

The Power of #metoo

JUN 02, 2018

BY ROBERT ROSBOROUGH

Did you attend MCBA's latest membership luncheon? If not, I recommend reading Nestor Schnasse's report on an excellent panel on the latest developments regarding gender inequality, primarily in the workplace. (Many thanks to Nestor not only for this article but for being our Guest Editor this month.) Our panelists had plenty to say about the #metoo movement but also noted how what is happening today is possible because of decades of brick-by-brick legal work. Of course, what is happening today makes clear just how many bricks still need to be added to create a level surface. Those of you closely following #metoo may not be surprised by the pervasiveness of sexual harassment and violence across entire industries and our panelists painted a compelling picture of it while discussing the progress being made, such as the SEIU announcing that addressing harassment is a priority in its next round of collective bargaining (alas, to the literal boos of some men in the SEIU's audience.) One of the more interesting points to me was how much economic circumstances help perpetuate harassment—but then we shouldn't be surprised that people put up with a lot when your economic choices are limited. You don't need to be an employment lawyer to want to learn what these experts had to say.

As a companion piece, Barbara Monty has written a highly personal and candid essay—indeed, a *cri de coeur*—that takes the continued pervasiveness of sexual harassment and violence everywhere as a rallying cry for all of us to do something about it. Barbara gives a bit of the history of #metoo and then quite literally says, “#metoo,” recounting her own experiences, including in the legal profession. I know that many men find the pervasiveness hard to believe and are discomforted by questions of acceptable behavior. MCBA is not trying to discount any of the questions raised or offer its own solutions here. Barbara's essay and the #metoo movement invite all of us to examine our own assumptions and feelings raised by these issues. As a conflict resolution teacher, I teach the wisdom of those very things in preventing and resolving all conflict.

For those of you looking for a meaty, “what the law is” article, financial advisor and attorney Mike Zaidlin offers a comprehensive overview of an issue that, if it hasn’t already been, will be important to all of us one day: filing for Social Security benefits (note my optimism that it will remain important to all of us.) I have heard Mike speak on this topic and he does a great job of enabling his audience to “issue spot” on a complex topic. Many of you may not realize that a married couple’s poor timing in filing for benefits can leave hundreds of thousands of dollars on the table. The topic is too complex to outline all the answers but Mike’s article enables you to know when to ask the right questions. I highly recommend that everyone read it—not just for your clients’ benefit but for your own and your friends’.

Marin Law Library trustee Jonathan Frieman has written a concise update on what’s new at the law library. It left me impressed with what the library offers, including benefits I didn’t know about, such as access to online CEB material. We are publishing a little bit early this month because Greg Brockbank, our newish political columnist, not only updates you on the races and propositions but ventures a few predictions for Tuesday’s election.

Finally, based on your feedback, we here at the Marin Lawyer are endeavoring to offer a convenient non-web-based format for those of you who want to take the Marin Lawyer with you for reading. We are still working on a more sophisticated approach and may experiment a bit but for now, we are trying out a new feature that allows you to create a pdf of the articles in the current issue with just one click.

If you click through from the e-mail announcement of the issue, just scroll down to the first “Notice” right after the main articles and you’ll see the link. Depending on your browser settings, the link will either open a pdf of the articles in your browser or download the pdf. If it opens in your browser and you want to download it, you can probably do that in several ways, including going back to the link and right clicking (or if you’re on a Mac like me, option-clicking begins the download immediately.)

If you are already on MCBA’s website and want to get the pdf, you have to go to the “Current Issue” of the Marin Lawyer and scroll down in the same manner. (Going to “In the News” will not show a pdf option.) The link works the same way as described above. The pdf is not formatted like the old printed version, but it is easy to read and of course you can print it if you want to take a paper copy with you. And we are

still working out kinks with our web developer; for example in a few places you'll see some code, such as for live links. The pdf also has only the articles--no event listings or notices.

Let us know what you think. And as always, let us know what you think of any other feature or article when you run into me (or Mee Mee, Kiersten or another board member) at MCBA events or by email or otherwise. Until next month, your editor is signing off. Enjoy the start of your summer!

Lawyers Both New and Old

JUN 01, 2018

BY THOMAS S. BROWN

This month's President's Message, crafted after the Warriors eliminated the Houston Rockets in game seven of the Western Conference Finals, touches on the declining bar pass rate and highlights a few changes to the Rules of Professional Conduct.

As the hiring partner for my firm's San Francisco office, I have spent a considerable amount of time over the past few years interviewing law students at some of our nation's premier law schools, including several Bay Area schools such as Stanford Law School, Berkeley Law, and UC Hastings. I have been impressed with the students' outstanding qualifications and diverse backgrounds. One of the first questions I ask is whether they are enjoying law school and why they want to pursue a career in law—fair questions for any prospective employer. The overwhelming response is that they are indeed enjoying law school, finding it both challenging and rewarding. As for their reasons for becoming a lawyer, most of the students have embarked on a career in law for a specific purpose, either because they have experienced or witnessed a legal injustice, have worked in the legal field following undergraduate school, or have a background in an area such as business, intellectual property, or insurance where obtaining a law degree makes professional sense. They strike me as dedicated, hard-working students who are capable of becoming excellent lawyers.

California State Bar Pass Rate: That's why the recent news from the California State Bar about the pass rates from the February 2018 bar examination is surprising and disappointing. Only one-quarter (27.3 percent) of applicants passed the California General Bar Exam, the all-time lowest bar pass rate according to records going back to 1951. Although California is generally believed to have the highest "cut score" and is considered one of the hardest bar examinations to pass in the country, the Golden State is not an outlier. The average score on the multistate bar exam, the portion of the test used in every state, fell 1.3 points from the previous year; that's the lowest average score in the past ten

years and the fourth straight year that the February test results have declined.

There have been multiple reports from law school deans and other educators who contend that the bar examination is too restrictive and unfairly prevents qualified individuals from pursuing a career in the legal profession, particularly women and minorities. Despite the requests to reduce the cut score, the California Supreme Court declined, noting that the pass rate has fluctuated over time and recent drops appeared to be part of a "broader national pattern." Critics have noted that lowering the bar pass rate is counterintuitive to improving the quality of our state's lawyers.

Following the decision by the California Supreme Court, the California State Bar "commissioned the first-ever comprehensive series of studies of the bar exam, including a review of the passing score and whether the content of the bar exam is appropriate to test the knowledge and skills needed by entry level attorneys. Based on the information available, no changes to the passing score or content of the exam were adopted." The State Bar has now embarked on a more thorough endeavor, and has published a Request for Information for a third-party vendor to conduct an attorney job analysis study designed to focus on the following issues:

- Provide a documented link between exam content in relation to current and changing legal practices;
- Inform the development of a minimum competence definition for standard-setting assessment;
- Assess the adequacy of the current exam format (including but not limited to multiple-choice and constructed response, scoring weights associated with each component) in testing the requisite knowledge and skills of entry-level attorneys; and
- Provide a blueprint for future development and selection of exam topics and question items.

Whether this study will actually provide meaningful guidance to improve the bar pass rate and ensure that California attorneys are adequately prepared to effectively represent clients is an open question.

Although the MCBA does not have a formal program designed to assist those sitting for the California bar examination, we do have a Mentor program for newer attorneys. We encourage veteran attorney members with ten or more years of practice to become mentors to our newer attorneys, with the goal of

providing them much needed practical knowledge and skills needed by entry-level attorneys. If you have any interest in participating in the Mentor program, please contact me or one of your board members.

New Rules of Professional Conduct: Several changes to the Rules of Professional Conduct, effective November 2018, are also worth noting for practicing attorneys. These include:

- Expansion of the ban on harassment and discrimination to allow the State Bar to open an investigation without a previous civil finding and to include express prohibitions on harassment and retaliation. This is a significant departure from the existing approach as the State Bar, which has extremely limited investigative resources, can now discipline an attorney for harassment or discrimination without any final determination in either an administrative proceeding or lawsuit.
- A stricter rule against sex with clients, banning it unless there was a prior consensual relationship.
- There is also legislation pending (AB 3249) that would change the designation of us attorneys from members to "licensees." This may not be a significant change, but I've never thought of myself as a "licensee," but rather, an attorney who both represents clients and acts as an "officer of the court."

