FAMILY LAW NEWSLETTER

Published by the Family Law Section of the Oregon State Bar

Oregon State Bar

Vol. 29, No. 6 December 2010

CONTENTS

ARTICLES

Social Security, SSI and Child Support
By Lawrence D. Gorin, Attorney at Law, Portland, Oregon 1

Roth: To Convert or Not to Convert
By Brian D. Currier, CDFA™, Senior Vice President Morgan Stanley Smith Barney, Portland Office 6

FEATURES

The Best of Tips, Sites and Gadgets
By Dee Crocker and Beverly Michaelis 8

The New Child Support Program
A Note from Jean Fogarty 10

Seeking Submissions for the OSB Family Law Newsletter
Editor 10

Index of Articles: 2010 12

Editor's Appreciation to Authors. 11

CASENOTES

Supreme Court 13

Court of Appeals 13

WEBSITE

Check out the Section Website at:
www.osbfamilylaw.homestead.com/

Social Security, SSI and Child Support

By Lawrence D. Gorin, Attorney at Law, Portland, Oregon

Introduction

References to "social security," "SSI" and "SSDI" are frequently encountered by family law lawyers when dealing with clients and colleagues. The terms are often used in the same breath, without distinction and all too often without a full understanding of what is, and is not, involved. Problems and confusion arise when the terms are unthinkingly used interchangeably, particularly in connection with discussions regarding child and spousal support. Lawyers need to be cognizant of the distinctions. The purpose of this article is to advance that goal.

Social Security

"***Social Security***," as that term ***is*** commonly used, refers to the federal "*Old Age, Survivors and Disability Insurance*" (OASDI) program that provides retirement benefits, life insurance benefits and disability insurance benefits for insured workers and their qualifying dependents and survivors. The Social Security OASDI program is funded by employee contributions withheld from wage and salary income pursuant to the Federal Insurance Contributions Act (FICA), together with matching employer contributions. Title II of the Social Security Act, codified at 42 USC § 401 ***et seq***, comprises the enabling federal legislation.

As an insurance program, Social Security benefits are paid upon the occurrence of qualifying and triggering events (retirement, disability or death). Specifically, Social Security retirement benefits are available commencing at age 62. Social Security disability insurance benefits -- often, and correctly, referred to as "SSDI" -- may paid whenever the insured worker becomes disabled. And upon the death of an insured worker, "survivor's insurance benefits" are payable to qualifying surviving spouses and dependents of the deceased worker. OASDI benefits are paid without regard to any consideration of individual "need."

Continued on the next page

(NOTE: As this article explains, *Social Security disability insurance benefits -- SSDI --* must be distinguished from Supplemental Security Income benefits -- *SSI*. The benefits are derived from two separate and distinct governmental programs and neither has anything to do with the other, although both programs are administered by the Social Security Administration.)

Supplemental Security Income

"*SSI*" refers to the *Supplemental Security Income* program, which is a "needs-based" public welfare program, the basic purpose of which is to provide "a subsistence allowance, under federal standards, to the Nation's needy aged, blind, and disabled." To be eligible for SSI benefits, a claimant must be aged, blind or disabled, as defined by 42 USC § 1382c, and must have "income" and "resources" below certain levels. Money for the payment of SSI benefits comes from congressional appropriations taken from general tax revenues (and not from the Social Security and Medicare trust funds). While the SSI program is *administered* by the federal Social Security Administration (SSA), it is not part of the Social Security OASDI program itself. In essence, SSI is a federally operated low-income (or no-income) welfare program for qualifying persons based on age and physical condition, coupled with financial need. Title XVI of the Social Security Act, codified at 42 USC § 1381 *et seq*, comprises the enabling federal legislation.

SSI benefits are available to qualifying disabled children under age 18. To qualify as being disabled, the child must have a medically determinable physical or mental impairment that results in marked and severe functional limitation(s) that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

In addition to qualifying as disabled, eligibility for receipt of SSI benefits by a child under age 18, and the amount of such benefits, depends on the child's income and resources. If a disabled child is under age 18, not married, and lives at home with a parent, a portion of the parent's income and resources will be "deemed" as being available to the disabled child. Generally, the more income that is deemed to be available to the child, the less will be the child's SSI benefit amount, even to the point of fully eliminating SSI eligibility. The federal SSI benefit rate for 2010 was $674 per month. If the income that is deemed as available to a disabled child equals or exceeds the SSI benefit rate, there will be no SSI benefit.

Supplemental Security Income (SSI) recognizes that disabled children under age 18 generally have greater financial needs than nondisabled children. Accordingly, the underlying intent of the program is to *supplement* -- but not replace -- the financial resources otherwise available to the disabled child, including money available to a child as a result of a court-ordered child support obligation imposed on a divorced, separated or never-married parent. Stated differently, SSI benefits for a disabled child are received by the child *in addition to, and not in lieu of*, a parent's court-ordered child support obligation.

Social Security "child's insurance benefits"

Under the Social Security insurance program (OASDI), when an insured worker who is a parent *retires*, *dies* or becomes *disabled* and has a qualifying child, "*child's insurance benefits*" become payable. The underlying premise is that, prior to retirement, death or becoming disabled, the insured worker was financially supporting his or her child with income earned from gainful employment. When an insured worker's employment income ceases due to retirement, death or becoming disabled while still having a parental duty of support, the Social Security "child's insurance benefit" becomes payable on behalf of the insured worker, thereby allowing continued fulfillment of the parental duty of support, with the source being the Social Security insurance dollars rather than employment income dollars.

In the case of an insured parent's retirement or disability, the resulting child's insurance benefit is paid *in addition* to the parent's own retirement or disability insurance benefit, so that the parent's own Social Security benefit continues to be paid in full, without any reduction.

To qualify for Social Security "child's insurance benefits," the insured worker's child must be unmarried and either (1) younger than 18 or (2) younger than 19 and a full-time secondary school student. Social Security "child's insurance benefits" remain payable until the first occurrence of any of the following events: (a) the child dies; (b) the child reaches age 18 and is neither disabled nor a full-time student; (c) the child marries; or (d) the child's parent is no longer entitled to Social Security disability insurance benefits (if the parent's disability was the basis for the child's entitlement). If the child is younger than 19 and still attending a secondary school, the child's insurance benefit will continue until the child graduates or until two months after reaching age 19, whichever comes first.

For the qualifying child of a *retired* or *disabled* worker, the amount of the "child's insurance benefit" is generally 50% (one-half) of the worker's full retirement or disability benefit. For the qualifying child of a *deceased* worker, the amount of the "child's insurance benefit" is 75% of the deceased parent's basic Social Security benefit. However, there is a limit to the amount of money that can be paid to a family. The family maximum payment is determined as part of every Social Security benefit computation and can be from 150% to 180% of the parent's full benefit amount. If the total

amount payable to all family members exceeds this limit, each person's benefit is reduced proportionately (except the parent's) until the total equals the maximum allowable amount.

