrieta Valley prevailed, setting up the Poly vs. Murrieta Valley final.

Local attorneys and Superior Court judges again volunteered as scorers and presiding judges in each round through the semifinal round. Scoring the championship round were Presiding Superior Court Judge Hal Hopp, District Attorney Michael Hestrin, Assistant Public Defender Brian Boles, RCBA President Kira Klatchko, and Defense Attorney Paul Grech.

The competition also included awards for individual performance which were presented at an awards ceremony following Round 4. Three students were recognized for each attorney, witness, bailiff, and clerk role. In addition, paid internships with the Superior Court, the District

3rd Place - Martin Luther King Jr High School



Attorney and the Public Defender were awarded to the best pre-trial attorneys and prosecution and defense trial attorneys.

The competition again demonstrated that it is one of the State's outstanding mock trial programs. It is a joint effort of the RCBA, Superior Court, and Riverside County Office of Education. Its continued success requires the countless volunteer hours of local attorneys. For more information concerning the volunteer opportunities please contact the RCBA.

John Wahlin, Chair of the RCBA Mock Trial Steering Committee, is a partner with the firm of Best Best & Krieger, LLP.



Research, Drafting and Appearance Services

- Immigration briefs and waivers including 601/601a waiver, USCIS motions, BIA appeals & 9th Circuit immigration appeals.
- Post-Conviction Motions to Vacate, Writs of Habeas Corpus & Coram Nobis.
- Appearances at Immigration courts and USCIS offices.
- Research in other areas of law.

Attorney Kusum Joseph

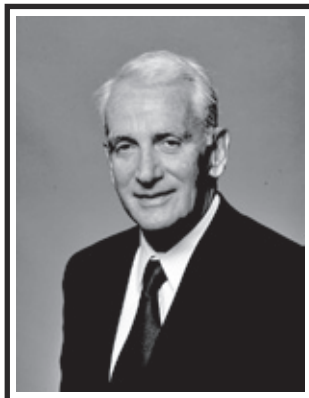
Phone: (909) 557-8424, Email: kusumjosephlaw@gmail.com



ARBITRATION & MEDIATION SERVICES

David G. Moore, Esq.

is available to provide you and your clients with Mediation and Arbitration Services.



CORPORATE OFFICE

8287 White Oak Avenue, Rancho Cucamonga, CA 91730

Phone: (909) 466-1665 • Fax: (909) 466-1796 • E-mail: info@IVAMS.com
www.IVAMS.com



PIA SPITZER

Certified Legal Nurse Consultant

Experts in
Medical Records Review and Analysis

Specializing in
Neuro-related injuries and Long-term care cases

- Brain injuries
- Spinal cord injuries
- Accidents
- Catastrophic trauma
- Elder abuse
- Falls
- Neglect
- Wrongful death

FREE ONE HOUR
consultation on 1st time clients



949-257-8306
www.WiseAlliance.net

THE RCBA ELVES PROGRAM 2015: YOU DID IT! YOU BROKE THE RECORD.

by Brian C. Percy

On December 24, 2015, the RCBA's Elves Program concluded its annual program of helping needy families in Riverside County. This year our outreach jumped to a record 59 families served which exceeded our expectations. Your Elves provided Christmas gifts and a holiday dinner to 172 children (150 last year) and 80 adults (67 last year).

This year we worked with the following organizations to identify families in need: The Victim Services Division of the Riverside County District Attorney's office, YMCA of the Desert, Light House Social Services, and the Community Emergency Outreach Program of the PW Enhancement Center

For the thirteenth year now, the success of the RCBA Elves Program is due to the great support and generosity of you, our membership. Helping others is infectious, and Elf participation has grown beyond the RCBA members to include their office staff, their families, their clients, and their friends. Now for some recognition.

