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REPLY TO:

Michelene E. Insalaco
Sucherman-Insalaco, LLP
50 California Street, Floor 34
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415-357-5050

Acting Presiding Justice Judith Ashmann-Gerst
Justice Victoria M. Chavez
Justice Brian M. Hoffstadt

Second District Court of Appeal, Division Two
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: In re Marriage of Belthius - No. B315673
Request for Publication

Dear Justices:

The Association of Certified Family Law Specialists (ACFLS) requests publication of this Court's opinion in *In re Marriage of Belthius*, Case No. B315673, filed on January 4, 2023. This case meets the standard for publication under subdivisions (3) and (6) of California Rule of Court, rule 8.1105(c). This case address two important family law asset apportionment issues, one of which is especially in need of clarification.

Belthius discusses the application of the time rule in dividing pension plans with both community and separate components. The husband here argued that the community's interest must be measured or capped at its value as of the date of separation, even though he continued to work at the same job and when he retired, he had risen to a higher level of benefits.

The method that husband here sought to apply is presently known as the "frozen benefit rule" or the "modified time rule." This approach is not proper, but recently ACFLS has seen a trend for employee spouses, especially those in certain employment unions, pushing for application of this rule, to the detriment of the community.

The “QDRones” with whom ACFLS discussed this case (a group of experts who calculate community and separate pension interests and prepare QDROs) agreed that publication of *Belthius* would help to end this trend, clarify the law on this point, reduce future litigation, and ensure that community pensions are fairly divided.

As this Court held, California law provides that the time rule must give *equal* weight to *all years* that a spouse works at a job. The frozen benefit rule does not result in a proper and equal division of community property. The trial court in *Belthius* was convinced otherwise, and other trial courts may make the same mistake, if this case is not published.

This case also confirms the proper application of the terminable interest rule, reminding practitioners that this rule was long ago abrogated.

In sum, the *Belthius* case involves (3) modifies, explains, or criticizes with reasons given, an existing rule of law explains and reinforces an existing rule of law at a time when such explanation and reinforcement are sorely needed (Rule 8.1105(c)(3)) and addresses two legal issues of continuing public interest (Rule 8.1105(c)(6)). Rule of Court 8.1105(c)(8) also applies in that while the time rule has been long settled, no published case has rejected the “frozen benefit rule.”

ACFLS is a nonprofit, statewide bar association with 700 members certified by the State Bar of California, Board of Legal Specialization as family law specialists. Since its founding at the inception of the State Bar’s family law certification program, ACFLS has taken an active public policy role when the appellate courts, Legislature, and Judicial Council consider matters of significance to family courts, family court populations, or the family law bar.

ACFLS has an active, all-volunteer amicus committee that reviews cases and makes recommendations to the Board of Directors regarding letters supporting publication or depublishment of opinions, letters supporting or opposing California Supreme Court review, and amicus curiae briefs.

ACFLS’ Board of Directors and Amicus Committee have no direct ties to or interests in the litigants or the attorneys in this matter, except that one member of the Amicus Committee was counsel for one of the litigants; this attorney was recused from all discussion of and work on this letter.

ACFLS has appeared as amicus curiae in approximately 16 intermediate court of appeal and California Supreme Court cases. Lawyers and family court judges throughout California bring cases to the committee for consideration.

The Amicus Committee includes as its members some of the most experienced family law and appellate attorneys, including the only four lawyers in the state who are dual certified in family law and appellate law (Leslie Ellen Shear, Claudia Ribet, E. Stephen Temko, and Ronald Funk) and one of the State's foremost family law continuing education lecturers (Garrett C. Dailey).

Best Regards,

M. Insalaco

Michelene Insalaco
ACFLS Amicus Committee

APP-109 Proof of Service (Appellate Division)

Instructions

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division. If you are serving a document electronically, please use *Proof of Electronic Service (Appellate Division)* (form APP-109E).
- The person who serves (delivers) a document in this case and who fills out this form:
 - Must be at least 18 years old
 - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

① At the time I served the documents listed in ④, I was at least 18 years old.