Social Security "mother's or father's insurance benefits"

If a retired or disabled worker is the parent of a qualifying child who is under age 16 and the child is "in care" of the retired or disabled worker's spouse, and the spouse is under age 62 and is "the natural mother or father of the worker's biological son or daughter," a Social Security "*mother's or father's insurance benefit*" is available. The amount of the spouse's insurance benefit is generally 50% of the retired or disabled parent's full retirement or disability benefit and is paid *in addition* to the qualifying child's own Social Security child's benefit. The "mother's or father's insurance benefit" payable to the retired or disabled worker's spouse due to the spouse being under age 62 and having "in care" the qualifying child of the retired or disabled worker comes to an end when the child attains age 16 (and the child is not disabled), or the child is no longer in the spouse's care, or the spouse and the retired or disabled worker get a divorce, whichever event first occurs.

Social Security "surviving mother's or surviving father's insurance benefits"

If an insured worker dies being survived by a qualifying child who is under age 16 and a spouse who is under age 62 and who has "in care" the deceased worker's child, the surviving spouse (widow or widower) is entitled to a surviving "*father's or mother's insurance benefits*." The amount of the surviving "*father's or mother's insurance benefit*" is generally 75% of the deceased worker's primary Social Security insurance amount. The surviving "*father's or mother's insurance benefit*" benefit otherwise payable in this circumstance ends when (a) there are no children of the deceased worker under age 16 (or disabled) who are entitled to a child's insurance benefit; or (b) the surviving spouse remarries. The surviving "*father's or mother's insurance benefit*" is payable *in addition* to the surviving child's own Social Security benefit.

Social Security "surviving divorced mother's or divorced father's insurance benefits"

Further -- and this is important for family law lawyers but often overlooked -- when a deceased worker's qualifying child is under age 16 (or otherwise entitled to child's insurance benefits) and is in the custody and care of the deceased worker's divorced spouse who is under age 62 and has not remarried, and the child is the natural or legally adopted child of the divorced spouse, a "*surviving divorced mother's or divorced father's insurance benefit*" becomes payable to the surviving divorced spouse, the amount thereof being 75% of the deceased worker's primary insurance amount. This payment for the surviving divorced spouse who is caring for the deceased worker's qualifying child is *in addition* to the surviving child's own Social Security child's insurance benefit (which itself is 75% of the deceased worker's primary insurance amount). In effect, the Social Security pay-out amounts to 150% of the deceased parent's primary insurance amount.

> NOTE: There is no provision for a Social Security benefit to be paid to a divorced spouse of a retired or disabled worker if the divorced spouse is under age 62, and this is so even if the divorced spouse has in his or her care a qualifying child of the retired or disabled worker who is entitled to child's insurance benefits.

Consent of retired or disabled worker not required for "child's benefits"

Application for the child's Social Security benefit and entitlement to receipt thereof does not require the consent of the retired or disabled worker. For example, when parents are divorced and the noncustodial parent is entitled to receive Social Security retirement or disability benefits, the custodial parent may apply to Social Security Administration (SSA) on behalf of the child for the "child's Social Security insurance benefit" without need of any consent from or involvement of the noncustodial parent. This sometimes results in the noncustodial parent being totally unaware that the child is receiving an insurance benefit directly from the Social Security Administration that is being paid on behalf of the insured worker. The SSA generally makes payment of the Social Security child's insurance benefit to a "representative payee" for the child, most often being the child's custodial parent (or other legal custodian).

In this circumstance, it is not unusual that a retired or disabled Social Security recipient who is under a court order for the payment of child support will continue to pay the court-ordered child support, often using his or her own Social Security benefit to do so, without realizing (or understanding) that the child is also receiving a payment directly from the Social Security Administration in an amount that may equal or exceed the amount of the court-ordered child support obligation.

Effect of SSI on child support obligations

As may be inferred from the label used, Supplemental Security Income (SSI) is designed and intended to *supplement* the recipient's income, *not* to replace that income. *If a disabled child is eligible for and is receiving SSI, the SSI benefit does not abrogate or reduce a parent's legal duty and obligation to support his/her child as otherwise mandated by law*. Nor does a child's eligibility for or receipt of SSI benefits provide a basis for a downward adjustment or elimination of the

FAMILY LAW NEWSLETTER

Published Six Times a Year by the Family Law Section of the Oregon State Bar.

Editor: Daniel R. Murphy
P.O. Box 3151
Albany, OR 97321
(541) 974-0567
murphyk9@comcast.net

Executive Committee Officers

Chair....Anthony H.B. Wilson
Chair Elect .... Laura B. Rufolo
Treasurer....Marcia Buckley
Secretary....Kristen Sager-Kottre
Immediate Past Chair....Richard William Funk

Members-At-Large

Sean E. Armstrong, Salem
Jacy F. Arnold, Eugene
Debra Dority, Hillsboro
Linda Reed Haase, Bend
Andrew D. Ivers, Albany
M. Scott Leibenguth, Portland
Grace Lee, Portland
Gregory P. Oliveros, Clackamas
Kristen Sager-Kottre, Albany
Lauren Saucy, Salem

Tom Kranovich, BOG Contact
Susan Evans Grabe, Bar Liason

The purpose of this Newsletter is to provide information on current developments in the law. Attorneys using information in this publication for dealing with legal matters should also research original sources and other authorities. The opinions and recommendations expressed are the author's own and do not necessarily reflect the views of the Family Law Section or the Oregon State Bar.

Layout and technical assistance provided by the Information Design & Technology Center at the Oregon State Bar.

Publication Deadlines

The following deadlines apply if a member wants an announcement or letter included in the newsletter.

Deadline	Issue
January 15, 2011	February 2011
March 15, 2011	April 2011
May 15, 2011	June 2011
July 15, 2011	August 2011
September 15, 2011	October 2011
November 15, 2011	December 2011

dollar amount of child support as calculated pursuant to the Oregon Child Support Guidelines.

In sum, the amount of child support as calculated under the Oregon Child Support Guidelines remains the same regardless of the child's receipt (or potential receipt) of SSI benefits. For a child under age 18 to be eligible for SSI benefits, the child must be *disabled* (as determined by SSI program standards) and must be *financially needy* due to lack of available income and resources, including family resources. It is not the intent of the SSI program to relieve a parent who has financial resources and income sufficient to support his or her child from using such resources and income to fulfill the parent's duty of support.