The Money Elves

Our funds came from direct donations and monies raised during several bar association events held throughout this past year. The money provided gifts for each family member, along with a Stater Brothers gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the family's holiday travel. I would like to thank the following Money Elves for their support:

John Michels; Judge Craig Riemer; Sandra Leer; Daniel Greenberg; Diane Huntley; Holstein, Taylor & Unitt; Daniel Skubik; Judge Dallas & Pat Holmes; Dan Hantman; Robert Swortwood; Casey Clements; Judge John Monterosso; Barrie Roberts; Bernard Donahue; Susan Exon; Judge Irma Asberry; Kira Klatchko; Attorneys to Go; Vicki Broach; Barry Walker; Judge Michele Levine; Riverside County Attorney's Association; Bratton Bratton & Razo; Don Cripe; Judge Jean Leonard & Jim Wiley; Commissioner Paulette Barkley; Judge John Molloy; Rob Schelling; Harry Histen; Greg Rizio; Julianna Tillquist; Kay Otani; Judge John Vineyard; Justice James & Carole Ward; Judge David Bristow, Jo Larick.

Once again I would also like to provide a very special "Thank you" to Mark Easter and all of his colleagues at Best Best & Krieger:

Peggy Barnes; Linda Byrd; Kim Byrens; Marvin Cohen; Kyle Davidson; Scott Ditfurth; Mark Easter; Dario Frescas; Cynthia Germano; Michael Grant; Tim Haynes; Ana Horta; Tammy Ingram; Roxana Jimenez; Mary Karlson; Ron Kauffman; Diane LaRoche; David Lucas; Andra McAreavy; Alex Mendoza; Jean Nakatani; Jenny Oberg; Juan Ornelas; Michelle Ouellette; Casey Owen; Susan Plummer; Glen Price; Stephanie Ramos; Edward Robles; Isabel Safie; Danielle Sakai; Charity Schiller; Mrunal Shah; Haviva Shane; Ward Simmons; Cambria Smith; Luis Tapia; Diana Valdez; Mandy Villareal; Debbie Vivian; John Wahlin; Darric Williams; Alisha Winterswyk; Joyce Zimmerman; Brittany Ziolkowski.

Their outstanding collective donation provides us a healthy "bump" to our fundraising process.

The Shopping Elves

Thanks to the help of the numerous Shopping Elves, my assistant Veronica, Charlene and a very helpful Kmart



l-r: Bill Bratton, Pam Bratton, Carissa Razo, Mike Razo, Kyle Haas, Corinne Chen, not pictured: Benjamin Razo.

Brianne Wesche and father Mitch Wesche





Yoginee Braslaw and daughter Maya



Matthew Strickroth

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

Lashon Halley, Riverside Police Department; Matthew Strickroth, Deputy District Attorney; Tina Flores, Student Member of RCBA; Ariel Aranda, Student of Poly High, Jesse Male & Family; Breanne Wesche & Family; Daisy Deandre, BBK; Vivienne Duarte, BBK; Bratton Family Law, Bratton Bratton & Razo, Inc.; Yoginee Braslaw & Family, Riverside Courts; Jo Larick, Riverside Courts; Judi Murakami, Attorneys to Go; Laura Moreno, BBK; Andy Graumann, Attorneys to Go; Gabrielle Beaudoin; Tony & Joanna Negrete, Students of Poly High School;

Susan Lawrence & Family, Lobb & Cliff, LLP; Andrea Mihalik, Laura Rosauer's Office; Annika Montebiano; Laura Mau; Erin Wright & Family; Christina Sovine; Anna Gherity, Law Office of Brian C. Percy; John Bludworth, Jaybee Brennan, and Amy Sisco; Sonya Rodriguez; Mia Molloy, wife of Judge John Molloy; Cassandra Godinez; Ruth Lecaro; Patricia Cole, Victim SVC Advocate; Sherri Marcus, Victim SVC Advocate; Barbara Trent; Lisa Avery; Judy Banegas; Judge William Bailey and Taylor Tribe; Shundee Martinez; Mya, P.W. Enhancement Center; Leonard; Judge Sunshine Sykes & family.

As always Big Kmart stepped up to the plate providing us with an additional discount on every item purchased.