A special thanks to all who attended our last two membership meetings, which included the District Attorney Candidates Forum in April and the Panel on the Update on Gender Inequality. The responses from those who attended the meetings have been positive and we look forward to this summer's events, which include (<https://marinbar.org/events/?type=event&id=185>) Professor Rory Little's update in June on this term's cases before the United States Supreme Court and in July, (<https://marinbar.org/events/?type=event&id=184>) Legal Puzzles for Lawyers and Courts from the Gig Economy. We look forward to seeing you all at the meetings this summer.

Best,

Tom

<hr>ⁱState Bar of California Releases Results of the February 2018 Bar Exam, News Release, State Bar of California (May 18, 2018).

ⁱⁱJob Analysis Study, Request for Information 2018, State Bar of California

May General Membership Luncheon Report: Update on Gender Inequality Issues.

MAY 28, 2018

BY NESTOR SCHNASSE

Just days before Harvey Weinstein would be arrested and charged with rape in New York, MCBA members gathered for a discussion of the #metoo movement he has become a national symbol of. Moderated by MCBA Secretary and Program Chair Susan Feder, the luncheon was not only timely, it was deeply informative and thought provoking thanks to Susan and featured speakers Jennifer Reisch, Legal Director of Equal Rights Advocates (ERA), and Bernice Yeung, Reporter for Reveal from The Center for Investigative Reporting (CIR). Each speaker brought to the table an impressive background in work on gender inequality.

Reisch brought the perspective of an accomplished workers' rights lawyer and more recently director of ERA for the past 12 years, managing the organization's multi-prong approach to seeking equality and justice for women in schools and workplaces. Under her direction, ERA is not only focused on affecting policy and legislation, but also on effecting change through litigation, direct legal services, education and community outreach. She helped pass the California Fair Pay Act of 2015, and was part of the team representing Betty Dukes and other women in their history-making case against Wal-Mart, two representative highlights of an active career. Those accomplishments are also indicative of a deep historical perspective on both the issue of gender inequality and the evolution of relevant legal protections.

Yeung brought the perspective of an investigative reporter long focused on issues of gender. She was part of the Emmy-nominated Rape in the Fields reporting team, bringing to light sexual assault of

immigrant farmworkers, and the lead reporter on another Emmy-nominated story, Rape on the Night Shift, which examined sexual violence against female janitors. Her most recent publication is *In a Day's Work: The Fight to End Sexual Violence Against America's Most Vulnerable Workers* (The New Press 2018). With a gift for storytelling and drawing connections, she delved into this complex issue and notably the difference between ways men and women perceive harassment.

How We Got Here and Why #metoo is Happening

Susan Feder opened the discussion by posing the key questions: How did we get here, and why is this issue a national topic of discussion today? Yeung took up first what 'here' is, characterizing the national discussion that includes the #metoo movement as a cultural reckoning. The Harvey Weinstein moment may seem a starting point, but she reminded the audience that moment was made possible by the efforts of many over many years to build a body of work exposing sexual harassment and violence on campuses, in the military, in places of employment, story upon story, case upon case.

On the question of why now, Yeung emphasized the effect of today's media as an echo chamber, and the celebrity status of many figures leading the #metoo movement. Those elements, she suggests, have led the nation to see gender inequality in a new way, as a matter of abuse of power. More importantly, with the numbers of women now coming forward, abuse of power is being viewed today as more than isolated individual interactions but as connected to powerful companies and institutions.

Building on that shift in scope, Reisch pointed out how swift the transition from #metoo to #himtoo was. No longer is the issue seen as just some men behaving badly but broader institutional failures that have both led to and perpetuated harassment. With this shift, she added, has come another important shift in thinking toward the questions of how we can fix institutions and how we can create space for dialogue in our workplaces, schools and legislatures where people can participate fully. With the focus now on abuse of power, the discussion is no longer just about sex, it is focused in a more productive way on power and what is preventing people from participating, from feeling safe, and feeling respected.

Epic Systems Corp. v. Lewis

The conversation then turned to various efforts to keep harassment out of the public view such as

nondisclosure agreements, and arbitration agreements at the heart of the U.S. Supreme Court's recent decision in *Epic Systems Corp. v. Lewis* (2018). (Available as a slip opinion (https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf) here.) Reisch quipped how quickly the tag #EpicFail gained currency after the decision was published, but was quick to note how devastating the decision is from the point of view of workers. The holding, she continued, is that an employer may require employees to sign arbitration agreements waiving the right to bring collective claims without violating the NLRA as that requirement would not fall within the Act's definition of 'concerted activity.' Turning her attention to a vigorous dissent, Reisch echoed "Notorious RBG's" (Ruth Bader Ginsburg's) call to action that it is time for Congress to update the Act, which dates back to the New Deal.

With regard to harassment, Reisch struck a more hopeful note on the decision's effect as most claims are brought on an individual basis, although she did predict the decision would have a broader chilling effect. She noted how the decision stands in contrast to the #metoo movement, which reminds us that there is strength in numbers. In practice, under *Epic Systems*, we should expect to see more instances of "death by a thousand cuts," subtle retaliation against a worker who reports. Ultimately, the decision fails to recognize or appreciate the economic reality under which real people operate in the workplace, where individuals often cannot afford to quit or bring an individual claim.

Current Legislation

When asked about current legislation to watch, Reisch ran through a number of bills pending in Sacramento and Washington D.C.:

California Assembly Bill 3080 (Gonzales) addresses serial harassers. It aims to: put an end to forced arbitration as a condition of employment, make it unlawful to retaliate, expand training requirements, make it unlawful to require nondisclosure as a condition of settlement, and create a registry of sexual harassment claims and settlements. Whether this bill would be preempted in part by the NLRA is yet to be seen.

California Assembly Bill 1870 would increase the statute of limitations on FEHA claims from one to three years in discrimination and harassment claims, to bring them in line with other torts. The Bill would also

reduce the number of employees needed to trigger training requirements and strengthen substantive requirements of that training.

California Senate Bill 224 (Jackson) would clarify that the Unruh Civil Rights Act applies to claims of sexual abuse in industries marked by power imbalance, e.g. producers, venture capitalists, lobbyists and elected officials.

The Congressional Accountability Act, which covers acts within Congress, is aimed at increasing transparency, clarifying policies and procedures, requiring disclosure of settlements, and getting clarity for employees on who and where they can turn to for help.

How #metoo Affects Low Wage Workers

The panel then explored how abuse of power affects workers at the bottom of the socio-economic spectrum. Yeung deftly illustrated the issue with a series of stories, drawing connections across seemingly disconnected industries. In Hollywood, the economic concern is whether an aspiring actress will have a role or any future roles. In the farm context, the concern is whether a worker will have work next season, her work conditions, and is often exacerbated by a lack of mobility. The economic element is severe for workers in this area. Yeung told the story of a woman working in the janitorial industry who shared how she was “constantly doing the math in her head,” calculating whether she could afford to look for another job when faced with a serial harasser. The livelihood of her family was at stake: two weeks off to find a new job, two weeks to the next pay check, meant one month’s missed salary. She just didn’t have that sort of savings, and so she stayed in her job and tolerated harassment until she was sexually attacked.

Adding another layer, Yeung explained how environmental factors built into a job will increase the challenge. A woman may work in a remote field, or as a single woman stationed at night on an entire floor of a large bank, or alone with a client in a home. In these situations, the worker is vulnerable, lacks witnesses to corroborate her story, and often faces a complete lack of any person or place to go for help.

Reisch also emphasized the connection between economic insecurity and harassment. One important

takeaway message to attorneys in the audience was that a complaint that on its face is economic, such as failure to pay minimum wage or provide required breaks, may well stem from retaliation for rebuffing sexual harassment.