Lastly, it needs to be understood, again, that the SSI program is a federally funded *public welfare program* that involves the expenditure of public (taxpayers') dollars. Consequently, to reduce or eliminate a court-ordered child support obligation otherwise imposable on the child's parent, doing so for the reason that the child is receiving (or is eligible to receive) SSI benefits, simply results shifting the child support obligation from the parent to the public. This would be inconsistent with the public policy as expressed in ORS 416.405 "*[T]hat dependent children shall be maintained, as much as possible, from the resources of both of the parents, thereby relieving or avoiding, at least in part, the burden often borne by single parents or by the general citizenry through public assistance programs.*"

> NOTE: When it is the disabled *parent* (rather than the child), who is the recipient of SSI benefits, ORS 25.245(1) becomes applicable: **ORS 25.245(1).** Notwithstanding any other provision of Oregon law, a parent who is eligible for and receiving cash payments under the federal Supplemental Security Income Program shall be rebuttably presumed unable to pay child support and a child support obligation does not accrue unless the presumption is rebutted.

Effect of Social Security on child support obligations

Parent's receipt of Social Security retirement or disability benefits. Social Security retirement benefits and disability benefits received by a parent are considered as "income" for child support calculation purposes under the Oregon Child Support Guidelines. OAR 137-050-0715.

Parent's receipt of SSI benefits. However, a parent who is receiving Supplemental Security Income (SSI) benefits is rebuttably presumed unable to pay child support and a child support obligation does not accrue unless the presumption is rebutted. ORS 25.245; OAR 137-055-5400.

Child's receipt of Social Security "child's benefits." As explained earlier, when a parent receives Social Security retirement or disability benefits and has a qualifying dependent child, the child becomes entitled to receive a Social Security "child's benefit" as a directly result thereof. The child's insurance benefit is paid *in addition* to the parent's own retirement or disability insurance benefit, so that the parent's own Social Security benefit continues to be paid in full, without any reduction.

Under Oregon law, when a child receives Social Security "child's benefits" as a result of the obligor parent's own entitlement to Social Security retirement or disability benefits, the obligor parent is entitled to a dollar for dollar reduction (or credit) against the obligor's support obligation. ORS 25.275(4).

> ORS 25.275(4). "*The child support obligation to be paid by the obligor and determined under the formula described in subsection (1) of this section may be reduced dollar for dollar in consideration of any Social Security benefits paid to the child [or to the child's representative payee], as a result of the obligor's disability or retirement.*"

ORS 25.275(4) is implemented through the Oregon Child Support Guidelines. Specifically, OAR 137-050-0740 says, in essence, that "*The support obligation may be reduced dollar for dollar in consideration of any Social Security benefits paid on behalf of a disabled or retired parent to a child or a child's representative payee.*"

The reasoning is that the Social Security benefit paid to the child is part of the Social Security retirement and disability insurance plan to which the insured worker made contributions throughout his/her working years. Typically, a parent supports his/her child with income (money) derived from employment or other labor. When the parent retires or becomes disabled, the employment income that was used by the parent to support the child is no longer available (because it no longer exists). The Social Security "insurance" benefit then kicks-in to fill the void and allow the parent's court-ordered support obligation to continue to be fully fulfilled even though the parent no longer has employment income with which to do so. In essence, the Social Security Administration (like any other insurance company) pays the insured's obligation on behalf of the insured. This is not intended to be "extra money" on top of court-ordered child support. Rather, the "insurance dollars" simply replace the "employment dollars," thus effectively resulting in the child receiving the full "guideline amount" of support as would otherwise be the case, albeit in whole or in part with Social Security dollars.

A child's receipt of "child's insurance benefits" may also effect proceedings seeking modification of child support obligations under ORS 107.135. Specifically, ORS 107.135(3) allows an existing child support order to be modified upon evidence showing that there has been a "substantial change in economic circumstances of a party." In considering whether a change in circumstances exists sufficient for the court to reconsider an existing support order, ORS 107.135(4)(a)(D) allows the court (or administrator) to consider "Social Security benefits paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits."

Social Security retirement benefits, SSDI, property division and spousal support

Social Security retirement benefits and disability benefits are personal rights that are not subject to division between spouses incident to dissolution of marriage. Further, the value of such benefits may not be included in the division of marital property nor in determining how much property to award each spouse. To do so would conflict with applicable federal law, 42 USC §§ 407, 659 and 662(c). *Swan v. Swan*, 301 Or 167, 720 P2d 747 (1986) ("State law, even state domestic relations law, must yield if Congress positively has required by direct enactment that state law be preempted..") However, such benefits may be *taken into consideration* in determining spousal support and fixing the amount thereof. *Cave and Cave*, 85 Or App 336, 736 P2d 215 (1987). (affirming trial court decision that "Social Security benefits of both the respondent and the petitioner shall be added up, and each party shall get an amount equal to one-half of the total").

Conclusion

It is hoped that the foregoing summary explanation and discussion will enlighten the reader's understanding as to the differences between Social Security benefits and "SSI" benefits, and make future discussions that employ these terms more accurate and more meaningful.

Online website resources:

Social Security Handbook

http://www.ssa.gov/OP_Home/handbook/ssa-hbk.htm

Understanding Supplemental Security Income

http://www.ssa.gov/ssi/text-understanding-ssi.htm

What Every Woman Should Know

http://www.ssa.gov/pubs/10127.html

Lawrence D. Gorin practices law in Portland, Oregon.
521 S.W Clay St., Suite 205
Portland, Oregon 97201
Telephone: 503-224-8884

Roth: To Convert or Not to Convert

Brian D. Currier, CDFA™ , Senior Vice President
Morgan Stanley Smith Barney, Portland Office

New regulatory changes make it easier than ever to convert a Traditional IRA or employer-sponsored retirement plans to a Roth IRA—even if you didn't qualify in the past because of your income level. That can mean the retirement assets you are working hard to build now, will one day become retirement income, free of tax.

You may have read that tax law changes went into effect in January that made *everyone* eligible for a Roth IRA conversion, regardless of income level or tax filing status. What's so special about a Roth IRA? The assets you are working hard to build now will become tax-free income in retirement. Rather than paying taxes when you *withdraw* the funds in retirement, you pay taxes on the assets when you *invest* in a Roth IRA. If you have a Traditional IRA or an employer-sponsored retirement plan, you may be wondering if you should convert those savings to a Roth IRA. There is no one definitive answer to that question, but following are a number of reasons why, depending on your personal financial situation, converting an existing retirement plan to a Roth IRA could help you meet your financial goals.

You don't expect to need all of the funds when you retire.

With a Traditional IRA, you must stop contributing and start taking minimum distributions from your account at age 70½. Roth IRAs have no such age restrictions: there's no contribution cutoff, provided income requirements are met, and no rule that you must begin tapping your account at age 70½. Your funds have the potential to grow tax-deferred as long as you want and you gain greater control over your income in retirement. You can tailor withdrawal amounts to your actual income needs—or eliminate them altogether in any given year.

So if you are past age 70½ and would like to quit taking those required minimum distributions, you may still have the option to convert some or all of your IRA into a Roth, allowing those funds to have the potential to grow tax-free for your own needs later in life or for your heirs. Note that you will need to pay taxes on the taxable amount of the IRA at the time of the conversion, so you should review this option carefully with your tax advisor before electing to convert to a Roth IRA. Also, the funds may only be converted after any current year required minimum distributions have been withdrawn.