Because of the ever-growing bundle of gifts to be transported from Kmart to the RCBA building, we needed a large "Sleigh" to accomplish that task. Walter's Auto Sales & Service donated the use of a very large Sprinter

Judge Sykes & family



Jesse Male & family



van for the night which made the transport so much easier. A great big thank you to General Manager Steve Kienle and parts manager Scott Eisengberger.

The Wrapping Elves

After the shopping was finished, all the gifts were delivered to the Bar and filled the RCBA Board Room and several other workrooms. Over the course of two evenings, the Wrapping Elves wrapped the largest number of items (toys, clothes and household goods) ever wrapped. This year's Wrapping Elves were:

Alexandra Fong, Riverside County Counsel; Susan Exon, University of LaVerne College of Law; Judge Gloria Trask, Riverside Superior Court; Judge Dallas Holmes, Riverside Superior Court (Ret.) and his wife Pat Holmes, Chris Keilson, NAG; Chris Marin; Digna Olmos; Elizabeth Lord of Holstrom, Block & Parke; Yesmin Anguiano; Gabriela Torres, Probation Restitution; Aneka Amezcua, SSD Restitution Services; Lachelle Crivello, Probation Department; Concetta Germain, Intero Real Estate; Ruth Lecaro, Bar Student; Laura Chaidez; Stan Dale, University of Redlands; Terri Dale, Painted Lady Quilt Shop; LaShon Halley, Riverside Police Department; Shaana Ramos, WealthyKids.org; Mike Donaldson; Breanne Wesche; Cammie Dudek, DA Office of Victim Services.

Delivery Elves

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

LaShon Halley, Riverside Police Department; Honorable Charlie Koosed & Family, Riverside Superior Court; Sherri Marcus, DA's SVC Victim's; Diana Renteria; Krista Goodman, RCBA; Breanne Wesche & Family; Daisy Deandre & Vivienne Duarte, BBK; Cindy Moran-Aguirre, Heber Moran, Moran & Moran LLP; Barry Walker, Walker Trial Lawyers, LLP; Yoginee Braslaw & family; Arlene M. Cordoba; Veronica Reynoso, Law Office of Brian C. Percy; Laura Moreno, BBK; Robert Swortwood; Shaana Ramos & Daughter; Yadi Vega, DA's SVC Victims; Susan Lowrance & Family, Lobb & Cliff, LLP; Cherie Medina, Public Defenders Office; Andrea, Jennifer Gerard's Office; Mike Donaldson, Attorney at Law; P.W. Enhancement Center; Kiya Kato, U.S. District Court; John Michaels, Attorney at Law; Gabriela Torres, Public Defender's Office; Lisa Yang, RCBA; Nanette, Palm Desert YMCA.

Special Thanks

Once again, big kudos to my assistant Veronica, whose dedication and organizational skills made this a very efficient and fun experience for all involved; to the Riverside



The Wrapping Elves

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

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

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

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





FINAL DRAWING
of the
Riverside
Historic
Courthouse
by **Judy Field**

\$100 each
(unframed)

Signed and numbered limited edition prints.
Great as a gift or for your office.
Contact RCBA office, (951) 682-1015
or rcba@riversidecountybar.com

JUDICIAL PROFILE: COMMISSIONER BELINDA HANDY

by Juanita E. Mantz

A Dream Realized: A Portrait of Newly Appointed Commissioner Belinda Handy's Road to the Bench

Commissioner Belinda Handy takes the bench in her custom designed judicial robe right on time at 8:30 a.m. She always gives the public a jovial "good morning." Her goal is to set a positive tone for the day and she wants the participants and litigants to know she is mindful of their time. Belinda Handy is happy to serve as a judicial officer in Family Courthouse Department 201. And, her mother is overjoyed. As she tells it, with a slight glint in her eyes, her mother is everything to her and extremely proud of her appointment to the bench as a Commissioner in Family Court.