Stopping Harassment in the Workplace

As gender inequality has become a national discussion, Reisch pointed to some significant positive steps in the area of low wage workers. The Service Employees International Union (SEIU), in its latest approach to collective bargaining, announced a demand to require a clear and effective process for responding to reports of harassment. Harassment has become a priority, and new pillar of collective bargaining.

Such a clear statement of priority must be backed up by effective education. Yeung added that training for farmworkers has vastly improved in some areas, with trainings made industry specific, and very impactful. Important elements to include are a clear message that there are many ways to report, that an employer cannot retaliate against a worker for reporting, and that the company has no tolerance for harassment. At one training she observed, the leader asked the men in the audience what was stopping them from speaking up when they see someone being harassed. Training is an opportunity to make clear that everyone shares responsibility, and to ensure that everyone is empowered to speak up.

Reisch echoed and amplified the importance of training and education, stressing the need to empower workers by making clear how to report and to allow anonymous reports. The questions she would have companies ask now are: What about our culture, our policies, our procedures prevents people from speaking up? How do we change that so we can provide access and space to speak?

As to advice for employers, after examining various industries, Yeung recommends employers do an audit to be sure they have a clear starting reference point. They then need to exhibit leadership, demonstrate a commitment to stop harassment, and model values like respect and equal treatment. Employers must find a way to check in with employees and assess the actual workplace climate. Policies must be written, and written in plain language that is accessible to all employees, who need to receive real notice rather than a policy buried in an inch-thick stack of rules to take home and read on their own.

Whether Gender Inequality and Harassment are Understood Differently by Men and Women

One final issue arose: whether gender inequality and harassment are understood differently by men and women. Yeung began with a story about a female friend and her friend's (now-ex) partner. Her friend had shared with her a conversation with her partner about harassment she'd endured at every place of employment she'd had, and how her partner simply did not believe her. On reflection, this friend imagined her partner either felt guilty because some of what she described seemed "normal" to him, or that her reality was so far removed from his that it had just never crossed his mind the world could be like that. Yeung then jumped to the moment when the SIEU announced that it had decided to make sex harassment a priority and some men in the audience booed. There is a perception gap, and what is needed, she urged, is twofold really: a broader vocabulary for everyone and an honest conversation.

Reisch drew a comparison to race and white privilege, a topic that is uncomfortable for many, bringing up feelings of undeserved privileged status while not having done anything "wrong" personally to achieve that status, leading many to avoid discussion of it. Well, the national debate is shining a light on the issue of gender inequality. Change, she advises, while uncomfortable for those who might prefer the status quo, is needed and coming.

To illustrate how the perception gap might be bridged, Reisch told a story a male friend had shared. He was at a convention returning to his room in the hotel with a glass of wine in his hand. He boarded the elevator and took a position opposite a woman already inside. He was heading to the same floor as the woman and when the elevator came a stop and the doors slid open, the woman began rifling through her handbag and said, "You go ahead." He did, and went to his room oblivious to why she seemed insistent that he exit first. Just before entering his room, he noticed her walking in the opposite direction. In the silence of his room, and for no particular reason, he began to imagine the moment from her perspective. In all probability, she had her key but pretended to search her bag so that he would not be in a position to either follow her or to see which room she went into. She felt the need to take action to feel safe, and in a way that would not burden him with a problem he may not even be aware of. He'd done nothing wrong. We're not all bad, he thought, but she had still needed to think about an issue he didn't, one he didn't personally create but created just by virtue of being there as a man. Imagining

her perspective provided valuable insight for him and for the audience. One of those insights was that he needed to be part of the solution even if he hadn't personally been part of the problem. And all it took was some degree of attention and opening up for just a moment to see the issue from a different perspective.

Thoughts on the #metoo Movement

MAY 30, 2018

BY BARBARA MONTY

GENDER BIAS

Sexual abuse is directly related to gender bias because many women have been sexually abused but have remained silent about it for most of our lives. We have done so because in our families, schools, and work we learned that we must just accept the unequal treatment and abuse and then not cause a stir about it or else we would be seen as troublemakers or as weak. So, many of us kept silent. Those of us in the legal profession are no exception.

RBG

Recently, my friend Eileen Barker and I were discussing “RBG,” the documentary film about Ruth Bader Ginsberg. Eileen remarked about how we women have been brainwashed to accept our unequal status of second-class citizens and how deep rooted this acceptance is. Our acceptance has silenced us. I also found disturbing how much was made about Justice Ginsberg’s husband being supportive of her and his respecting the work of women. Why is this so unusual? Why is it not the norm that both genders are treated with equal respect and have equal opportunities? It is because gender bias and the resultant sexual abuse are part of the fabric of our society.

#METOO

In 2006, civil rights activist Tarana Burke began using the term, “Me Too,” on Myspace to promote “empowerment through empathy,” particularly among young women of color who had experienced sexual abuse. Her intention was to raise awareness of the pervasiveness of sexual abuse and assault in

society. Burke was particularly moved when a thirteen-year-old girl with whom she worked confided to Burke that she had been sexually assaulted. Burke later regretted that she had not simply said to the girl, "Me too, I too was sexually assaulted." Instead, Burke kept silent.

In October 2017, following the publicity of Harvey Weinstein's serial abuses, actress Alyssa Milano encouraged using the hashtag, "#metoo," on Twitter and encouraged women to speak out about how they were victims of sexual harassment and rape in the entertainment industry to "give people a sense of the magnitude of the problem." Early high-profile posters with stories of sexual abuse included: Gwyneth Paltrow, Ashley Judd, Jennifer Lawrence, Uma Thurman, Lady Gaga, Debra Messing, Elizabeth Warren, Angelina Jolie, Laura Dern and Ellen DeGeneres.

Milano tweeted the phrase, "Me Too," around noon on October 15, 2017 and by the end of the day, it had been used more than 200,000 times and tweeted more than 500,000 times by the following day. On Facebook, more than 4.7 million people used "Me Too" in 12 million posts during its first 24 hours. The platform reported that 45% of users in the United States had at least one friend who had posted using the term. Since then, the hashtag has trended in over 85 countries.

Since October 2017, at least 211 celebrities, politicians, sports stars, judges, athletes, CEOs and other well-known men have been accused of sexual misconduct. Allegations include: rubbing their genitals against women, touching women's breasts and buttocks, groping women, even penetration of children. These men were accused of drugging women, forcing women to masturbate them, and to perform oral sex. These were men of power, talent, accomplishments, and many had made significant contributions to society.

Could this really be? Could sexual harassment be so pervasive? Could even Dr. Huxtable have been drugging and raping women for years? For many of us, the allegations themselves are not a surprise. What is astonishing is how widespread the sexual abuse is. Information has come out that over 60% of U.S. female medical trainees and students experience harassment during training though most do not report the incidents and over 55% of U.S. female government workers have reported being sexually harassed at work.

EARLY RESULTS

As a result of this movement, institutions and agencies have made commitments to change. Promised steps include:

- Processing all untested rape kits.
- Closer vetting of teachers.
- Better protecting children at school.
- Updating sexual harassment policies.
- Improving training in workplaces, places of worship and schools.
- Strengthening federal and local laws for processing and prosecuting sexual assault.

Time Magazine chose the #metoo Movement as “Person of the Year” for 2017.

PERSONALLY

My dad, a homicide detective, taught me never to show weakness or talk about hardship, and to remain tough at all costs. Although many bad things have happened to me, I have not spoken about them because I did not want to appear weak and because, honestly, I felt somehow responsible for letting those things happen to me. However, I have come to believe that real strength comes from being vulnerable and honest.

I have been sexually harassed at work since my first waitress job at 16. I said nothing about being “ordered” to wear my uniform tighter and shorter, or being groped by the boss, because I needed the work and did not want to appear to be a “troublemaker.” When I was a law clerk in a large firm, a name partner came very close to raping me after weeks of making sexual comments and my dodging his invitations to dinner “work” sessions. He only stopped when one of his partners walked in while he had me pinned to the conference table. One of the female associates to whom I had confided told me that he just gets “frisky” before trial and the firm cuts him slack because he is a great rainmaker and successful trial attorney. I found another job and remained silent.