You want to leave a lasting financial legacy to your heirs.

If you won't need your IRA to fund your retirement income, a Roth IRA can be an effective wealth planning tool, since heirs can enjoy continued asset growth potential without paying taxes when they withdraw assets. By using a "stretch IRA" strategy, you can extend the tax-deferred growth potential and tax-free income benefits of your Roth IRA across multiple generations. This works by taking advantage of the fact that, while the beneficiaries of your Roth IRA (other than your spouse) will be required to take minimum distributions annually after your death, those distribution amounts will be calculated using a life-expectancy factor based on their own age, not your age. This allows more of the funds to remain in the account longer, continually reaping the benefits of tax-deferred growth potential, and if your beneficiary outlives the account, it can similarly be passed on to the next generation, and so on.

You're concerned about taxes.

You're aware that diversifying your portfolio by investing in multiple asset classes, including stocks, bonds and cash, can be a way to mitigate risk. The same logic applies to tax diversification: by spreading your retirement assets across different types of accounts provides diversification. A tax-free Roth account combined with a taxable account, like a brokerage account or mutual funds account, and a tax-deferred account, like a 401(k) or Traditional IRA, can give you the flexibility to potentially keep taxes low in retirement. This is especially important if you're concerned about future tax increases or you think that your tax liabilities may be higher in retirement. Converting some of your Traditional IRA to a Roth IRA can be an effective strategy that allows you to take income from different sources to potentially keep taxes low in retirement.

You think that you might need some of the money before you retire.

If you withdraw funds from a Traditional IRA before age 59½, not only will you be taxed on the value of the funds withdrawn, you will also be subject to a 10% early-withdrawal penalty unless an exception applies. With a Roth IRA, you can withdraw the original contribution at any time, without penalty. You can even withdraw earnings, but if you do not meet the requirements listed above regarding the length of time held, age and other considerations, you will be taxed on the earnings when you withdraw the funds.

The Facts: Roth IRA vs. Traditional IRA

Roth	Traditional
• Nondeductible contributions • Tax-deferred growth potential • Tax-free withdrawals*	• Deductible or nondeductible contributions • Tax-deferred growth potential • Taxable withdrawals
• Tax-free withdrawals during retirement do not raise the tax bill on Social Security benefits.	• Taxable withdrawals in retirement can raise the account owner's tax bill on Social Security benefits.
• No required minimum distributions during account owner's lifetime • Able to continue contributions after age 70½	• Must begin taking required minimum distributions at age 70½ • Cannot contribute beyond age 70½
• Assets remaining in IRA pass income-tax-free to heirs.*	• Assets left to heirs will be taxable as ordinary income upon withdrawal.

* Contributions can be withdrawn tax-free at any time, and earnings can be withdrawn without income tax if the account has been in effect for five years and the owner is over age 59½, has died, is disabled or is a qualified first-time home purchaser (maximum $10,000).

A few additional points to consider:

- When you convert from a Traditional IRA or employer-sponsored plan to a Roth IRA, you will incur certain tax liabilities. These include taxes on any pre-tax contributions plus taxes on any earnings or growth.
- If you have pre-tax and after-tax funds in a Traditional IRA, there are certain rules that determine how these funds can be converted. Your tax advisor can help you determine which funds can be converted and the amount of taxes due on a conversion.
- To help ease the tax burden, you can spread your tax payment across two years. So instead of paying all the taxes when you convert in 2010 you can include 50% of the income in 2011 and 50% of the income in 2012 at rates in effect in those years. This option is a one-time offer for 2010 conversions only.
- It's important to identify funds outside the IRA that can be used to pay the taxes due on the conversion to a Roth IRA. Tapping into the amount converted from a Traditional IRA or employer-sponsored retirement plan to pay taxes will reduce the amount available in the Roth IRA to earn tax free income—and trigger a 10% penalty if you're under age 59½ (unless an exception to the penalty tax is available).

To help you decide whether a Roth conversion is a good idea for you, you should speak with your tax advisor, plus ask your Morgan Stanley Smith Barney Financial Advisor to prepare a personal Roth Conversion Illustration Report for you. The illustration will show the after-tax future value of an IRA balance, comparing the outcomes of a Traditional IRA or employer-sponsored plan with those of a Roth IRA. You'll also be able to see the wealth planning advantages of "stretching" a Roth IRA over multiple generations.

Is a Roth Right for You?

We have touched on some key benefits of converting to a Roth IRA, but for many individuals a Roth conversion may not be the best strategy. If one or more of the following apply to you, it might be best for you to avoid conversion or to only convert a portion of your retirement account:

- You expect that your tax bracket will be the same, or lower, in retirement.
- You do not have funds available to pay the extra taxes from the conversion.
- You only have a short time frame to take advantage of potential tax-free compounding before retiring.
- You have projected income needs equal to or greater than the required minimum distributions of the IRA.

Get Help Making your Decision

To help you understand how a Roth conversion will likely impact your financial scenario, ask your Morgan Stanley Smith Barney Financial Advisor to provide a personal Roth Conversion Illustration Report for you. This report explores your specific situation, factoring in such variables as the amount to be converted, the distribution year, your date of birth and where you are in the retirement planning cycle. Based on this input, the report shows the after-tax future value of an IRA balance, comparing the outcomes of a Traditional IRA with those of a Roth IRA. You'll also be able to see the wealth planning advantages of "stretching" a Roth IRA over multiple generations. Finally, as with all tax related issues, you should also discuss your situation with your tax advisor.

Articles are published for general informational purposes and are not an offer or a solicitation to sell or buy any securities or commodities. Any particular investment should be analyzed based on its terms and risks as they relate to your specific circumstances and objectives.

Tax laws are complex and subject to change. Morgan Stanley Smith Barney LLC, its affiliates and Morgan Stanley Smith Barney Financial.

Advisors do not provide tax or legal advice. This material was not intended or written to be used for the purpose of avoiding tax penalties that may be imposed on the taxpayer. Individuals are urged to consult their personal tax or legal advisors to understand the tax and related consequences of any actions or investments described herein.

The appropriateness of a particular strategy will depend on an investor's individual circumstances and objectives.

Article by Morgan Stanley Smith Barney LLC. Courtesy of your Morgan Stanley Smith Barney Financial Advisor. © 2010 Morgan Stanley Smith Barney LLC. Member SIPC.

Submitted by:

Brian D. Currier, CDFA™, Senior Vice President
Branch Name: Morgan Stanley Smith Barney, Portland
OfficePhone Number: 503-552-8224, toll free: 866-382-7964

The Best of Tips, Sites, and Gadgets

By Dee Crocker and Beverly Michaelis

Every few years the practice management advisors at the Professional Liability Fund present a traveling CLE road show. This year's program is "Tips, Sites, and Gadgets." Following are a list of the best practice management tips, Web sites, and geeky gadgets from this presentation.