"My mom is my biggest supporter," Handy says with a fond grin, the affection for her mother evident on her face. "My mom would always say, I want you to be a judge, that's what you should do." Handy goes on to add, "She saw the potential in me, before I did. I was so happy to share it with her."

Handy's mother, Lucy Amos, sacrificed much for Handy to go to college and law school. Handy is the youngest of her three siblings and the first in her family to graduate college. She attributes many of the accomplishments she has made to her mother's strong guidance along the way. As further evidence, Handy notes with a soft smile, "My undergraduate diploma hangs in my mom's office."

Handy was raised in the Los Angeles area and graduated from the University of Texas at Arlington with B.A. in Sociology and then from Whittier Law School cum laude. After law school, Handy worked for an internet start-up company as legal counsel for a year and then for a large civil law firm in Los Angeles -- Mayer, Brown, Rowe & Maw LLP -- practicing business litigation. Handy soon found her way to criminal law and acted as defense second chair on a serious and violent felony with a solo practitioner. After that experience, Handy worked for Placer County as a Deputy Public Defender and then for Fresno's Alternate Public Defender's Office handling both misdemeanor and felony cases. Handy then came back to Southern California and worked at a law firm handling family law cases including divorce, and juvenile delinquency and dependency proceedings.

In 2007, Handy came to Riverside to work for the Riverside County Public Defender's Office and was placed in juvenile court due to her experience in that area of the law. "It was a great experience," she notes. "I had autonomy as I



Commissioner Belinda Handy (r) and her mother Lucy Amos

already had some experience and I jumped right in handling the dual status cases." These dual status cases involved clients who were both in dependency court (i.e., they were removed from their parents due to abuse or neglect) and delinquency court (they had a pending juvenile criminal case). This intersection became her specialty and it was work Handy felt a special affinity for. "Other than their social worker, I was the one constant in these kids' lives," she states. Handy worked for the Riverside County Public Defender's Office until 2016 and in

that time, she spent the majority of her time in Juvenile Court but also did stints handling adult felony and misdemeanor cases in Riverside and Banning.

On February 5, 2016, her mom's wish came true when Handy was sworn in as the newest Commissioner in Family Court. Her swearing in ceremony was a packed house and both Judge Roger Luebs and Riverside County Public Defender Steve Harmon spoke and Judge Jacqueline Jackson swore her in. Since that day, Handy has been tirelessly working at a fast pace. Her department handles everything from dissolution of marriage, child custody, support and visitation, contempt and restraining orders. "It's a lot of work," she says. "And I put a lot of pressure on myself to do a good job."

Luckily, Handy has a lot of support in her new position from Judge Gail O'Rane, Judge Christopher Harmon, Judge Chad Firetag, and Commissioners Joan Burgess and Eric Issac. "On any given day, I will call at least one of them or they will call to check in on me," she says. Handy adds that, "Everyone who works in my building, from the management to facilities to my staff have been extremely helpful and I can tell they want me to succeed, for which I am very grateful."

In her spare time, Handy loves to travel and learn new cultures and has even visited Dubai. She also has her canine companion terrier mix, Gavel, by her side. "He is not a mutt, but a custom blend," she emphasizes with a hearty laugh.

As the newest commissioner on the bench, Belinda Handy is sure to bring her very own special blend of positivity, hard work, and determination to Department 201 for all to see. And, the signs already point that she will be a great success.

Juanita E. Mantz is a Deputy Public Defender in Riverside County in Department 42 handling incompetency proceedings under Penal Code section 1368. She wishes Commissioner Handy the best of luck in her new endeavor.



FIRST ANNUAL MOCK TRIAL LUNCHEON

by Judge Helios Hernandez II

Riverside, California, July 24, 2015: Riverside County held its First Annual Mock Trial Luncheon on Friday, July 24, 2015 at the Riverside County Bar Association Bldg. The event was well attended by judges, coaches, steering committee members, mock trial interns, and mock trial students who have become attorneys.