MEN

Personally, I like many men and even love some. I enjoy working with men, and I feel no need for revenge or punishment. I realize that some men are confused, and feel persecuted as a result of the #metoo movement. That's a terrible place to be. It makes one feel misunderstood, defensive and powerless. It's a place, however, where most women live all the time. Perhaps it would be beneficial now for men to go deep into those feelings and learn from those feelings how profound gender inequality is and what they can do to change it. Men may realize that they too are products of the culture and that much of their past, and even present behavior, perpetuates the culture of harassment and abuse. We need men as allies, as teachers of other men, as role models for boys and as supporters of women.

WOMEN

How many women feel:

We feel demeaned and diminished.

We feel judged and shamed.

We feel afraid of losing our jobs and of not being believed.

We feel guilty that we were not able to stop the abuse.

We feel angry.

What we want:

We want to be heard and understood.

We want change in society, families, schools, jobs, and religious institutions.

We want to stop being demeaned and harassed.

We want respect.

Women—and men—from all backgrounds can help bring about this change. Women—and men—in the legal profession can bring about this change not only in our own profession but have many tools at our disposal to help bring about broader change.

Perhaps for all women, now is the time for us to step forward, to end our silence about what has happened to us, even if it is uncomfortable. It is uncomfortable. It is also empowering to show one another, and particularly our daughters, that it is not weak to speak out and break the silence. It is truly brave. In that spirit, I can now say, "Me too."

<hr>Eileen Barker and I are planning a #metoo discussion for women in the legal profession who have been sexually mistreated. The purpose is to share our stories and to explore what we might need to move on in our lives. Women interested in participating are invited to contact us at(bmonty@montywhitelaw.com) bmonty@montywhitelaw.com.

RESOURCES

Me Too Movement

(<https://metoomvmt.org/>) www.metoomvmt.org

Center for Domestic Peace, Marin

(<http://www.centerfordomesticpeace.org/>) www.centerfordomesticpeace.org

415-924-6616

Marin County District Attorney

(<https://www.marincounty.org/>) www.marincounty.org

415-473-6450

Association for Lesbian, Gay Bisexual & Transgender Issues in Counseling

(<http://www.algbtic.org/>) www.algbtic.org

National Center for Transgender Equality

(<https://transequality.org/>) www.transequality.org

202-642-4542

National Online Resource Center on Domestic Violence

(<https://vawnet.org/>) www.vawnet.org

National Teen Dating Abuse Helpline
(<http://www.loveisrespect.org/>) www.loveisrespect.org
866-331-9474

National Women's Law Center
(<https://nwlc.org/>) www.nwlc.org
202-319-3053

Workplaces Respond to Domestic and Sexual Violence
(<https://www.workplacesrespond.org/resource-library>) www.workplacesrespond.org/resource-library

Final Thoughts (& Predictions) on Marin's June Ballot, the Statewide Races and Propositions, and Looking Ahead to November

MAY 28, 2018

BY GREG BROCKBANK

<h4>LOCAL NONPARTISAN RACES FOR PUBLICLY ELECTED OFFICES</h4>

[Editor's Note: Greg's opinions are his own and do not reflect those of the MCBA. His election predictions should in no way be taken as voting recommendations. MCBA does not endorse candidates for any office. In full disclosure, Greg has publicly endorsed Ms. Anna Pletcher and Shelly Scott and his endorsement is listed on their websites.]

As noted in my last column two months ago (from which surprisingly little has changed), Marin elects five supervisors, four department heads, the councils of 11 towns and cities, the members of 19 school boards, and representatives on dozens of special districts (mostly water, fire protection, community services, and public utilities), for a total of about 250 elected officials on over 60 public bodies. Most elections are in November, though a few boards have chosen to hold theirs in June. A few boards have "primaries" in June, where the top two have a run-off in November.

Most of our local nonpartisan elections were, until a couple years ago, in odd-numbered years, but a new state law requires all elections to move to even-numbered years if the turnout is significantly higher (which it is in Marin, given our outstanding turnout in presidential and, to a lesser extent, gubernatorial years). There were a few potential new elections in this June's election, and there is one actual one

on the ballot – the Corte Madera Town Council.

Most of the open seats on the above boards had no challengers, leaving only five actual contests for seven seats amongst them. Three of these seats are for the Corte Madera Town Council, one is for County Supervisor from the Novato area, and three of the four elected county department heads have contested elections.

COUNTY SUPERVISOR: Incumbent JUDY ARNOLD of Novato (well-known, well-established, well-funded, and well-endorsed) is running for her fourth term, but she's now 77 years old, and some think it's time for a change.

Challenger TONI SHROYER, after losing narrowly to Arnold four years ago as an unknown, is still angry and hyper-critical of Arnold and the rest of the Board of Supervisors. She's done a few things in the community, but not as many as one might expect from a serious candidate for county supervisor. Her followers tend to also be angry, anti-tax, anti-housing, and conservative.

Even though Shroyer herself is nominally a Democrat, she didn't seek the Marin Democratic Party endorsement, which went to Arnold. Most Dems are hoping that the anti-incumbent fervor of four years ago is no longer in effect, so Arnold should easily prevail this time.

COUNTY SUPERINTENDENT OF SCHOOLS: 24-year incumbent Mary Jane Burke is being challenged for the first time ever by MATT NAGLE, a West Marin school principal. Nagle wants more attention paid to Mexican-American and other immigrants, which is good, but he's no match, especially without really campaigning, for the hugely popular and effective Burke.

DISTRICT ATTORNEY: Two of the three candidates are currently deputy district attorneys – A.J. BRADY and LORI FRUGOLI. Frugoli, with 27 years in the department – preceded by years on the San Rafael Police Dept. and Marin Sheriff's Dept. – is the "old boy" in the race, as evidenced by her endorsement from the former elected DAs, and much of law enforcement. She promises increased safety for Marin. A.J. BRADY, a ten-year veteran of the DA's office, has been active in forwarding restorative justice and opposes the death penalty and is endorsed by the Marin County Prosecutors Association. ANNA PLETCHER is the outsider in the race; she has an impressive record as a ten-year

federal prosecutor fighting white-collar crime. She argues that her management experience of overseeing 25 attorneys is transferable and that the DA's office is ripe for change. I think the DA, beyond just running the office, sets an important tone for law enforcement in Marin, and I predict Pletcher will come in first, but with less than 50%, and there will be a runoff in November, probably with Frugoli.

ASSESSOR/RECORDER: SHELLY SCOTT has been the frontrunner since the incumbent, to whom she lost eight years ago, announced his retirement last December. And she has a good chance of getting over 50% of the vote and avoiding a November runoff. In addition to her run for the office eight years ago, she has been a Novato School Board member since then, and has worked in the office for 30 years, in all three divisions. The other two candidates, BRIAN KARR, and JENNY MATTSON, seem to be political newbies, and I don't see much evidence of their campaigns.

CORTE MADERA TOWN COUNCIL: There are four candidates for the three open seats here. I expect incumbent BOB RAVASIO (who lost his re-election race four years ago but was subsequently appointed to a seat when someone resigned mid-term) will probably win a full four-year term, despite his recent automobile accident injuries, as well as local activists DAVID KUNHARDT and ELI BECKMAN.

<h4>MARIN'S PARTISAN RACES FOR CONGRESS AND STATE LEGISLATURE</h4>

Below are my blurbs on these three races from my last column two months ago, because, again, nothing's changed. Although incumbents do sometimes get beaten, it's rare, and even more rare when the challengers aren't raising enough money to get past one percent of the incumbents' war chests. And I admit that as the campaign Treasurer of one of the challengers.

All voters, regardless of party, now get the same ballot in the June primaries (thanks to Prop. 14 in 2010), and the "top two" go on to the final election in November — even when the top two candidates are the same two people in June and in November, and both are from the same party.