- Acrobat is king when it comes to PDF publishing and printing, but it's not a cheap program. ($299 for Acrobat Standard; $449 for Acrobat Professional.) However, Acrobat comes bundled with most models of the Fujitsu ScanSnap series scanners at no additional charge. The S1500 model is especially popular at $495. Visit http://bit.ly/7qcJPA for more information.
- Learn about Acrobat at the following sites: http://blogs.adobe.com/acrolaw/, http://www.pdfforlawyers.com, and http://www.planetpdf.com. Acrobat has many powerful tools – legal redaction, e-mail archiving, creation of PDF portfolios, document comparison, and scanned file optimization. These sites can teach you how to use these features.
- Free people search sites are often worth what they charge – not a whole lot. Check out the two leading paid databases: https://www.merlindata.com/index.asp and http://www.accurint.com.
- Save money on credit cards. Bank merchant accounts are inflexible and expensive. If you are a member of the Multnomah Bar Association (MBA), check out http://www.affiniscape.com/mbabar. If you don't belong to the MBA, consider Beacon Processing, a long-time ABA vendor: http://www.beaconprocessing.com. Both offer incredible flexibility and are guaranteed to save you money.
- Need instant relief from your technology woes? Try http://www.support.com. The service plans are inexpensive and hassle-free. Support.com can help you with set-up, installation, hardware, and software support 24/7. A great resource if you have limited IT support in your community.
- Every office should have an e-mail and Internet use policy. Employees should clearly understand what they can (and cannot) download, forward, or access via the Internet. Social Media Governance (SMG) is a free site with over 150 sample policies. Visit SMG at http://socialmediagovernance.com/policies.php to get started.
- Are you an iPhone or Blackberry user? Have you tried Dragon Naturally Speaking for your Smartphone? Don't type an e-mail or text ever again. Just dictate and send. Visit your Smartphone app store for more information.
- Have you ever emptied your Recycle Bin and regretted it? Or lost a file when your computer crashed? Recuva *may* be able to help you. This free program will scan for files that have been deleted (including files emptied from your recycle bin) and if possible, recover them. Visit http://www.recuva.com for more information.
- Want to research a new business client? Or perhaps an adverse party? Try the consumer complaints database maintained by the Oregon Attorney General's office: https://justice.oregon.gov/complaints. Search for a business by its current or former name.
- Would you like clients to pay you more quickly? Then follow the rule of 4: Rule 1 – Bills should be clear and informative. Clients are much more likely to pay bills that are descriptive: "Telephone conference with client regarding settlement proposal from defendant ABC; review options; recommend counter-offer; submit counter-offer to opposing party." Rule 2 – Always include a due date on your bills. Most clients prioritize payment of their bills according to due date. When you mail or e-mail a statement with no date, you are telling the client that it doesn't matter when they pay you. Rule 3 – Keep on a regular billing schedule. This will keep clients informed, ensure better cash flow to you, and allow clients to keep on top of their account by paying in smaller, more manageable increments. Rule 4 – Include a self-addressed envelope with your bills. Why? Because anything that makes payment easier for your clients means they are more likely to pay you promptly. Add postage if desired.

- How would you like to throw away your flash drive or quit hauling your laptop to and from home? You can do it with Dropbox. Dropbox allows users to securely sync files online and across computers. A 2GB account is free. Visit http://www.dropbox.com.
- Are you a Mac user? Macs are enjoying resurgence, and there are many terrific blogs, forums, and Web sites specifically for lawyers using Macs in the law office. Check out: http://www.themaclawyer.com, http://www.macattorney.com, Macs in the Law Office (MILO Google Group): http://bit.ly/aB84BU, and the Oregon Yahoo Mac Lawyer Users Group: http://dir.groups.yahoo.com/dir/.
- Looking for a new home page? A Web page from which you can launch your fact research? Try http://www.refdesk.com. This site is a rich resource that includes a little bit of everything: news, weather, encyclopedias, dictionaries, historical information, and more.
- Your computer security is only as good as your password is strong. What makes a secure password? A mixture of alphabetic, numeric, and special characters. But AB123$%laladeebev might be just a little hard to remember. Instead, try creating a short sentence or pass phrase. Capitalize some of the alphabetic characters, swap out the dollar sign or cent sign for the letter S or letter C, and include numbers. For example: "$500/hour is MY fee." This is easy to remember and meets all the criteria.
- The next time your fax machine dies, don't replace it. Convert to eFax instead. What is efaxing? Sending and receiving faxes via e-mail. (Incoming faxes come to you as a PDF that you can print, if you maintain paper files, or save electronically if you are paperless.) Compare eFax services at http://www.compare-fax.com.
- Ever received a file you couldn't open? Convert it for free using Zamar. Select the file to convert, upload it to Zamar's secure site, enter your e-mail address, and convert. In about two minutes, Zamar will send you a link to pick up your converted file. Works with audio and video formats and conversion of Web sites (URLs). Visit http://www.zamar.com for more information.
- Learn all there is to know about iPhone and iPad apps for lawyers at iPhone J.D., the site of Jeff Richardson. Check it out at http://www.iphonejd.com.
- Wish you could e-sign documents? Now it's possible with Adobe's free eSignatures service. Upload a document, identify the intended recipient via e-mail address, and choose a date to send the document, add a message, and sign. The resulting document is certified. If any attempts are made to alter the document, the certification disappears. Visit https://esign.adobe.com.
- Can't afford Acrobat? Not in the market for a scanner? Try PrimoPDF, a free PDF creator at http://www.primopdf.com.
- Research on the Internet can be time-consuming. Learn the tips and tricks to make your searches more efficient by downloading Google Guide, available at http://www.googleguide.com.
- If you prefer to leave the mouse behind and use keyboard shortcuts, take a look at http://www.keyxl.com. This site contains a database of hundreds of keyboard shortcuts for the most popular Windows, Mac, and Linux programs.
- If you are challenged by how to insert multiple headers and footers in WordPerfect or use section breaks in Word, visit the blogs of Jan Berinstein and Anita Evans. They just may have the answer. Jan blogs at http://compusavvy.wordpress.com. Anita blogs at http://legaltechtrainer.com.
- Looking for fast, easy remote access to your Mac or PC? Try GoToMyPC or LogMeIn, two of the most popular programs. Visit http://www.gotomypc.com or http://www.logmein.com for more information.
- Argh! What do you do when you get an error message in one of your programs? Try to look it up on the manufacturer's Web site? Fagetaboutit! Just Google it! If the name of the program is not included in the error message, add it to your Google search. By Googling the error, you will find information on the manufacturer's site plus explanations posted to user forums which are often more helpful.
- Looking for a toll-free number? Need to do a reverse search? Many of the free reverse lookup directories are actually poor fronts for paid services – you never quite find what you need or the service isn't free after all. Try Argali instead: http://www.argali.com.
- Online storage can be a salvation for lawyers looking for a way to backup data offsite. Looking for a vendor? If you are an ABA member, take advantage of the discount from Mozy at http://www.mozy.com. Otherwise, http://www.carbonite.com and http://www.filesanywhere.com are good options. Look around – there are many choices!
- Are you stuck with the calculator built into your computer keyboard? Do you wish you had a printable, savable tape? Now you can! Download FreeCalc from Moffsoft at http://www.moffsoft.com. Print your calculation results to paper or save the "tape" electronically to your paperless file.

