Come One! Come All!

By Traci Hoppes, Esq., FBA President

The Foothills Bar Association is ending 2017 and beginning 2018 with several events, including fun holiday festivities, the Annual Hard-To-Get MCLE seminar, and the annual dinner and board of directors installation. The FBA encourages your participation in all of these exciting events!

Stop by and enjoy a cookie (or more!) with our East County Judges on Tuesday, December 12, 2017 at the annual dessert mixer from Noon to 1:15 pm in Department 6 of the East County Superior Court. This annual event is a fun opportunity to enjoy time with fellow members of the legal community and to enjoy some homemade goodies.

Mark the evening of Thursday, December 21, 2017 on your calendar for our Toy Drive and Holiday Mixer at Hooley’s Irish Pub in Grossmont Center, La Mesa, from 5:00 to 7:00 p.m. The Foothills Bar Association is pleased to collect donated toys for the Salvation Army, which will distribute them to local families in need. A flyer is included with this newsletter. Bring your new, unwrapped gift and receive a drink ticket (limit one ticket per person). Delicious buffet-style food is included. We look forward to seeing our members there!

On Thursday, January 11, 2018, the Foothills Bar Association will present its Annual “Hard-To-Get” MCLE Seminar, providing one hour of continuing legal education credits for each of the legal ethics, elimination of bias in the legal profession and competence issues categories. The program will be at the Claim Jumper Restaurant in Grossmont Center, La Mesa, beginning at 5:00 p.m. Details are included in this newsletter.

Upcoming Events Calendar

December 12
Family and Criminal Law Sections
12:00 - 1:15 p.m.
East County Court, Dept. 6
250 E. Main Street, El Cajon
Annual Holiday Cookie & Dessert Mixer

December 14
Estate Planning and Probate Section
12:15 – 1:15 p.m.
Law Office of Nancy Kaup Ewin, Esq.
8166 La Mesa Blvd., La Mesa
Topic: Year End Recap and Roundtable: What We Learned This Year – A Review and Discussion of Cases and New Code Sections

December 21
Foothills Bar Association’s Holiday Mixer and Toy Drive
5:00 – 7:00 p.m.
Hooley’s Irish Pub Grossmont Center, La Mesa

December 25 – Christmas Day
January 1, 2018 – New Year’s Day
State and Federal Courts Closed

January 11, 2018
Foothills Bar Association
“Hard to Get” MCLE Seminar
5:00 – 9:00 p.m.
Claim Jumper Restaurant (Private Room)
Grossmont Center, La Mesa

January 26, 2018
Foothills Bar Association Annual Dinner & Installation of Board of Directors
Babylon Palace Banquet Hall
456 Magnolia Avenue, El Cajon
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Then, on **Friday, January 26, 2018**, the Foothills Bar Association will hold its Annual Dinner and Installation of Officers and Directors at Babylon Palace Banquet Hall in El Cajon. The evening will include a delicious dinner, music and fun festivities. Registration information will be provided soon.

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**It’s Time for the FBA’s Annual “Hard to Get” MCLE Program**

By Glen Honig, Esq.

On **Thursday, January 11, 2018**, the Foothills Bar Association will present its Annual “Hard-To-Get” MCLE Seminar. This program will provide one hour of continuing legal education credits for each of the legal ethics, elimination of bias in the legal profession and competence issues categories. We will be at a new venue, the private room at the Claim Jumper Restaurant in Grossmont Center, La Mesa. Dinner and beverages will be included. Registration will begin at 5:00 p.m., with the first speaker scheduled to start at 5:30., and the program will conclude at approximately 9:00 p.m. We have lined up an excellent panel of speakers. Pre-registration fees are $70 for FBA members and $80 for non-FBA members, with each category of fees increasing by $10 on the day of the event. You may register and pay through the FBA’s website, [www.foothillsbar.org](http://www.foothillsbar.org), or by mailing your check to the FBA at P.O. Box 1077, El Cajon, CA 92022. Be sure to indicate on the check that it is for the “Hard To Get” seminar and the name of the attendee.
Latest Legal Changes Affecting Retirement Division in Family Law

By Koryn K. Sheppard, Esq.

