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REPLY TO:

Lynette Berg Robe
12711 Ventura Blvd., #315
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December 20, 2012

Hon. Kathleen O'Leary
Acting Presiding Justice
California Court of Appeal Fourth District
Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Re: In re Melissa, Case number G045899
Request for Publication

Dear Presiding Justice O'Leary:

As permitted by California Rules of Court, rule 8.1120, the Association of Certified Family Law Specialists (ACFLS) respectfully requests that *In re Melissa* be published.

ACFLS has a state-wide membership of approximately 600 attorneys certified by the California State Bar Board of Legal Specialization as Family Law Specialists. Our Amicus Committee regularly reviews cases and makes requests for review, publication, depublication, and frequently submits amicus briefs in cases with significant issues. In this particular case, we think that the publication of *In re Melissa* would be helpful to the family law community as set forth below.

In 2000, when the Supreme Court decided *In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, it established that waivers of spousal support in premarital agreements were not per se void as against public policy. It left for future determination, as well as Legislative action, the scope of permissible waivers. Since then, not a single published opinion has explored this crucial issue.

It is not uncommon for family law attorneys to advise clients with prenuptial agreements that were signed prior to 2000. Despite the fact that *Pendleton & Fireman* is 12 years old, the continued lack of guidance as to the scope of permissible waivers substantially increases the extent to which this issue (whether a spousal support waiver is enforceable) is litigated rather than resolved outside of court. Moreover, given the total uncertainty in the law, attorneys cannot provide intelligent advice to their clients as to how a trial court will rule on the issue.

In re Melissa sets forth a simple, common sense approach to this issue. After a well written and careful analysis that in and of itself is very useful, the case holds that spousal support waivers entered into before January 1, 1986, the effective date of the Uniform Premarital Agreement Act, are void as against public policy. The decision further holds that such waivers in agreements signed after January 1, 1986, are not per se invalid as against public policy. The decision also clarifies that prenuptial agreements signed after January 1, 2002, are subject to the restrictions added by the Legislature in Fam. Code §1612 (c).

If this court ordered *In re Melissa* published, attorneys and judges would have a logical black letter rule that would bring clarity and certainty to litigants and prevent unnecessary litigation.

Calif. Rule of Court, rule 8.1105 provides for the publication of an opinion that:

- (1) Establishes a new rule of law;
- (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;
- (3) Modifies, explains, or criticizes with reasons given, an existing rule of law;
- (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;
- (5) Addresses or creates an apparent conflict in the law;
- (6) Involves a legal issue of continuing public interest;
- (7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law;
- (8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or



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(9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.

In re Melissa meets all of these standards except possibly (5) and (9). The publication of this case would be of great benefit to the family law bench, bar and litigants.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lynette Berg Robe".

Lynette Berg Robe

President, Association of Certified Family Law Specialists