The format for the lunch was different from most such events. Instead of introducing the VIPs and listening to speeches, each person present stood up and told of their connection to mock trial and what it meant to them. Presiding Judge Hal Hopp, Asst. PJ Becky Dugan, and Judges Michele Levine and Helios Hernandez all spoke about their many years with mock trial and the benefits of the program. Veterans spoke of the history of the program: Virginia Blumenthal, the CEO of one of the conflict panels, coached a team to the State Championship, and is the co-founder of the Riverside County Mock Trial program. Steve Harmon is the Public Defender and coached a team to the State & National Championship. John Wahlin, a senior partner with Best Best & Krieger, coached a team to the State title, and is the long time chair of the Mock Trial Steering Committee. Tracey Case, Riverside County Office of Education, is the long term Coordinator of Mock Trial for the county. We are fortunate to have good people stay with the program for the long haul. This is one of the things that makes Riverside County a mock trial mecca. The Constitutional Rights Foundation recognizes this and would like to have the State Finals in Riverside every year. Currently, the State is held in Riverside every other year.

The former mock trial students who are now attorneys all had interesting and entertaining things to say. In alphabetical order, they were: Michael Boyd, Heather Blumenthal Greene, Melissa Hale, Emily Hanks, Joshua Hanks, Helios Hernandez III, Carlos Monagas, and Trent Packer. Several former mock trial students are married to fellow team members. This is “insider” information and you will have to go to next year’s luncheon to find out this information.

Last summer is the first time that we have had four paid internships for Mock Trial award winners. The



Interns: Aba Samaan, Brendon Brown, Danielle Ortiz, Justin Thompson.

District Attorney and Public Defender have had the program for a number of years and the Courts have joined in this year. The interns are Danielle Ortiz (Patriot), Best Prosecutor; Aba Samaan (Xavier Prep), Best Defense Attorney; Justin Thompson (Santiago), Best Pretrial Prosecution Attorney; and Brendon Brown (Poly), Best Pretrial Defense Attorney.

Aba, Danielle, and Justin went off to college in the fall of 2015. Brendon is a senior in high school.

The highlight of the day were remarks by our three mock trial students who are Riverside County Superior Court Judges: Hon. Chad Firetag, Hon. Jack Lucky, and Hon. Raquel Marquez. Judge Marquez did her mock trial in Sacramento. Judge Lucky did his at Apple Valley H.S. in San Bernardino County. Judge Firetag did his at Riverside Arlington H.S. and he was on the team that Steve Harmon coached to the National Championship.

The supervisors for the interns are Supervising Public Defender Eric Keene, Supervising District Attorney Carlos Monagas, and Judge Helios Hernandez. It was these three who thought up the idea of the luncheon and organized it.

The Honorable Helios Hernandez II is a judge for the Riverside County Superior Court and a member of the Mock Trial Steering Committee.



Judge Helios Hernandez making introductory remarks with Judge Becky Dugan to his left.



Former Mock Trial Students: Judge Chad Firetag, Judge Raquel Marquez, and Judge Jack Lucky.



Judge Chad Firetag speaks. To his right, attorney Paul Grech. To his left, Judge Michele Levine, attorney Virginia Blumenthal, and attorney Helios Hernandez III.



Attorney Emily Hanks with attorney Trent Packer looking on.

ATTENTION RCBA MEMBERS

If you are not getting email updates/ notices from the RCBA and would like to be on our mailing list, visit our website at www.riversidecountybar.com to submit your email address or send an email to lisa@riversidecountybar.com

The website includes bar events calendar, legal research, office tools, and law links.



You can register for events, make payments and donations, and much more.

**Interested in writing?
Seeing your name in print?
Advancing your career?
Addressing your interests?
Being published?
Expressing your viewpoint?**

Join the *Riverside Lawyer* staff NOW and be a part of our publication.