The Right to Retire:
The Court of Appeals, in February 2017, affirmed a spouse’s right to retire at age 65. In the case, *IRMO McLain*, the Court cited to a 1998 case, *IRMO Reynolds*, which held that no one can be compelled to work after age 65 in order to pay spousal support at a level commensurate with when the obligor was still regularly employed. In *McLain*, the Court was considering an inverse of this argument—i.e. whether Wife could be compelled to work after age 65, even though, previously, she had not been substantially employed, in consideration of California’s strong public policy in favor of spouses becoming self-supporting. The Court held that retirement was a part of the marital standard of living (as the parties were already living on retirement income) and thus, Wife could not be compelled to work after age 65.

In *IRMO Shimkus* (2016) the Court of Appeals held that a firefighter who retired at 61 (after being employed for 31 years as a firefighter before achieving the rank of Fire Captain) did not retire early, citing to California Code of Regulations (which cites to the Government Code) which deems age 55 as the normal retirement for firefighters.

Social Security is not Divisible—Even in the Face of Inequity:
In 2016, the Court of Appeals affirmed the protection and non-divisibility of Social Security Retired pay. In *IRMO Peterson*, the parties entered into a Marital Settlement Agreement. Husband’s Social Security benefits (valued at $228,000) were affirmed as his separate property. However, Wife’s Los Angeles County Employees Retirement Association (LACERA) benefits (valued at $215,000) were considered community property, because they were earned during employment that took place during the marriage. What resulted was that Husband was allowed to keep 100% of his Social Security Benefits, in addition to one-half of Wife’s LACERA benefits. This inequitable result left Husband with $335,500 in retirement benefits, and Wife with only $107,500 in retirement benefits.

Upon learning of this result, Wife asked the court to modify the parties’ prior agreement. She proposed that the court either: 1) divide the couple’s property in a way that accounted for this disparity, by either requiring Husband to reimburse the community for the Social Security contributions and then divide them equally, or, 2) allocate all of the LACERA benefits to her as an equalization of the retirement assets. The trial judge declined, finding that, under preemption principles, federal law prevented the court from considering Husband’s Social Security benefits in dividing the couple’s property. Despite expressing sympathy for the inequity suffered by Wife, the Court of Appeals affirmed the decision.
Disability Pay is Non-Divisible:
Non-divisibility of disability pay is not a new concept. In 1981, the U.S. Supreme Court held that the Supremacy Clause precluded California (or any other state, for that matter) from dividing military retired pay pursuant to community property laws. *McCarty v. McCarty*. In response to the *McCarty* precedent, the Federal Uniformed Services Former Spouse Protection Act was enacted, which allowed state courts to divide “disposable retired pay” in accordance with state law. Then, in 1989, the U.S. Supreme Court decided *Mansell v. Mansell*, which held that Title 38 disability benefits are, by definition, not divisible community property assets.

*IRMO Gillmore* and *IRMO Stenquist* which, taken together, hold that it is a “settled principle that one spouse cannot, by invoking a condition wholly within his control, defeat the community interest of the other spouse.” In other words, an employee spouse cannot defeat the nonemployee spouse’s expected community benefit by unilateral election (or even inaction). Afterwards, a line of California cases came down which supported the principle laid down in *IRMO Gillmore* and *IRMO Stenquist*, which reiterated the retirement plan’s responsibility to make due on a non-employee spouse’s election to receive his or her benefit, even when the employed spouse, who has reached retirement age, elects to continue working.

Historically, California required the military spouse to indemnify and/or reimburse the non-military spouse for losses incurred in the event that the military spouse unilaterally elected to take non-divisible disability pay in lieu of divisible retirement pay- even after judgment had been entered. This was reaffirmed as recently as 2016 in *IRMO Chapman and IRMO Cassinelli*.

In *In re Marriage of Chapman* (2016), the Court of Appeals held that a husband’s post-judgment election to take combat-related special compensation benefits in lieu of the military retirement benefits specified in the judgment could not defeat Wife’s right to receive her community property share of the benefits he voluntarily relinquished. The Court determined it was error to impose a constructive trust on such benefits, since he had not acquired them wrongfully. However, it ordered that the wife was entitled to receive her benefits from the husband’s other assets.