These are just a few of the tips, Web sites, and gadgets we talk about in our road show CLE. We are wrapping up 2010 in the mid-Willamette Valley, but may come to a city near you in 2011. Watch your e-mail inbox and the PLF Web site (http://www.osbplf.org) for more information.

The authors are practice management advisors with the Professional Liability Fund. They can be reached at deec@osbplf.org or beverlym@osbplf.org.

The New Child Support Program: A Note from Jean Fogarty

The new Child Support Program website is up and running. Please visit us at www.oregonchildsupport.gov. You'll see that we've made a lot of organizational improvements. The content on the page is sorted by most-likely user with tabs at the top of the page. The sophisticated left menu bar contains drop in sub menus as well as drop down & disappearing FAQ content for easier use. There is a Google translator feature available by hitting "en espanol". Once you are on the Google translation site the content can be translated into any other language listed on the drop down menu.

We are currently redirecting users from our old site but please remember that you will need to refresh or update your favorites and links to the new address eventually.

This redesign effort is just one piece in the Child Support Program's strategic plan to:

- Make it easier for parents to comply with their orders
- Get the parties engaged in our processes
- Provide parents with a better understanding of child support services
- Allow the Program to move to interactive forms
- Allow the Program to move to online and alternative payment methods

I hope you like our new and improved site.

Jean Fogarty
Director, Oregon Child Support Program
503-986-6120
503-986-6158 FAX

Seeking Submissions for the OSB Family Law Newsletter

Editor

It is again time to solicit your submissions to this newsletter. We have openings for submissions for all of the months in 2011 and you will find the submission deadline and details below.

If you have never written an article before consider doing so in 2011. It is a great way to familiarize yourself with an area of law – nothing teaches better than becoming a teacher. The research you do on a subject will deepen your expertise in that area and by writing it down you force yourself to think with greater clarity. You could pick an issue that you have recently addressed in trial or appellate court or a subject you would like to know more about.

If you are a relatively new attorney this is a great way to establish yourself in the family law practitioner community. Other attorneys who might consider referring a case your way can assess your capability based on your writing. There are several thousand attorneys practicing some family law in Oregon. Only a tiny number have the initiative to write articles for this newsletter and other publications. This is a way to distinguish yourself.

If you are a seasoned attorney this may be a way of challenging yourself to improve research and writing skills or to publish something you have wanted to write on in an area of law you find important.

My preference is that you write on a subject you have a genuine interest in or have worked on. However if ideas are needed here are some subjects that have not been addressed in recent articles:

1. Does the appellate law in Oregon provide sufficient guidance on how much spousal support should be awarded in given circumstances and for what duration? If it does what is that guidance and what cases should counsel and the court rely upon? Are there outliers, that is cases that have rulings out of line with the general tenor of decisions in the area and should we ignore those outliers or do they mark a point where the law may diverge?

2. As a new legislative session starts there is renewed talk of changing the custodial rules in Oregon. Should we look to the Massachusetts model? Should we adopt another model? Should we as independent Oregonians invent our own? Or should we stay the course and why?

3. The economy has suffered mightily these past three years and there is little likelihood of a robust recovery in the near future. In light of this how should courts view imputed income for the purposes of calculating child support and spousal support? Is the imputed minimum wage rule for child support legally defensible and if not what should we do?

4. The Child Support Division is taking more aggressive action than ever to enforce child support. What defenses have been successful to enforcement proceedings and how were they effectively used?

5. The federal health insurance legislation of the past couple years has changed the health insurance industry and the ground rules. How is this affecting health insurance in dissolution of marriage and custody cases and what should practitioners know about the new laws?

These are only a few of the many issues that you could write on. Please consider submitting an article next year. Our readers will appreciate it and you will learn a great deal in the process.

Guidelines for submission of articles to the OSB Family Law Newsletter: These revised guidelines apply after January 1, 2009. All newsletters will be distributed electronically.

Size: Minimum of 500 words (2 pages double spaced); maximum of 2500 words (10 pages double spaced). With permission longer articles are accepted, please confer with the editor. It may also be possible to divide them into multiple parts.

Content: Please remember you are writing to the Oregon State Bar Family Law Section so try to keep the material relevant and timely for family law practitioners.

Submission: Please submit your article by email either as a Word document or a Word Perfect document. Please do not encrypt or turn on document protection codes. Please do not submit it in PDF format. If you cannot send it in Word or Word Perfect please contact the editor so we can work that out.

Biography: Also please submit a short biography of yourself listing where you practice, name of your firm, type of practice, how long you have practiced and anything else of importance about you related to the article.

Please submit your article by the following deadline:

By all means if you run into problems please contact me right away so we can see what needs to be done.

Thank you very much for your willingness to write an article for the Newsletter.

Submission Deadlines for 2011

For Issue Published in:	The deadline is:
February	01.15.11
April	03.15.11
June	05.15.11
August	07.15.11
October	09.15.11
December	11.15.11

Submit your articles by email to the editor at: murphyk9@comcast.net

In Appreciation

The editor wishes to express sincere appreciation for the work of the following authors who submitted articles to the OSB Family Law Newsletter this year:

Dee Crocker

Brian D. Currier

Jane Edwards

Jean Fogarty

Lawrence Gorin

Bradley C. Lechman-Su

Kristin LaMont

Beverly Michaelis

Erik S. Schimmelbusch

Likewise a thank you to the staff at the Oregon State Bar who make this newsletter possible including Anna Zanolli, Sarah Hackbart, and Molly Whiteside.

Index of Articles: 2010

OSB Family Law Newsletter

Articles are listed by their full title, author and month of publication.