Contact Charlene or Lisa
at the RCBA office
(951) 682-1015 or
lisa@riversidecountybar.com



CLASSIFIED ADS

Office Space – Grand Terrace

Halfway between SB Central & Downtown Riverside. 565 to 1130 sq ft., \$1.10/sq ft. No cams, ready to move in. Ask for Barry, (951) 689-9644

Office Space – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

Cloud Based Bookkeeping – IOLTA365

IOLTA365 is a cloud based bookkeeping service specifically for IOLTA accounts. We handle the bookkeeping and keep your IOLTA account records in compliance with CA Rule 4-100. The lawyer provides electronic copies of all banking records and we create: (1) the main account register, (2) an individual ledger for each client matter, and (3) a three-way reconciliation showing the main register balance, total of all individual ledgers, and the adjusted bank statement balance. Please contact us via message on Twitter @IOLTA365 or via email IOLTA365@gmail.com.

Complete Resource Center – Marathon-records.com

Marathon-records.com is a complete resource center for the solo and small firm lawyer. IOLTA One is an online bookkeeping application designed specifically for IOLTA accounts that reduces the task of keeping compliant records to a simple data entry function. IOLTA One prevents the most common IOLTA account errors and automatically produces a chronological account register, individual client ledgers, and a three-way reconciliation report in compliance with the rules of professional conduct and ALTA best practices. Visit online at www.marathon-records.com and sign up for a free trial.

Wanted: Receptionist/Office Assistant

Immediate position open with small law firm in Corona for receptionist/office assistant. Perfect applicant would be a great self-starter with great customer service and organization skills. Please email a resume and cover letter to ccarterlaw@gmail.com.

Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlene or Lisa at the RCBA office, (951) 682-1015 or rcha@riversidecountybar.com.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective April 30, 2016.

Jane Abzug – Shernoff Bidart Echeverria Bentley LLP, Claremont

Sharon M. Anderson – Holstrom Block & Parke, Corona

Matthew C. Bradford – Robinson Bradford LLP, Temecula

Doug Bradley (A) – InlandEmpireLawyers.com, Fontana

Donald R. Buchanan – Law Offices of Donald Buchanan, Corona

Veepee De Vera – Creason & Aarvig, Riverside

Jeffrey Decker – Decker & Buchanan, Riverside

Sharunne Foster – Office of the District Attorney, Riverside

Zachary R. Hagenbuch – Fullerton Lemann Schaefer & Dominick, San Bernardino

Grover Merritt – Office of the District Attorney, San Bernardino

Erin A. Orzel – Court of Appeal Fourth Dist. Div. Two, Riverside

Ernest Charles Payne – City of Riverside, Riverside

Omar Sharif – Turner & Sharif, Corona

Tiffany Smith-Nguyen – Fiore Racobs & Powers, Riverside

Amanda N. Vickers – Law Student, Riverside

Andrew J. Wallin – Law Office of Rajan Maline, Riverside

(A) – Designates Affiliate Member



Let us help you...



Fast Legal Reproduction (Digital Color and Black & White)
Ask About Free Local Pick-up & Delivery



PIP Printing Riverside • 951.682.2005
4093 Market St. Riverside, CA 92501

PIP Printing Corona • 951.737.1820
501 East 6th St. Corona, CA 92879

Riverside
County

LAWYER

Riverside County Bar Association

4129 Main St., Ste. 100, Riverside, CA 92501
RCBA 951-682-1015 LRS 951-682-7520
www.riversidecountybar.com rcbadrs@riversidecountybar.com

PRSR STD
US POSTAGE
PAID
PERMIT #1054
RIVERSIDE, CA

ARBITRATION & MEDIATION SERVICE PROVIDER

RCBA Dispute Resolution Service, Inc.

You be the Judge.

Over 100 experienced Riverside County Bar Association mediators

2 out of 3 private mediations reach full settlement

3 out of 4 Family Law cases referred to our Court program reach full settlement

No administrative fees! Competitive hourly rates!

*DRS is a nonprofit public benefit corporation proudly serving Riverside County since 1995.
DRS is the approved mediation service for the Riverside County Superior Court.
Located across from the Riverside County Historic Courthouse at 4129 Main Street, Suite 100.*

(951) 682-2132
www.rcbadrs.org