Similarly, in *In re Marriage of Cassinelli* (2016), the Fourth District Court of Appeals held that it is error for a court to order the military spouse to pay monthly spousal support as compensation to the nonmember spouse for the loss of monthly military retirement benefits. In this case, she stopped receiving monthly retirement payments when Husband made a post-judgment election to receive disability benefits in lieu of divisible retirement pay. Instead, the justices ordered the lower court to award the Wife monthly payments as damages, due to Husband’s election causing “the loss or destruction of a property right belonging to [the wife].”
For nonmember spouses, when it rains it pours. In 2017, the U.S. Supreme Court stepped in, once again, in Howell v. Howell to take matters one step further. The U.S. Supreme Court held that a state court cannot order a veteran spouse to either indemnify or cover for the loss of a former spouse’s portion of military retirement that was caused by the veteran’s waiver of retirement benefits. (Such waivers of retirement benefits are made by veterans to instead receive service-related disability benefits).

Howell essentially overruled cases like IRMO Chapman, In re Krempin, IRMO Stenquist, and IRMO Cassinelli which attempted to compensate nonmilitary spouses for the loss of benefits resulting from the unilateral elections of the military spouse. With this decision, state courts now have no ability to fashion an equitable remedy to allow the nonmilitary spouse to receive the expected, designated portion of military retirement, if the military spouse decides to opt for non-divisible, disability pay instead. The U.S. Supreme Court, in Howell, described equitable remedies as merely changing the label on payments in order to get around the non-divisibility. The Court said that labeling the payments as reimbursements or indemnifications will not make them permissible.

Frozen Benefit Rule- More Changes to Military Retirement Pensions:
In 2016, the federal government passed a law referred to as the “Frozen Benefit Rule”. (It was actually a revision to the Uniformed Services Former Spouses’ Protection Act). This has impacted military retirement division in the event the military spouse is still active duty at the time of dissolution. (If the military spouse is already retired, then the parties may continue to use the “Time Rule” - which is sometimes incorrectly dubbed the “Brown Formula” - which is a ratio of years of marriage weighed against creditable service years.) IRMO Poppe; IRMO Grey.

The reason it is called the “Frozen Benefit Rule” is that the pension is to be divided and valued based upon the retiree’s pay as if the retiree had retired on the date of division - not the retirement date. In other words, the non-military spouse’s portion of the pension is determined by the “High Three” (meaning the highest three years of pay) at the time of the division. The value of the benefit is “frozen” at the time of division- not at the time of the actual retirement. Thus, if the divorce occurs when the military spouse is of a lower rank, the non-military spouse will not get the “growth” on the pension resulting from subsequent years of post-judgment service.
Continued from Page 5…

This is contrary to California state law. In California, the non-employee spouse is entitled to the “growth” on retirement benefits (including pension benefits) even if they are not vested at the time of the dissolution. IRMO Brown. In California, the pension benefit is valued at the time of the retirement, not “frozen” at the time of dissolution. Thus, if the employee spouse’s pension benefits increase post-judgment (i.e. increased benefits due to promotion and salary increase), then the nonemployee spouse enjoys the increase in the community portion as well.

Since Howell has effectively tied the state court’s hands in regard to equitable remedies, it is not clear what the best method is for compensating non-military spouses for this loss of their rights under state law. There is a glimmer of hope, however. If the military spouse will agree to a reimbursement or indemnification in a judgment, then the state court can enforce the agreement. (The courts simply cannot impose equitable remedies over the military spouse’s objection). Certainly, practitioners are encouraged to utilize a QDRO expert to help with crafting language in their judgments that will help compensate the nonmember spouse for the loss of benefits. Possibilities include agreements to amend the division order after retirement, an actuarial buy-out, or a “Gillmore election.” While there are downsides to these options, there are no better available remedies at this time.

SAVE THE DATE!!!
The Foothills Bar Association’s 54th Annual Dinner and Installation of Officers & Board of Directors will be held on January 26, 2018 at Babylon Palace Banquet Hall in El Cajon. Details will be coming soon.

