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July 21, 2011

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VIA E-MAIL

Leslie Ellen Shear, CFLS, CALS, IAML  
Attorney at Law  
16133 Ventura Boulevard, Seventh Floor  
Encino, California 91436-2403

Re: **In re Marriage of Valli - Appeal**

Dear Ms. Shear:

We are certified specialists in family law, having been certified by the California Board of Legal Specialization. We also are members of the ACFLS. Additionally, our firm, Jaffe and Clemens represented Randy Valli ("Wife"), both at trial and with respect to the recent appellate decision, *In re Marriage of Valli*, Second District, May 18, 2011. Garrett Dailey represented Frankie Valli ("Husband") on appeal. Peter Walzer and Christopher Melcher represented Husband at trial and on appeal.

We just learned that the ACFLS has approved sending some type of amicus letter in support of Husband's petition for review to the Supreme Court. For the reasons that follow, we request that the ACFLS reconsider its approval, that it read all of Wife's appellate briefs and opposition to the petition for review, that it communicate with Wife's counsel, that it retract the position that it publicly has taken and that it take no position concerning the petition for review in the Supreme Court.

Jaffe and Clemens attorneys have dual roles here. As Wife's representatives, we are interested in bringing this case to an end on the basis of the appellate decision, which we believe is correct. It is a narrow decision due to the unique facts in this case. As members of the ACFLS specifically and the family law bar generally, our role is to ask that our organization be diligent, not consider only one side of this question in order to rush into a position, and upon more careful examination of this question, refrain from or retract support of Husband's petition to the California Supreme Court.

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We understand that Husband's review petition has been posted to your blog site along with the ACFLS Board's solicitation of its members to give views or examples of why the case needs to be reviewed.

We are writing to you out of concern that ACFLS decisions are being made based upon wrong information and wrong procedures. For example, it appears that Husband's appellate documents but not Wife's appellate documents are being reviewed by the ACFLS Board. Commentators are repeating some of the claims made in Husband's appellate documents, which claims were correctly rejected by the Court of Appeal as being *factually wrong*, not merely legally wrong. The commentators apparently are influencing the ACFLS Board. The Court of Appeal decision specifically identifies some of the erroneous factual claims in Husband's brief.

So, our first objection goes to the process of the ACFLS Board making decisions and recommendations without consulting both sides.

Reading the actual opinion of the Court of Appeal decision instead of relying on the interpretations of commentators and advocates shows that this is not a far-reaching decision. Review by the California Supreme Court is not needed, and the criteria for review are not present.

Your July 14, 2011 ACFLS ListServe posting begins with the subject line "help needed: Marriage of Valli amicus letter in support of review." It recommends reading Dawn Gray's blog posting of her discussion of the case. This posting perpetuates the false claim that the Court of Appeal decision means that community funds used to pay premiums on Wife's separate property insurance policy represents a loss to the community. The Court of Appeal states just the opposite. The Court of Appeal remanded the case to the trial court and expressly directed that the trial court consider credit to the community for premiums that it paid.

Another fundamental wrong interpretation of the decision of the Court of Appeal is the contention that if parties agree to take title to an asset in one name, then that title is controlling. The *Valli* situation is far more limited and unique. The decision is similarly limited. This case deals with only those situations in which one spouse acquires an asset during marriage and, without any involvement of the other spouse, unilaterally determines to, and does, take title to the asset in the name of the other spouse.

Here are the undisputed facts, based on the evidence at trial.

Husband bought the policy without Wife's involvement. Husband decided without Wife's involvement that he wanted the policy to be solely in Wife's name. Husband testified that it was his intention that this be for Wife's benefit. Husband presented absolutely no evidence, inference or meaningful argument that there was any intention or agreement that he or the community had any interest in the policy when it was first acquired.

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It is important that ACFLS keep in mind what this case is *not* about. This is not a case where:

- ▶ One spouse acquires an asset during marriage and places title in his or her own name.
- ▶ Both spouses together acquire an asset during marriage and place title in the name of only one spouse, but with an agreement that the asset in reality will be owned by both spouses.
- ▶ One spouse takes an existing community property asset and puts title into his or her own name.
- ▶ One spouse induces the other spouse, in violation of the confidential relationship and in breach of the fiduciary duty, to place title to an existing community property asset into the name of the one spouse.
- ▶ One spouse, at the time of acquisition of an asset during marriage, and in violation of the confidential relationship and in breach of the fiduciary duty, induces the other spouse to allow title to the asset to be taken solely in the name of the one spouse.

The *Valli* decision does not apply to any of those situations. The facts in the evidence presented at trial clearly demonstrated that the acquisition of the life insurance policy in question had nothing to do with any of those situations.

Husband's appellate documents misstate the record about the trial evidence. The Court of Appeal noted those misstatements. Unfortunately, the commentators and the ACFLS are being misled by the brief or by opinions of others, or they are misreading the decision.

As stated above, the evidence disclosed that Husband, with no involvement of Wife, unilaterally decided to acquire an asset during marriage and unilaterally determined to, and did, place title to that asset solely in Wife's name. This is an exceedingly rare occurrence among spouses in California. This is not a pressing question of public policy. Leaving the appellate decision in the *Valli* case will have only the most negligible impact on the manner in which most spouses comport themselves during marriage.

We ask you and the board members to read the decision itself, not what the commentators or what Husband's briefs tell you the decision is. Additionally, if you or the board of directors have received any appellate documents from Husband, then, in fairness, you should also read the appellate documents from Wife, including opposition to the petition for hearing at the Supreme Court. We will send them, if requested. If you or any other board member has had discussions with Husband's attorneys concerning this case, then fundamental fairness requires that you and the board communicate with Wife's attorneys before publicly taking any position. Since the ACFLS has already taken a public position it should be retracted.

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Fairness and the integrity of the ACFLS require that what appears to be a wrong procedure be corrected now and that a wrong decision of the ACFLS be corrected now.

Very truly yours,

Handwritten signatures of Daniel J. Jaffe, Bruce A. Clemens, and William S. Ryden.

Daniel J. Jaffe  
Bruce A. Clemens  
William S. Ryden  
of JAFFE AND CLEMENS

P.S. We request and expect that you will post his letter on your blog site and distribute a link to it via the ACFLS listserv.

WSR:ecs  
cc: All Members of the ACFLS Board of Directors  
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