

# ACFLS

ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS

EXECUTIVE DIRECTOR  
DEANNA (DEE) ROLEWICZ  
PRESIDENT  
LYNETTE BERG ROBE  
VICE-PRESIDENT  
JILL L. BARR  
TREASURER  
KAREN C. FREITAS  
SECRETARY  
ANNE-FLORENCE B. DAVIES  
IMMEDIATE PAST-PRESIDENT  
DIANE WASZNICKY  
JOURNAL EDITOR  
DEBRA S. FRANK  
ASSOCIATE JOURNAL EDITOR  
CHRISTINE DIANE GILLE  
LEGISLATIVE DIRECTOR  
DIANNE M. FETZER  
ASSOCIATE LEGISLATIVE DIRECTOR  
MICHELE B. BROWN  
TECHNOLOGY DIRECTOR  
MARK RESSA  
ASSOCIATE TECHNOLOGY DIRECTOR  
SETH D. KRAMER  
EDUCATION DIRECTOR  
JOHN D. HODSON  
MEMBERSHIP BENEFITS DIRECTOR  
PAUL L. BRIMBERRY  
OUTREACH DIRECTOR  
TERESA MERZOIAN  
CHAPTER DIRECTOR (1)  
SHERRY PETERSON  
ASSOCIATE CHAPTER DIRECTOR (1)  
RENEE ROSE ROSS  
CHAPTER DIRECTOR (2)  
FREDRICK S. (RICK) COHEN  
ASSOCIATE CHAPTER DIRECTOR (2)  
STEPHANIE L. WILLIAMS  
CHAPTER DIRECTOR (3)  
DORIE A. ROGERS  
ASSOCIATE CHAPTER DIRECTOR (3)  
JASON M. SCHWARTZ  
REGIONAL DIRECTOR  
PATRICIA A. RIGDON  
COORDINATING DIRECTOR (1)  
JOSEPH J. BELL  
COORDINATING DIRECTOR (2)  
STERLING E. MYERS  
COORDINATING DIRECTOR (3)  
LESLIE ELLEN SHEAR  
ADMINISTRATIVE ASSISTANT  
RACHELLE SANTIAGO

REPLY TO:  
Lynette Berg Robe  
President ACFLS  
12711 Ventura Blvd., #315  
Studio City, CA 91604  
[Portia1000@aol.com](mailto:Portia1000@aol.com)

May 29, 2014

The Honorable William R. McGuiness  
Administrative Presiding Justice  
First District Court of Appeal, Third Division  
350 McAllister Street  
San Francisco, California 94102-7421

**Re: Request for Publication, Marriage of Stacy Holzman and Alexander Seidel,**  
**Court of Appeal, First District (A136969), Opinion Filed May 15, 2014**

Dear Justice McGuiness:

As permitted by California Rules of Court, rule 8.1120, the Association of Certified Family Law Specialists (ACFLS) respectfully requests that *In re Marriage of Holzman and Seidel* be certified for publication.

The Board feels that this opinion, if published, would add to the existing case law on the subject of interspousal fiduciary duties as applicable to purported transmutations, particularly those included in estate planning for married couples. Such agreements are often prepared by estate planning attorneys who (as admitted in this case) have limited knowledge of family law, the requirements for interspousal transmutations, or the impact of the Family Code on the documents they are preparing.

## **I. Statement of Interest**

ACFLS has no financial interest in the outcome of this action. ACFLS is a non-profit statewide association formed in 1980, shortly after the State Bar of California established its program for formal certification of family law specialists. ACFLS has approximately 627 current members (all of whom are Certified Family Law Specialists—certified by the State Bar of California, Board of Legal Specialization)). ACFLS monitors issues of interest to family law specialists, presents advanced educational programs for the bar and judiciary, and work to enhance the quality of services provided to the public.

ACFLS has an amicus committee co-chaired by two members who are dual-certified as appellate specialists and family law specialists. ACFLS has appeared numerous times as amicus curiae in state and federal appellate courts. In addition to filing amicus briefs, ACFLS has requested publication and depublication of opinions affecting family law litigants, counsel, and the courts. ACFLS has also requested the grant of Supreme Court review in important cases. The *ACFLS Family Law Specialist* (formerly, ACFLS Newsletter) has been cited in opinions of the California Court of Appeal. ACFLS does not advocate for a particular outcome with respect to the parties in any case; rather, ACFLS amici briefs and letters express our members' concerns about issues of importance to family law attorneys and litigants throughout the state.