CONGRESS: JARED HUFFMAN is running for his fourth two-year term, and will once again be challenged by Republican DALE MENSING of Garberville and Democrat ANDY CAFFREY of Van Nuys (formerly of Mendocino County, from where he ran this race two years ago; there's no requirement that

congressional candidates or members live in the district they represent.) Jared usually gets 70+% of the vote, and this year is unlikely to be any different.

STATE SENATE: MIKE McGUIRE, the 38-year-old energizer bunny from Healdsburg, who had already served on his local school board, city council, and Board of Supervisors before getting to the state senate, will be running for his second four-year term, challenged only by fellow Democrat and perennial candidate RONNIE JACOBY of Santa Rosa, a former city councilwoman.

STATE ASSEMBLY: MARC LEVINE is running for his fourth two-year term. Many progressives are not happy with him, and he is being challenged by first-time candidate but long-time progressive activist DAN MONTE, who is thus far struggling to raise money. Levine had in excess of \$1M in his campaign coffers to start the campaign.

<h4>STATEWIDE RACES</h4>

U.S. SENATE: DIANNE FEINSTEIN was first elected in 1992, but is now 84 years old. She is being challenged by fellow Democrat Kevin de Leon, who just stepped down as President Pro Tem of the State Senate; more progressive than Feinstein, he actually got more votes than she did from the several thousand delegates at the State Democratic Party's convention in February. However, in November, where these two top candidates will inevitably be the only ones on the ballot, Feinstein will presumably get most of the Republican votes, in addition to her advantages as the incumbent, with name recognition, far more money, and nearly 26 years in that office.

GOVERNOR: GAVIN NEWSOM has been the frontrunner since he was the first to enter the race, has always been first in fundraising, and consistently, in the polls, although ANTONIO VILLARAIGOSA narrowed the gap briefly a few months ago. The race now seems to be a two-way race for the number-two spot between Villaraigosa and the major Republican, John Cox, for the right to face Newsom in November. Newsom, even though he's quite progressive, would wipe out Cox, but might have a problem with the slightly more conservative Villaraigosa, who could get most of the Republican votes.

LT. GOVERNOR: The top three, in no particular order, are probably former State Bar President JEFF

BLEICH (also former Chair of the California State University Trustees, former ambassador to Australia, and endorsed by the Marin IJ May 24), State Senator ED HERNANDEZ, and former Ambassador (to Hungary) ELENI KOUNALAKIS. A possible wild card is GAYLE MCLAUGHLIN, the extremely progressive former Richmond mayor who is running as an independent, with little money but tons of volunteers and social media, commanding as she does many in the Bernie Sanders army.

ATTORNEY GENERAL: It's still appointed incumbent XAVIER BECERRA versus Insurance Commissioner DAVE JONES and will be exclusively those two in November. When Kamala Harris went to the US Senate last year, Governor Jerry Brown appointed L.A. Congressman Becerra to fill out the final two years of her term. Jones (a former Sacramento City Councilman and State Assemblyman) is being termed out of his current office. He began running for A.G. three years ago, locking up the endorsements of the majority of Democratic activists and local office holders and raising a considerable amount of money. But Becerra has also done well in money-raising and is now about even with the more progressive Jones.

Not surprisingly, the race has gotten a bit nastier. Becerra lobbed a few accusations a few months ago that Jones was dishonest in claiming he'd gotten "zero oil money," when he'd gotten a tiny contribution from a gas station owner. Recently, Jones has accused Becerra of failing to do a number of things besides suing Trump (and not even that, often or early enough). Endorsements by newspapers and major elected officials are split. But regardless of the vote total in June, the race may still change shape before the November election.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION: State Assemblyman TONY THURMOND, from Richmond, seems to be the front-runner, with his major opponent being MARSHALL TUCK, who lost a race for this seat four years ago to then-incumbent Tom Torlakson, now terming out. Current TV commercials portray Tuck as a successful school reformer, and Thurmond as relatively inexperienced and a failure in school success efforts as a former school board member, so maybe we shouldn't count Tuck out. Tuck is a big supporter of charter schools, which are becoming more controversial in recent years, and in fact many progressive candidates now refuse to take money from charter school sources, as it seems more and more charter schools are being owned and operated by private, profit-seeking corporate chains. On the other hand, there are a lot of people who really like charter schools, even if the for-profit minority are perhaps ruining their reputation.

STATE TREASURER: State Board of Equalization Member (and former S.F. Supervisor) FIONA MA seems basically unopposed for this open seat.

STATE INSURANCE COMMISSIONER: State Senator Ricardo Lara seems poised to win this open seat, also relatively unopposed.

SECRETARY OF STATE: Incumbent ALEX PADILLA should cruise easily to a second term.

STATE CONTROLLER: BETTY YEE also has no serious opposition for a second term.

<h4>STATE BALLOT MEASURES</h4>

You may recall that a recent change in the law put only Legislature-sponsored ballot measures on the June ballot in even numbered years, and the ones put on the ballot by citizen signatures all go on in November (which is making those elections more crowded than ever). Usually in June, there are only a couple or so, but this time there are five (again, all from the Legislature), and to sum it all up, the California League of Women Voters recommends voting yes on all of them except the middle one – Prop. 70.

Prop 68: California Drought, Water, Parks, Climate Coastal Protection, and Outdoor Access for All Act
This relatively large bond, like its predecessors, is sometimes called a “Christmas Tree,” with ornaments to appeal to (and induce votes from) many groups. But they are good causes, and we are, in my opinion, still underinvested in most of these areas.

Prop 69: Motor Vehicle Fees and Taxes

This would restrict existing transportation revenues paid at the pump (gas taxes) and registration fees to ONLY road and transportation improvement projects. There’s no real opposition.

Prop 70: Greenhouse Gas Reduction Reserve Fund

This would require approval by 2/3 of legislators to approve funding projects from the cap-and-trade program, starting in six years. Opponents says this could lead to deadlocks, inefficiency, and poor

decisions.

Prop 71: Effective Date of Initiatives

Currently a ballot measure becomes law the day after the election, but sometimes the results are close and in doubt for several weeks. This would change the effective date to five days after the Secretary of State certifies the results. It has no real opposition.

Prop 72: Property Taxation: New Construction: Rainwater Capture System

This would add an exclusion from additional property taxes for new rainwater capture systems. Again, we should always try to use taxes to discourage bad behavior, and tax exemptions or credits to incentivize good behavior, as this measure does.

<h4>NATIONAL ELECTIONS</h4>

U.S. SENATE: Everyone wants to know if the Democrats can take back the Senate in November in what is expected to be a blue wave (size not yet known), but the road to success is narrow. Of the 33 Senatorial seats up nationwide this year, only ten of them are held by Republicans, and except in Nevada (the only state Trump lost among those ten; the others are deep red), most of the incumbent Republicans look pretty secure – although there is a chance for a few upsets. Meanwhile, there are ten incumbent Democrats running for re-election in states won by Donald Trump, and five of them are currently trailing in the polls. But they say a month is an eternity in politics, so five months (until the November election) is more than enough time for the polls to reflect a reversal of fortune for the currently trailing Democrats if that blue wave indeed materializes, and is big enough, and holds. So the Democrats do have a chance to take control, but they would have to keep all their seats and take Nevada (50/50 at present) and one other state (e.g., Arizona, Kentucky, or Mississippi – all possible).

HOUSE OF REPRESENTATIVES: The party in the White House nearly always loses seats in the mid-term elections, and the less popular the President is, the more seats are likely to be lost. Donald Trump's approval ratings have set record lows for a first-year President (starting in the high 40s), and dropped throughout last year (to the low or mid-30s), although recent polls show he's bounced back to the low 40s in recent weeks (50% in Orange County in mid-May), allegedly due to the tax bill which is somehow still viewed positively by surprisingly too many people. The Democrats need to flip 23 seats, which is

doable with presidential approval ratings around 40, but in a huge wave year, they could take at least twice that number. Several could come from California, as we have 14 Republican Congress members (out of 53), seven of whom are in districts won by Hillary Clinton (but four of which are in Orange County, where likely voters approve of Trump's agenda by an astounding 2-1). There are huge mobilizations from Democrats in those counties (with help from neighboring counties) to take those seats.