Adoption

Adoption: Part I - Surrendering a Baby for Adoption: Informed Consent?
By Jane Edwards
(April 2010)

Adoption: Part II - Contesting an Adoption
By Jane Edwards
(August 2010)

Adoption: Part III - Recommended Changes to Oregon's Adoption Laws and the Role of the Attorney
By Jane Edwards
(October 2010)

Child Support

The Oregon Child Support Program has a new Paternity Establishment Service to offer Parents
By Jean Fogarty, Director of Oregon Child Support Program
(April 2010)

Complying with Medical Support Orders in a Challenging Economy
By Jean Fogarty, Director, Oregon Child Support Program
(June 2010)

Discussion of Revision to UTCR 2.130 - Confidential Information Form
By Jean Fogarty, Director, Child Support Program
(October 2010)

The New Child Support Program
A Note from Jean Fogarty, Director, Child Support Program
(December 2010)

Estate Planning

Estate Planning Considerations in Marital Dissolutions
By Erik S. Schimmelbusch
(June 2010)

Features

Tech Tips for Lawyers: Working with PDF Documents
By Kristin LaMont
(February 2010)

Tech Tips for Lawyers: Are You Still Faxing?
By Kristin LaMont
(April 2010)

The Best of Tips, Sites, and Gadgets
By Dee Crocker and Beverly Michaelis
(December 2010)

International Custody – Hague Convention

The Hague Convention in Oregon: Effective Remedy or Empty Promise?

How the Upcoming U.S. Supreme Court Decision on the "Rights of Custody" Issue Will Affect the Convention Rights of Oregon Noncustodial Parents
By: Bradley C. Lechman-Su
(February 2010)

Investments

Roth: To Convert or Not to Convert
By Brian D. Currier
(December 2010)

Jurisdiction

Oregon Dissolution Jurisdiction: Residency and Domicile – ORS 107.075
By Lawrence Gorin
(February 2010)

Social Security

Social Security, SSI and Child Support.
By Lawrence D. Gorin
(December 2010)

Spousal Support

When is it Alimony and When is it Not?
By Lawrence D. Gorin
(August 2010)

Editor's Note: these are brief summaries only. Counsel should read the full opinion. A hyperlink is provided to the on line opinion for each case.

OREGON SUPREME COURT

LIFE INSURANCE / CONSTRUCTIVE TRUST

Heather Tupper v. Danette Roan, (SC S057373), 349 Or ___ (2010)

http://www.publications.ojd.state.or.us/S057373.htm

On review from the Court of Appeals in an appeal from the Clackamas County Circuit Court, Deanne Darling, Judge. 227 Or App 391, 206 P3d 237 (2009). The decision of the Court of Appeals is reversed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings.

Opinion of the Court by Justice W. Michael Gillette.

Today, the Oregon Supreme Court held that, because the parties to a divorce decree agreed that a constructive trust would be imposed over the proceeds of any life insurance policy owned by either party at the time of the party's death if that party failed to maintain a life insurance policy naming the other as beneficiary, decedent's ex-wife had an equitable interest in the proceeds of a life insurance policy that the decedent bought after his divorce, which named his girlfriend as beneficiary. However, the Court concluded, neither party was entitled to summary judgment in the ex-wife's lawsuit against the girlfriend seeking a constructive trust, because there was a question of fact whether the girlfriend was a bona fide purchaser for value, without notice of the decedent's obligation to his ex-wife.

Plaintiff Heather Tupper divorced the decedent, Jerry Tupper, in 2004. As part of their dissolution decree, Jerry Tupper agreed to maintain a $100,000 life insurance policy naming Heather Tupper as beneficiary, as trustee for their child. Jerry Tupper never purchased such a policy. About two years after the divorce, however, he purchased a $600,000 life insurance policy naming his girlfriend, defendant Danette Roan, as beneficiary; Tupper died while that policy was in force, and Roan collected the proceeds. Heather Tupper sued Roan, seeking the imposition of a constructive trust on $100,000 of the insurance proceeds and alleging theories of unjust enrichment and money had and received.

On cross motions for summary judgment, the trial court imposed a constructive trust on $100,000 of the insurance proceeds. On Roan's appeal, the Court of Appeals reversed, holding that the trial court should have awarded summary judgment to Roan.

In a unanimous opinion authored by Justice W. Michael Gillette, the Court held that, because the dissolution decree required imposition of a constructive trust on "any" insurance policy owned by Jerry Tupper at the time of his death, Heather Tupper had a vested equitable interest, as a matter of law, in $100,000 of the $600,000 life insurance policy that Jerry Tupper bought after the divorce, which named Roan as beneficiary. However, Roan's right to the proceeds of that insurance policy would be superior to Heather Tupper's if she were a bona fide purchaser for value and had no notice of Jerry Tupper's obligation to maintain a policy naming Heather Tupper as beneficiary. The Court concluded that the record on summary judgment created a factual question respecting that issue and, therefore, neither party was entitled to summary judgment. SC 11.12.10

COURT OF APPEALS

ATTORNEY FEES

Samal Dang and Kimleang Chhun, 238 Or App___ (2010)

http://www.publications.ojd.state.or.us/A133384.htm

Trial Court: Claudia M. Burton, Marion County Circuit Court

Opinion: Armstrong, J.

Wife appeals a supplemental judgment, assigning error to the trial court's award of attorney fees to husband. Wife contends that the court erred by relying on unsubstantiated considerations when it exercised its discretion to award husband fees, specifically wife's access to her family's financial resources.

Held: The facts in the record are insufficient to support a finding that wife's parents or sister will provide wife financial support, and, therefore, the trial court erroneously relied on an unsubstantiated consideration when exercising its discretion to award attorney fees to husband. Vacated and remanded for reconsideration. CA 10.27.10

DOMESTIC PARTNERSHIP

Richard J. Greulich and Julie Ann Creary, 238 Or App___ (2010)

http://www.publications.ojd.state.or.us/A135685.htm

Trial Court: Michael S. Loy, Multnomah County Circuit Court

Opinion: Landau, P. J.

In this equitable proceeding for dissolution of domestic partnership, petitioner appeals a judgment

determining that no domestic partnership existed. Petitioner argues that a domestic partnership existed because the parties lived together for over 18 years and occasionally held themselves out as married. Petitioner also notes that they shared an "important" account, a single credit card for which he was an authorized signer and respondent made all the payments.

Held: In determining whether a domestic partnership existed, the primary consideration is whether the parties--either expressly or impliedly--"intended to pool their resources for their common benefit." *Beal v. Beal*, 282 Or 115, 122, 577 P2d 507 (1978). In this case, although the parties cohabitated for a long period of time, there was insufficient evidence that the parties intended to pool their resources for mutual economic benefit. In fact, there was significant evidence that respondent repeatedly told petitioner that she wanted her children to inherit her property and that, consistently with that desire, the parties did not hold joint accounts, investments, property, or retirement plans. Because there was no intent to pool their resources, the trial court did not err in determining that no domestic partnership existed. Affirmed. CA 11.03.10

CHILD SUPPORT

Colleen Renee Hunt v. Aaron James Hunt, 238 Or App __ (2010)

http://www.publications.ojd.state.or.us/A143326.htm

Trial Court: Gregory G. Foote, Lane County Circuit Court

Opinion: Brewer. C. J.