Please Join Us!
On January 18, 2018, the Foothills Bar Association’s Young/New Lawyers Committee will host a mixer at Coin Haus, located at 8361 Allison Avenue in La Mesa. This event is open to all members. Details will be provided soon.
Dear Members,

On December 21, 2017, the Foothills Bar Association will hold its general membership meeting at 4:45 p.m. at Hooley’s Irish Pub & Grill in Grossmont Center, La Mesa. At that meeting, members will have an opportunity to vote to elect the Board of Directors for the upcoming 2018 calendar year.

The Board has open positions. If you are interested in serving on the Board or would like to nominate someone to serve, please send nominations (self or others) via e-mail to “Nomination Committee” at bar@foothillsbar.org by Thursday, December 14, 2017. To be eligible, a nominee must have been a member of the Foothills Bar Association for at least one year and maintain his or her residence or principal office in San Diego County. We will send out the slate of nominated directors and current directors for your consideration prior to the general meeting.
ATTORNEYS, LAW OFFICE STAFF AND COURT EMPLOYEES:
PLEASE JOIN THE FOOTHILLS BAR ASSOCIATION FOR OUR
HOLIDAY TOY DRIVE AND MIXER

HOOLEYS IRISH PUB & GRILL – GROSSMONT CENTER, LA MESA
THURSDAY, DECEMBER 21, 2017 FROM 5:00 PM to 7:00 PM

PLEASE BRING A NEW UNWRAPPED TOY TO BENEFIT THE
SALVATION ARMY TOY DRIVE. TOYS WILL BE DISTRIBUTED BY THE
SALVATION ARMY TO LOCAL FAMILIES. ENJOY HOSTED APPETIZERS
AND RECEIVE ONE DRINK TICKET WITH YOUR TOY DONATION.

GET IN THE HOLIDAY SPIRIT OF GIVING AND SHARE GOOD TIDINGS
WITH FELLOW MEMBERS

(Limit of one drink ticket per person will be distributed)
Pursuant to Government Code § 68106 and Rule 10.620 of the California Rules of Court, the Superior Court of California, County of San Diego, is providing notice that it will be closing the Family Court Building at 1555 Sixth Avenue, San Diego, CA 92101 and the Madge Bradley building at 1409 Fourth Avenue, San Diego, CA 92101 (including both business operations and courtrooms), and transferring these operations to the new San Diego Central Courthouse at 1100 Union Street, San Diego, CA 92101 (the “Central Courthouse”). The Family Court Building, which currently houses courtrooms F-1 to F-6, will now close at 3:30 p.m. on December 13, 2017. The Madge Bradley building, which currently houses courtrooms F-8, F-9 and PC-1, PC-2, and PC-3 will now close at 3:30 p.m. on December 14, 2017.

Family and Probate court operations and hearings in Family and Probate cases will resume on Monday, December 18, 2017 in the new Central Courthouse at 1100 Union Street. Effective that same date, all Probate case filings, and filings for Family cases pending in the Central venue district, must be made in the new Central Courthouse.

Also moving from the Family Court and Madge Bradley Buildings and reopening in the new Central Courthouse at 1100 Union Street beginning December 18, 2017 will be Family Court services, Family Law Facilitator services, the Domestic Violence Restraining Orders clinic operated by the San Diego Volunteer Lawyer Program, and the Children’s Waiting Room.

These actions are due to the completion of the building project to construct the new Central Courthouse.

The Court continues to invite public comment on these changes prior to implementation. To ensure prompt review and consideration, comments should be submitted electronically through the Court's website at www.sdcourt.ca.gov (click on “Invitation to Comment”). For those without easy internet access, comments may be mailed to: Superior Court of California, County of San Diego, 220 W. Broadway, Executive Office, San Diego, CA 92101, attention Michael Roddy, Court Executive Officer.

MICHAEL M. RODDY
Executive Officer
Notices

Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at mark@thelawcorp.com or Cheryl Stengel clstengel@outlook.com.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the third Tuesday of each month. The next meeting will be on December 21, 2017 at Hooley's Irish Pub in Grossmont Center, La Mesa, prior to the holiday mixer and toy drive. The meeting will begin at approximately 4:15 p.m., followed by the general membership meeting and board of directors election at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.
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SUBMISSIONS
Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at clstengel@outlook.com.

ADDRESS CHANGES
Send change of address or telephone number to Bradley Schuber at bschuber@krigerlawfirm.com

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