Making Optimal Decisions with Social Security Benefits

MAY 29, 2018

BY MICHAEL ZAIDLIN, J.D.

Social Security benefits often constitute a majority of retirement income, with the median married couple or individual recipient relying on Social Security for 67% of retirement income. Many married couples will receive over one million dollars in lifetime benefits. In many cases, the amount of benefits a married couple will receive will exceed the amount of income that can reasonably be provided by even a \$1,500,000 IRA account.

Despite the importance of making a carefully considered decision about when to file, many individuals miss out on tens of thousands of dollars in lifetime benefits by filing too early or because they lack awareness of particular filing strategies. Married (and many divorced) couples, for whom Social Security retirement benefits serve as a “joint-and-survivor” annuity, often forego several hundred thousand dollars in combined lifetime benefits.

There are a number of reasons for this. Individuals invariably underestimate their own life expectancy, place too little value on Social Security’s primary role as longevity insurance, focus far too much on the “break-even” aspects of a filing decision, and fail to take into account that a lower earning, younger spouse is very likely to “step-up” to the higher earning spouse’s benefit, often for many years.

For many attorneys, a general understanding of Social Security is useful. For example, the ability of a divorced spouse to collect a survivor or spousal benefit – or both - based on the work record of an ex-spouse requires that the marriage have lasted a minimum of ten years, among other factors. Remarriage may impact the client’s ability to qualify for certain benefits in the future. For estate planners, retirement or survivor benefits will often impact how financially secure a surviving spouse will

be, as well as impact the size of the client's remaining estate.

The goal of this article is to provide general information on Social Security's rules and benefits, describe a number of filing strategies, and highlight other information relevant to the filing decision. The reader should be aware that there are many exceptions to the general rules described below, particularly when disability benefits are involved.

The optimal filing decision often appears deceptively simple, yet for many filers there will often be hundreds of possible filing options involving timing and benefit combinations. The complexity, and the financial stakes, should nearly always warrant the use of suitable software or professional assistance, except in the most basic of situations.

Full Retirement Age and the Retirement Benefit.

Full retirement age (FRA) is the age at which one is entitled to a full retirement benefit, also known as the "Primary Insurance Amount." FRA is based on one's date of birth – it is 66 for those born from 1943-1954, increasing by two months for each year until 1960, when FRA is 67 for those born in that year and after. The size of the retirement benefit is based on the highest 35 years of one's "covered" Social Security earnings.

For each year in which the retirement benefit is delayed past FRA, the benefit will grow via "delayed retirement credits" by approximately 8% annually to age 70. Conversely, taking the benefit before full retirement age will reduce the benefit size by just under 7% per year to age 62. For example, one entitled to an annual retirement benefit of \$30,000 at age 66 would collect \$22,500 if filing at age 62, or \$40,000 if filing at age 70.

The retirement benefit can grow for as long as one works, which also has the secondary benefit of allowing dependent and survivor benefits to grow as well. For those who already have a long, solid earnings history, further work is likely to have little impact on the size of the retirement benefit, but growth can be dramatic when one has relatively few years of covered earnings or has earnings which have significantly increased over time.

Certain Social Security rules change depending on whether or not one has reached full retirement age, which affects filing strategy. These include:

- Filing a “restricted application for spousal benefits” upon reaching FRA is still available to those born before 1954.
- One cannot suspend benefits before FRA.
- The earnings test no longer applies at FRA.
- Spousal and survivor benefits do not increase in size after the claimant has reached FRA.

Retirement Benefits and the Impact of Delaying Beyond FRA.

Delaying benefits past FRA can have a major impact on total lifetime benefits, particularly when an older spouse is the higher earner, and may result in an additional \$200k-\$250k in lifetime benefits for a married couple. Social Security benefits constitute a unique form of “longevity insurance” because they are tax-favored, inflation-protected, and government-backed. No other annuity offers all three features.

Because the median life expectancy of a 65-year-old is now 86 for a woman and 84 for a man, and because life expectancies are anticipated to increase at an ever-faster pace, Social Security’s role as longevity insurance is critical. In addition, those who rank in the top 25% of education and/or income levels have life expectancies that are about three years longer than the population as a whole. Of course, it may not always be beneficial to delay filing when health/life-expectancy issues are evident or anticipated.

The family of a worker who is taking retirement benefits, and who has a child under 18 still living at home (or older if disabled before age 22) is eligible for child, as well as child-in-care spousal benefits, regardless of the age of the spouse. This is just one scenario which may make early filing more beneficial than delaying, depending on life expectancies and other factors.

Delaying Benefits and the Impact on an Investment Portfolio.

Delaying Social Security benefits often results in smaller taxable retirement account withdrawals due to

the increased size of the benefit, a combination which should also result in a reduction in taxes as higher tax-favored Social Security benefits are “exchanged” for smaller tax-disfavored IRA withdrawals. Combined with the built-in inflation protection of benefits, delaying should result in a higher level of after-tax income, a retirement income stream with lower overall risk, and thus an investment portfolio requiring less exposure to risk.

Because Social Security benefits constitute tax-favored and inflation-adjusted longevity insurance, this further reduces the risk of depleting investment accounts during retirement. Those who are risk-averse are particularly well served by delaying, as having a higher percentage of retirement assets in the form of an annuity such as Social Security results in an overall lower-risk retirement portfolio.

The Surviving Spouse and the Survivor Benefit.

Due to the survivor step-up, the filing decision for both spouses must be jointly coordinated, as the higher retirement benefit will constitute a “joint and survivor” annuity that will end only at the death of the lower-earning spouse. The step-up to the deceased’s retirement benefit occurs at the death of the first spouse, but only if the deceased was receiving a larger retirement benefit than the surviving spouse.

To be eligible for a survivor benefit based on the work record of one’s spouse, one must have been married a minimum of nine months. For divorced spouses, (where filing coordination can also be highly desirable for the lower-earning spouse) the marriage must have lasted a minimum of ten years. In addition, if currently married and seeking a survivor benefit based on the work record of a deceased ex-spouse, the current marriage cannot have begun prior to age 60.

For the older, higher-earning spouse, a key guideline regarding when to file for retirement benefits is whether at least one spouse can be expected to live past the general “break-even” age, which, depending on current interest rates and other factors, has historically been in the 81-84 age range. If either spouse can reasonably be expected to live to this age range, it often makes sense to have the higher earning, older-spouse delay benefits.

If H is the higher earner and significantly older than W, it is extremely likely that W will step-up to a

survivor benefit. In that case, it may be optimal for W to file early for a benefit, since that benefit is likely to be replaced by the larger survivor benefit before W reaches her “break-even” age. Many younger, lower earning spouses outlive their spouses by many years, even decades, which can mean the difference between collecting \$25k in annual survivor benefits, or \$40k, for many years.

Today's Filing Decision and the Impact on Tomorrow's Survivor Benefit.

The size of a survivor benefit is dependent on both whether the deceased filed for retirement benefits before or after reaching FRA, as well as on when the surviving spouse files for the survivor benefit. There are four possible outcomes:

- Both spouses wait until FRA or after to file. Here, the survivor benefit amount will be what the deceased was collecting at the time of death, or which would have been collecting had he or she filed at that time.
- The deceased files at or after FRA, and the surviving spouse files before FRA. This may drop the survivor benefit to 71.5% of the amount the deceased was receiving.
- The deceased files before FRA, and the surviving spouse files at FRA. This may drop the survivor benefit to 82.5% of the amount the deceased was receiving.
- Both spouses file before FRA. This may reduce the survivor benefit to 71.5% of the deceased's full retirement benefit.

The Impact of “Deemed Filing” on Retirement and Spousal Benefits.

With few exceptions, whenever one files for a retirement or a spousal benefit, one will be presumed (“deemed”) to be filing for all of the benefits that one is entitled to at the time of filing, and will simply be awarded the highest of those benefits. Except in certain circumstances, deeming eliminates the option of taking one benefit now, while allowing another benefit to continue to grow, a process often referred to as “being paid to wait.”