Father appeals a judgment establishing a child support arrearage under ORS 25.167. The parties' marriage was dissolved in 2000, and the judgment required father to pay an unsegregated sum of $392 per month in child support for the parties' minor children. The parties' son died in 2002, and the parties entered into a verbal agreement to reduce father's support obligation. That agreement was never documented or reduced to the form of a judgment modifying the dissolution judgment. In January 2006, the parties' daughter turned 18 and from then until her 21st birthday, she lived with friends or with one of the parties while attending school. For at least four months in 2006, daughter lived with father. Father made at least $200 in support payments per month from November 2002 to May 2009, when he ceased paying support.

Held: The trial court correctly denied father's request for relief from arrearage, because father had not filed or served a motion to modify the child support obligation before the parties' daughter reached age 18 and, thus, the trial court had no authority under ORS 25.167 to reduce father's support obligation to $200 per month. The Court of Appeals also held that the trial court should have exercised its discretion under ORS 107.135(7)(a) to reduce the period of father's arrearage by four months, to reflect the time during which daughter had lived with father. Accordingly, the Court of Appeals modified the arrearage judgment to reflect that reduction. Judgment for support arrears dated August 27, 2009, modified to provide that unpaid child support in arrears in this case are established at $21,827.96 through April 13, 2009; otherwise affirmed. CA 10.27.10

PARENTING TIME

Drake Rand Long and Melyssa Jean Leduc, 237 Or App __ (2010)

http://www.publications.ojd.state.or.us/A142477.htm

Trial Court: Jamese Lou Rhoades, Marion County Circuit Court

Opinion: Wollheim, J.

Mother appeals the trial court's judgment awarding father unsupervised parenting time with his son.

Held: The record supports the trial court's finding that there is no evidence that father presents a danger to his son. The trial court did not err in granting father unsupervised parenting time. Affirmed. CA 10.13.10

SPOUSAL SUPPORT

James David Hook and Marie Moreland Hook, 238 Or App __ (2010)

http://www.publications.ojd.state.or.us/A139210.htm

Trial Court: Joseph C. Guimond, Marion County Circuit Court

Opinon: Brewer, C. J.

Wife appeals a dissolution judgment awarding her maintenance support of $2,000 per month for the first two years following entry of the judgment, $4,000 per month for the next two years, and then $3,000 indefinitely, as well as $3,000 compensatory support for two years along with $1,000 per month transitional support during those two years. Wife argues that the trial court erred in failing to award her indefinite compensatory support and that the trial court erred in setting the amount and duration of both the maintenance and transitional support awards, specifically, that the transitional support award should have been continued for seven years to allow her to complete her educational plans. Husband and wife had been married for 21 years, and during that time, wife contributed extensively to husband's attaining his medical degree and establishing his medical practice. The trial court found that wife had postponed her own education and had worked both outside the home and as a homemaker to support husband and their children while husband was in

medical school. Husband had also used marital assets to retire his student loan debt and purchase his medical practice, and, thus, the marital estate had not increased commensurately with the increase in husband's income. At the time of dissolution wife was 54 and had a gross monthly income of $1,961; husband was 56 and had a gross monthly income of $19,992 per month.

Held: On *de novo* review, the Court of Appeals held that, given the long-term nature of the marriage, wife's support for husband's numerous educational and training efforts and the lifelong disparity in the parties' earning capacities, an award of compensatory support of $3,000 per month for 10 years was just and equitable under the circumstances. The Court of Appeals also modified the maintenance support award to $2,000 per month for four years following the dissolution and $1,000 per month for six years thereafter, increasing to $3,500 per month at the end of 10 years following dissolution. Reversed and remanded for entry of judgment (1) awarding wife transitional spousal support of $1,000 per month until June 1, 2012; (2) awarding wife compensatory spousal support of $3,000 per month for 10 years; and (3) awarding wife maintenance spousal support of $2,000 per month for four years, $1,000 per month for the next six years, and $3,500 per month thereafter; otherwise affirmed. CA 10.27.10

Ellen D. Sather and Arthur C. Sather, 238 Or__ (2010)

http://www.publications.ojd.state.or.us/A137822.htm

Trial Court: Karsten H. Rassmussen, Lane County Circuit Court

Opinion: Armstrong, J.

Husband appeals a dissolution judgment that awarded wife spousal support of $5,000 per month until the end of 2012 and $4,000 per month thereafter. Husband's only contention on appeal is that the trial court erred in setting the amount of spousal support, arguing that it leaves him with insufficient funds to maintain a standard of living that is sufficiently proportionate to the standard of living that the parties enjoyed during their marriage.

Held: A reduction in the spousal support award will enable husband to enjoy a standard of living that is closer to the parties' marital standard of living, while also ensuring that wife's standard of living is not overly disproportionate to the marital standard. Judgment of dissolution modified to award wife spousal support of $4,000 per month for the first five years and indefinite support of $3,000 per month thereafter; otherwise affirmed. CA 10.27.10

PROPERTY DIVISION

Cynthia Richards Clapp and David Wayne Clapp, 238 Or App ___ (2010)

http://www.publications.ojd.state.or.us/A137905.htm

Trial Court: Locke Williams, Benton County Circuit Court

Opinion: Armstrong, J.

Wife appeals a general judgment of dissolution, raising five assignments of error concerning the property division, and a supplemental judgment, raising one assignment of error concerning the trial court's denial of attorney fees. Wife contends that the trial court erred in its property division by (1) failing to credit her with post-separation payments that she made toward a mortgage on the family home; (2) assigning a loan in husband's name to her; (3) discounting a debt that she owed to her mother; (4) disallowing post-separation finance charges that she had incurred; and (5) awarding husband more than half of the marital estate.

Held: Wife's post-separation payment of both parties' share of their mortgage, a marital debt, must be accounted for in the property division, and the award of the long half of the marital estate to husband was not just and equitable. General judgment of dissolution reversed and remanded with instructions to enter a QDRO consistent with this opinion or, if that is not possible, to modify the judgment to award wife an equalizing judgment of $19,240.25. Supplemental judgment affirmed. CA 11.03.10

STALKING

Melanie Ruth Travis v. Jack Alfred Strubel, Jr., 238 Or__ (2010)

http://www.publications.ojd.state.or.us/A142996.htm

Trial Court: John Ghastin, judge pro tempore, Marion County Circuit Court

Opinion: Schuman, P. J.

Respondent appeals the trial court's grant of petitioner's stalking protective order (SPO) under ORS 163.732(1), arguing that petitioner did not establish two or more alarming, unwanted contacts, which are a necessary predicate for obtaining an SPO. Because neither party requested *de novo* review, the court reviewed the facts for any evidence and the legal conclusions based on those facts for errors of law.

Held: The record is not clear as to whether more than one unwanted contact occurred. Even if the court could have found that two unwanted contacts occurred, the court could not have inferred that *any* of the contacts were coercive or caused petitioner any alarm. Reversed. CA 10.27.10