② I am not a party in the case identified in the box on the right side of this page.

③ My home business address is:
2020 Hurley Way #200 Sacramento, CA 95825
Street City State Zip

④ I mailed or personally delivered the following document, as indicated below (check or fill in the name of the document you are serving and check and complete either a or b).

- Notice of Appeal/Cross Appeal (Limited Civil Case)
- Notice Designating Record on Appeal (Limited Civil Case)
- Proposed Statement on Appeal (Limited Civil Case Misdemeanor Infraction)
- Appellant's Opening Brief
- Respondent's Brief
- Appellant's Reply Brief
- Abandonment of Appeal (Limited Civil Case)
- Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)
- Other (write in the name of the document):

Letter- Re- TRMO Belthius- No. B315673- Request for Publication

a. Service by Mail

(1) I put one copy of the document identified in ④ in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of Los Angeles

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:
VD023301

Trial Court Case Name:
Belthius v. Belthius

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:
B315673

(2) The envelope or envelopes were addressed as follows:

(a) Name of person served: Acting Presiding Justice Judith Ashmann-Gerst

Address on envelope: 300 S Spring St, 2nd Fl, North Tower, Los Angeles, CA 90013
Street City State Zip

(b) Name of person served: Justices Victoria Chavez and Brian Hoffstadt

Address on envelope: 300 S Spring St, 2nd Fl, North Tower, Los Angeles, CA 90013
Street City State Zip

Check here if you mailed copies of the document identified in (4) to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on (date): 1/20/2023 from (city): Sacramento (state): CA by depositing the envelope or envelopes (check one):

(a) With the U.S. Postal Service or

(b) At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b. Service by Personal Delivery

I personally gave one copy of the document identified in (4) to each of the following people:

(1) (a) Name of person served:

(b) Address where you gave the documents to this person:

Street City State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

(2) (a) Name of person served:

(b) Address where you gave the documents to this person:

Street City State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

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(5) I declare under penalty of perjury under California state law that the information above is true and correct.

Date: 1/20/2023

Nicole Harman
Type or print server's name

Server signs here after serving

CA 2nd District Court of Appeal Court Name	PROOF OF SERVICE	B315673 Case Number
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- At the time of service, I was at least 18 years of age.
- My email address used to e-serve: **nicole@familylawlitigators.com**
- I served a copy of the following document(s) indicated below:

Title(s) of documents served:

REQUEST - REQUEST TO PUBLISH OPINION: Letter

Person Served	Service Address	Type	Service Date
Greg Yacoubian	greg@gregyacoubianlaw.com	e-Serve	01-20-2023 3:54:02 PM
Law Offices of Gregory G. Yacoubian		3dc8c4b4-05f5-4408-9079-7b3fbc7249fe	
Lisa Mccall	lisa@lisamccalllaw.com	e-Serve	01-20-2023 3:54:02 PM
Law Offices of Lisa R. McCall, APC		26b583b3-dadc-4293-bc9f-acf6a3a40700	
Erica Baca	erica@lisamccalllaw.com	e-Serve	01-20-2023 3:54:02 PM
Law Offices of Lisa R. McCall, APC		7ed06061-b268-4760-84cc-84b78f5102ad	
Kelly Mcgrane-Irwin	irwinfamilylaw@irwinirwin.com	e-Serve	01-20-2023 3:54:02 PM
Irwin & Irwin, LLP		dc3bbafc-aa1a-4433-9605-4ae01fd5898a	

TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.

The contents of this proof of service are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

01-20-2023
Date

/s/Fredrick S. (Rick) Cohen
Signature

Cohen, Fredrick S. (Rick) (143407)
Last Name, First Name (Attorney Number)

Law Offices of Fredrick S. Cohen
Firm Name