In certain cases, one can take a survivor benefit, or a spousal benefit via a restricted application, while letting a different benefit continue to grow, then switch over to that benefit – in effect, being

“paid” to wait. Under the 2015 Bipartisan Budget Act, only those born before 1954 are now eligible to file a “restricted application” for a spousal benefit without being deemed to be filing for retirement benefits.

Switching Between Survivor and Retirement Benefits.

Because deeming does not apply to survivor benefits, one may take a survivor benefit while allowing a retirement benefit to grow, then switch to the retirement benefit at a later date. Or, the retirement can first be taken, while allowing the survivor benefit to grow. A survivor benefit may be claimed as early age 60 (age 50 if disabled and the disability started within seven years of the deceased's death.)

As noted earlier, the survivor benefit does not grow after one has reached full retirement age, while the retirement benefit continues to grow in size until age 70. As a result, certain filing strategies may come into play between ages 60 and 70. For example, if one's retirement benefit at 70 will be larger than his or her survivor benefit will be at age 70, it may be optimal to file as early as possible for the survivor benefit, then switch to the higher retirement benefit at age 70. Or, if one's retirement benefit at 70 will be smaller than the survivor benefit will be at full retirement age, it, may be optimal to take the retirement benefit early, then switch to the survivor benefit upon reaching full retirement age.

Spousal Benefits for Married Couples.

The spousal benefit, if taken at full retirement age by spouse A, is equal to one-half of spouse B's full retirement benefit. To file for a spousal benefit based on a current spouse's work record, the couple must be married for a minimum of one year. Also, spouse A can only claim the spousal benefit when spouse B has first filed for his or her own retirement/disability benefit. The spousal benefit does not increase after one reaches FRA. Filing for a spousal benefit before FRA reduces the size of the benefit to as low as 35% if taken at age 62.

In addition to a spousal benefit, a “child-in-care spousal benefit” can be collected by that spouse at any age, with no reduction, if there are children under age 16 in care. This benefit is also 50% of the size of the full retirement benefit. However, the “family maximum benefit rule” will reduce the total benefits a family can receive to a maximum of 150%-180% of the size of the retirement benefit that the

dependent benefits are based on.

Spousal Benefits for Divorced Spouses.

To be eligible to claim a spousal benefit based on ex-spouse A's work record, the marriage must have lasted a minimum of ten years, and Spouse B cannot be currently married. (Eligibility for a spousal benefit based on an ex-spouse's work record can, however, be regained upon divorce.)

Unlike married couples, each divorced spouse can file for spousal benefits. Also, if divorced for more than two years and at least 62, neither ex-spouse is required to wait until the other ex-spouse has filed for retirement benefits, as is the case with married couples. Finally, ex-spouse A's current marital status never has a bearing on ex-spouse B's ability to collect a spousal benefit.

Suspending Retirement Benefits at Full Retirement Age or Later.

Suspending a retirement benefit, which can only be done at or after reaching full retirement age, allows one to "correct" a too-early filing decision, and from the moment of suspension will allow the retirement benefit to grow by approximately 8% per year. Suspending a retirement benefit, (unless it was done before April 30, 2016 by those few who qualified to do so) will, however, now cause all dependent benefits to be immediately suspended as well.

Obtaining a "retroactive benefit" can be done when an individual realizes or otherwise decides he or she should have filed earlier for a particular benefit. Up to six months of missed benefits can be collected. A retroactive benefit cannot be filed for before reaching full retirement age.

Withdrawing Retirement Benefits.

Withdrawing one's retirement benefit is the equivalent of never having applied for a retirement benefit at all. In effect, it resets the clock back to the day in which retirement benefits were filed for, so that the retirement benefit grows retroactively from that date. As with suspending a benefit, it serves to correct a "too-early" filing decision. Unlike suspending a benefit (which can only be done at or after FRA), withdrawing a benefit requires paying back any amounts receiving during that period, including

dependent benefits and Medicare premiums.

There is a short window to withdraw retirement benefits – it must be done within 365 days of the date of the initial filing. If the one-year withdrawal deadline has passed, suspending benefits upon reaching full retirement age is the earliest moment at which benefits can be suspended, and allow the retirement benefit to grow. “Failing” the earnings test often has a similar impact as withdrawing or suspending retirement benefits.

The Earnings Test.

The earnings test applies when one is collecting benefits before full retirement age and has employment (or self-employment) earnings above a certain limit. Earnings do not include investment and other non-work-related income. In any year before the year in which the recipient reaches FRA, one dollar in benefits will be withheld in 2018 for every two dollars earned in excess of \$17,040. In the year in which FRA is reached, one dollar in benefits will be withheld for every three dollars earned in excess of \$45,360 in the months preceding the month in which FRA was reached. Dependent benefits may also be impacted by the earnings test.

Most of the time, the earnings test has an ultimately positive impact because it allows the withheld benefit to grow at 8% per year, similar to a withdrawn or a suspended benefit. However, certain benefits subject to the earnings test can be permanently lost, especially in cases where that benefit may only be collected for a specific number of years, such as a survivor or retirement benefit where one will be switching between the two benefits, or in the case of a child-in-care spousal benefit that may only last a few years.

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI).

Specific claiming rules and strategies apply to the disabled and to their dependents. For example, a disabled surviving spouse or ex-spouse can take survivor benefits at 50, and in contrast to non-disabled workers who get their full retirement benefit at 66-67, disabled workers can obtain their full retirement benefit at age 62. An SSDI benefit amount is based on an age-based sliding scale - the older one is, the more work credits are needed to qualify. It is not “need-based” and therefore is not means-tested.

Deeming does not apply to disabled workers. For example, collecting a spousal benefit before full retirement age will not permanently reduce the size of the worker's retirement benefit.

Supplemental Security Income (SSI) is administered by the Social Security Administration, but is not funded by Social Security taxes. To a large degree, it is the program that has supplanted Welfare. It is intended for those who have not accumulated sufficient credits for covered earnings to qualify for SSDI. It is need-based, and therefore recipients are subject to means-testing.

Federal Taxation of Social Security Benefits.

Social Security benefits are federally "tax-favored." The Provisional Income (PI) formula determines the percentage of Social Security benefits that are taxed in a given year. Under the PI formula, either 0%, 50%, or 85% of one's benefits will be subject to federal taxation. The particular bracket will depend on how much, and what type, of outside income one has. For example, IRA distributions are subject to the PI formula, and can increase the taxation of Social Security benefits, while qualified Roth distributions will not.

Because of the impact of the "tax torpedo", in which outside income subject to the PI formula can cause one's benefits to be subject to a higher tax bracket, combined with the fact that Social Security benefits are taxed at a lower rate than ordinary income (such as IRA distributions), taking higher benefits and reducing other taxable income can have dramatic impacts on one's taxes. For example, a married couple filing jointly who receive \$70k in benefits, and who take a \$20k distribution from an IRA, would pay 75% less in federal tax than a couple who receive \$45k in benefits and who take \$45k from an IRA.

Finally, California does not tax Social Security benefits. Therefore, residents of California and other high-tax states often realize a further benefit from delaying and increasing the size of their Social Security benefits.

Key Takeaways:

- The Social Security claiming decision is a key financial decision, often appearing deceptively simple

but should be carefully evaluated with software, particularly when marriage is or has been involved.

- In an era of rapid advances in medical technology and life expectancy, Social Security, as a tax-favored, inflation-adjusted, government-backed annuity, represents the ultimate form of longevity insurance.
- Delaying Social Security benefits represents the most cost-efficient way to obtain more longevity insurance, compared to any commercial annuity.
- There are often sound reasons to take benefits early, particularly when disability benefits or a younger spouse are involved, when minor children are still living at home, when one can switch between types of benefits without being “deemed,” or when health or financial need are important considerations.

What's New at the Law Library

MAY 29, 2018

BY JONATHAN FRIEMAN

Well, if it has been some time since you visited the newly refurbished Marin County Law Library, located at 20 N. San Pedro Rd., it is high time you came in and looked around.