## **II. Timeliness**

The Opinion was filed May 15, 2014. A request to publish may be delivered to the court rendering the opinion no later than 20 days from the date the Opinion became final. California Rules of Court, Rule 8.1120, subd. (a)(3). Accordingly, the deadline for this request is June 4, 2014.

## **III. Standards for Certification.**

Rule of Court 8.1105(c) sets forth the standards for certification for publication of an appellate decision. Here, Rule 8.1105(c)(2), (3), (4), and (6) support publication because the decision applies the rule to a new set of facts (8.1105(c)(2)), explains an existing rule of law (8.1105(c)(3)), clarifies the law (8.1105(c)(4)), and involves a legal issue of continuing public interest (8.1105(c)(6)).

## **IV. Argument**

Existing transmutation cases deal with various aspects of fiduciary duties relating to transmutations. However, there is very little law on what proof is required to meet the

element of the burden to rebut the undue influence presumption involving the other spouse's knowledge of the effect of the transaction. This case clarifies that in order to overcome the undue influence presumption, the spouse seeking to enforce the transmutation must affirmatively demonstrate that the other party understood the facts and the legal effect of the transaction on his property rights prior to entering into the agreement. This case involved a completed estate plan, but exemplifies a situation in which the estate planning process was insufficient to render the "harmed" spouse fully informed, thus making the transaction unenforceable.


This case applies the existing law to facts significantly different from those in published opinions in that it involves a finding that the benefitting spouse put no pressure on the other whatsoever, and that the "harmed" spouse executed the document in question freely. This is the perfect case to clearly state the standard of "fully informing" the "harmed" spouse to rebut the undue influence presumption. In distinguishing *In re Marriage of Burkle* (2006) 139 Cal.App.4<sup>th</sup> 712, this opinion helps define the parameters of the undue influence presumption when applied to transmutations of property.

In addition, this case clearly holds that an agreement transmuting separate property into community property cannot be created by estoppel or other equitable principles. This holding will lessen litigation in that there would, upon publication, be a clear decision barring estoppel or other equitable principles.

Finally, the opinion addresses an issue not dealt with in any other case, which is whether a spouse breaches his or her fiduciary duty to the other spouse by challenging an interspousal agreement, with the goal of depriving the other spouse of benefits that the agreement already conferred. While the argument that doing so breaches the spouse's fiduciary duty is often made, this is the first decision touching on the issue. For these reasons, we respectfully request that you issue an order that the case be published in the official reports.

Thank you, on behalf of ACFLS, for considering our request for publication.

Yours truly,

  
Lynette Berg Robe  
President ACFLS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 12711 Ventura Blvd., Ste. 315, Studio City, CA 91604.

On May 29, 2014, I served the document(s) described as: REQUEST FOR PUBLICATION, on counsel for the parties in this action, or on the parties in propria persona, addressed as stated below:

SEE ATTACHED SERVICE LIST

[X] (BY "FEDERAL EXPRESS" DELIVERY SERVICE) as follows:  
On May 29, 2014, I deposited the sealed envelope containing the above described document(s) in a box maintained by the carrier, Federal Express, for receipt of said envelope located at 12711 Ventura Blvd., Ste. 315, Studio City, California, the cost prepaid. I am aware that on motion of the party served, service is presumed invalid if the air bill date is more than one day after the date of deposit for mailing an affidavit. I served by Federal Express:

The Honorable William R. McGuiness  
Administrative Presiding Justice  
First District Court of Appeal, Third Division  
350 McAllister Street  
San Francisco, California 94102-7421

[X] (BY MAIL) By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit. I served by US mail:

S. Alexander Seidel : Respondent  
Mindy Lauren Ross  
Winter & Ross  
50 California Street, Suite 3230  
San Francisco, CA 94111-3908

Garrett Clark Dailey  
2915 McClure Street  
Oakland, CA 94609

Susan Holzman : Appellant  
David Michael Youngsmith  
Hersh Family Practice  
456 Montgomery Street, 17<sup>th</sup> Floor  
San Francisco, CA 94104

The Hon. John McCall  
San Francisco County Superior Court  
400 McAllister Street  
San Francisco, CA 94102-4514

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 29, 2014, at Studio City, California.

  
MERRY GLADCHUN