You will find a wonderful office away from the office and enjoy spending some quiet time away from the phones, away from the emails, and away from the questions, and do some quality study. Remember when that is what we used to do? The new location has been beautifully restored with plenty of tables and space for everyone. There's a large conference room you can rent at a very reasonable rate. It is restful, quiet, spacious, and relaxing. Come down and check it out.

While you are there, you will find the same secondary source reference materials in print (does anybody remember paper?), including most of the Rutter Group and CEB Collections. If it is not there in print, it is on Westlaw, which is free to use. Something new to the Library is the newly released electronic CEB On Law Collection, a great new resource which has access to all the up-to-date CEB publications, and, yes, that is free to use as well.

But if you are looking for a restful time to study, you should avoid the second or fourth Thursdays of the month in the evenings. That is when the Law Library hosts the "Lawyers in the Library" program, produced in collaboration with the MCBA. During those times, MCBA members volunteer their time and effort to answer questions for and give advice to self-represented patrons of the Library.

Self-represented patrons now account for about half of the Law Library's annual 4,000 visitors. We are dedicated to providing them with excellent service, and so it is always gratifying to see the volunteer attorneys provide that same extra effort to four or five patrons at each event. That effort attracts a full house almost every time, and patron evaluations of their experience are always stellar. So even if you were not at the recent volunteer appreciation social held at the Library last month, you know who you are...Thank You!

What is also new is that the Library has spun off a 501(c)(3) corporation called Friends of the Marin County Public Law Library. It is chaired by Board of Trustees Vice President Jonathan Frieman, and its mission is to raise funds for the Law Library to help close its 30% financial shortfall from 2008 levels.

Jonathan and the other members of the Friends might be coming your way with ideas about how you might be able to help (to update collections and the like), and they thank you in advance for your kind support.

For more information, visit the Law Library's website at: (<https://www.marincountylawlibrary.org/>) www.marincountylawlibrary.org. For more information about Friends of the Marin County Law Library, contact Jonathan Frieman at (yogi@well.com) yogi@well.com.

C. Clay Greene

MAY 28, 2018

BY NESTOR SCHNASSE

MCBA Past-President C. Clay Greene recently rejoined the board of directors. The Marin Lawyer sat down with him to catch up on the latest.

What is your practice area?

My practice is focused on family law.

Do you have a particular emphasis?

Most of my work revolves around financial issues, including support and the characterization and division of community property. I do some child custody work but my partners handle most of that work. Over the last few years I also have developed a mediation and private judging practice.

Why did you decide to become a lawyer?

I'm not sure if I ever "decided" to become a lawyer—it was more like an opportunity to attend law school arose and I jumped on it. I had arrived in San Francisco a couple of years earlier in 1970, following two years in the military. San Francisco was a great place to be in those days and I took full advantage of all that was offered. At the time the "opportunity arose," I was starting to look for meaningful work with zero thought of becoming a lawyer. A lawyer I had met offered me a clerk position in his office and introduced me to the local law librarian who told me about a night law school program. To make a short story even shorter, six weeks later, to my great surprise, I was attending law school. I ended up working my way through school with the same lawyer, graduating at the top of my class and of course, passing the bar.

Why do you live in Marin?

After living in the City, I moved to Marin not really thinking I would become a long-time resident. I've been here 44 years now. What's not to like about living here in Marin except for there being nothing open past 9:00 pm?

What do you love to do when you're not busy practicing law?

Outside of practicing law, I like to keep fit, travel and spend time with family and friends. I do a lot of road cycling, including riding in centuries and other long-distance rides. I'm hoping to complete the California Death Ride this summer, which is 14,000 feet of elevation gain over 130 miles. I will also be doing my fourth SF to LA AIDS ride this summer.

Tell us about your family.

I am blessed to be married to Romy Taubman who is also my law partner. I have a grown son (Alex) and three incredible granddaughters. I also have three wonderful stepdaughters with Romy, two of whom are still at home and one in college.

If you could pursue any other career besides law, what would it be and why?

If I was to start all over again and not be a lawyer, I would probably do some kind of environmental work or maybe be an archeologist.

Why did you join MCBA?

I joined the MCBA many years ago. Probably 1978 or '79. My purpose was to meet other lawyers and get to know the men and women who were senior to me. I would say that the saving grace (for me) in the stressful practice of law is the many wonderful friends made over the past 41 years. Not only do I know almost all of the attorneys I work against, in most cases I know their spouses and often their children. Starting with law school, I've always enjoyed the company of lawyers. I think our legal

training and the work we do gives us a special bond.

If you had to pick a single highlight of your career, what would it be?

One of my most memorable cases was not a family law case. Many years ago, I defended a woman against a foreclosure of her home. In order to purchase the home, she had used her divorce attorney as a loan qualifier because she had no job and had put title in his name. Unbeknownst to her, this lawyer (long since disbarred) refinanced the house, pulled a lot of money out, quit paying the mortgage and disappeared. I sued the lender, got a restraining order against the foreclosure, and after a week's trial in front of the Hon. Louis Burke, a retired Supreme Court Justice sitting by assignment, won a quiet title action against the lender and my client was awarded her home free and clear.

Marin Court Appointed Special Advocates (CASA): Providing a Voice for Youth in Marin's Child Welfare System

MAY 28, 2018

BY NESTOR SCHNASSE

I was introduced to Marin CASA by a fellow Scout leader who happens to work with the Marin Community Foundation. We share an interest in supporting Marin's youth and their families through various BSA programs, and our discussion turned one day to an issue that deserves greater attention: children who need an advocate.

Here's a fact that may come as a shock: every year in Marin County, over one thousand reports of suspected child abuse, neglect and abandonment are called into the County's hotline. Today, approximately one hundred children are in the Marin County child welfare system.

Through no fault of their own, many of these children have been removed from their home — sometimes separated from siblings — and placed in the foster care system. It's heartbreaking to imagine the fear, anxiety, disappointment, worry and shame those children endure, and their need for support is obvious. A Court Appointed Special Advocate (CASA) volunteer can play a key role in the process by providing a voice in the courtroom, and a consistent, reliable adult presence during an unstable time.

Marin CASA's Executive Director, Robyn Roberts, explained to me that the program recruits, screens, trains and supervises volunteer advocates. Its mission, she continued, "is to provide a voice for

abused, neglected, and abandoned children in the Marin Juvenile Court system.” CASA volunteers build a supportive and enduring relationship with each child, identify critical needs, and then advocate on the child’s behalf for medical, dental, mental health or education services in addition to permanency planning and placement.

Marin CASA is one of nearly a thousand CASA programs, a national volunteer movement. The concept began in 1976, when Seattle Superior Court Judge David Soukup founded the program based on his experience in the courtroom. As he was determining life-changing outcomes for children who had experienced abuse and neglect, he looked around the courtroom and saw there was no one there who could speak for the child. In 1977, Judge Soukup formed the first CASA program, and since then communities across the country have formed a national network of CASA programs to serve children in need.

The National CASA Association reports that children with access to a volunteer are more likely to be adopted, half as likely to re-enter foster care, more likely to have a plan for permanency and more likely to have improved educational performance.

In Marin County, a CASA volunteer is appointed to every dependency case (as well as traditional delinquency and probate guardianship cases as requested by the judge) in the Marin Juvenile Court system, serving children and youth zero to 21 years of age throughout the County. Marin CASA provides its volunteers with training, ongoing supervision, support and continuing education to make sure they know how to work within the child welfare and court systems to advocate for the best interests of children.

As our conversation came to a close, Robyn shared the program’s vision, which resonated with me as both a parent and youth program volunteer. Marin CASA, she said, “believes that every child deserves to be safe and treated with respect and dignity, every child has the right to a loving home where they can grow and learn, and every child should have the opportunity to become a successful, contributing member of our community.”

For more information visit (<https://marincasa.org/>) www.marincasa.org. If you are interested in becoming a volunteer, contact Robyn Roberts at (robynroberts@marincasa.org)

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