

WEDNESDAY THURSDAY FRIDAY MONDAY **TODAY**[Previous](#) [Next](#) [Bookmark](#) [Reprints](#)[Feedback](#) | [FAQ](#)[NEWS](#) [RULINGS](#) [VERDICTS](#)

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Your parents' grey divorce: No more Ozzie and Harriet

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Your mother and father have been married for 30 years. Your Dad was the sole wage earner (the "breadwinner"); Mom (the "non-breadwinner") raised you and your siblings and supported your Dad's career. At age 50, your parents adopted a child, who is now 11. Now Mom is 60 and Dad is 65...and they have

decided to divorce. You are shocked, but your parents are part of the demographic trend of an increasing divorce rate for older ("grey-haired") couples who end lengthy marriages. Your parents are about to experience the complexities of "Grey Divorce."

Although your parents are amicable, each faces major post-divorce concerns: retirement, child support, workforce re-entry, dual household expenses, declining health and increasing health care costs. Working cooperatively is the best way to maximize outcomes and minimize the negatives. Here is a look at the issues from each parent's perspective.

The non-breadwinner's perspective: Supporting late-in-life children raises financial conflicts. The breadwinner must provide support while either facing actual retirement (forced or voluntary) or planning aggressive retirement funding in the final (typically maximum income) working years. The non-breadwinner has these same concerns plus maybe having to re-enter the workforce. In California, child support is of primary importance in divorce, often taking precedence over retirement or desired parenting roles. Therefore, the non-breadwinner and breadwinner may need to reduce living expenses to match reduced income if or when the breadwinner retires. The non-breadwinner may need re-training or additional education to get a job and supplement the breadwinner's support. Facing this reality sooner rather than later is best.

Compared to child support, spousal support is not formulaic. It reflects many factors, including each spouse's income, expenses and history of saving (i.e. retirement funding). The non-breadwinner should document any history of savings as part of a request that the breadwinner continue to fund retirement planning. Again, the unprepared non-breadwinner may be expected to make a difficult workforce re-entry to reflect good faith self-support efforts by no later than one-half the length of time that the marriage lasted. If age or health preclude re-entering the workforce, the non-breadwinner may face a significantly reduced standard of living - especially if the breadwinner has retired or is physically unable to work. The non-breadwinner may mitigate future health care expense through long-term care insurance. The breadwinner may supplement his income through disability insurance, so as to continue financial support.

The breadwinner receives a tax deduction for paying spousal support (unlike with child support), meaning the non-breadwinner must pay taxes on support received. If the breadwinner does not need the deduction, a non-taxable spousal support arrangement may be negotiated thereby eliminating the tax liability for the non-breadwinner.

Although your parents are amicable, each faces major post-divorce concerns:

Tuesday, July 26, 2011

California Supreme Court

Liu Nominated for State Supreme Court
Gov. Jerry Brown has tapped UC Berkeley law professor Goodwin Liu for the state Supreme Court.

Law Practice

O'Melveny races to fill chairmanship

O'Melveny & Myers LLP is attempting to put an end to the infighting and partner defections that have recently plagued the 11-year tenure of current chairman A.B. Culvahouse. It has chosen three litigators as candidates to lead the firm.

Intellectual Property

Patent damages guidelines to get tested

A federal appellate court's efforts to slash large damage awards for patents that infringe a small part of a product is getting a closely-watched test in a San Diego case against Microsoft Corp.

Mergers & Acquisitions

Dealmakers

A roundup of recent M&A and financing activity and the lawyers involved.

Government

Interim director named to AOC

State Administrative Office of the Courts Deputy Director Ronald G. Overholt will move into the agency's top spot when Director William C. Vickrey retires in September, the chief justice announced Monday.

Education

Law school defends job statistics

A San Diego law school argues its low bar passage rate should have tipped prospective students off that the chances of finding a law job weren't as rosy as they seemed.

U.S. Supreme Court

Video game groups seek legal fees from state

Two video game trade associations that convinced the U.S. Supreme Court to overturn California's ban on violent video games want the state to pay their \$1.14 million legal bill following that victory.

Large Firms

Former Irell partner sues firm

A former Irell & Manella LLP partner has sued her former firm for being forced out of her job in 2009 after objecting to sexually inappropriate comments by intellectual property litigation star Morgan Chu.

Intellectual Property

Oracle overreached in damages, judge says

U.S. District Judge William Alsup rejected an Oracle expert's damages report late Friday, calling it an "overreach" on the amount Google Inc. should

retirement, child support, workforce re-entry, dual household expenses, declining health and increasing health care costs.

Often, one or both parties will face increased health care and insurance expenses, mostly met from the breadwinner's income. An unemployed breadwinner may be unable to contribute toward the non-breadwinner's health insurance. Options to mitigate health care and insurance expense include insurance (long-term care, group health, government-aided health, disability), Social Security benefits, asset liquidation (for example, selling real property or accessing retirement plans), and reduced living expenses. The non-breadwinner may also get a job that provides group health insurance at low or no cost and with no medical qualification.

A financial planner can help the non-breadwinner evaluate expenses, income sources and investments to decide which assets in the divorce are the most important income sources. Often, the non-breadwinner's toughest choice is whether to keep the residence. Doing so requires paying current obligations (mortgage, taxes, insurance, monthly maintenance), future repairs, increases in adjustable mortgage rate payments versus replacement housing costs. Selling the residence after divorce requires paying sale costs and capital gains taxes. Keeping the residence as part of a divorce settlement is thus a business decision, not an emotional one. The non-breadwinner who keeps the house may in reality be financially worse off.

The breadwinner's perspective: The need to financially support minor children late in life often collides with the breadwinner's plans to retire or aggressively fund retirement in the final career years. Unless the breadwinner has an extraordinarily high income (undefined under California law), the child support formula is generally based upon each parent's gross income and the time each parent spends with the child. Therefore, mandated child support may derail retirement funding.

In California, child support is of primary importance, often taking precedence to a parent's retirement plans. Therefore, the breadwinner may need to reduce current living expenses to accommodate child support and retirement funding. In this difficult choice, the breadwinner must choose between enjoying current income and funding future retirement. When evaluating these choices, the breadwinner should remember that child support is not a tax deduction and therefore directly affects net income.

Compared to child support, many factors determine spousal support, including each spouse's saving (funding retirement) history. If there is a history of saving, the breadwinner could request being left with sufficient funds to continue saving even if this means the other spouse is not paid as much spousal support. This is a very dicey argument because the non-breadwinner can reverse it and request spousal support that also allows for saving. Either way, the breadwinner's income is often insufficient to support two households in the same manner as one household prior to divorce.

Unlike with child support, the breadwinner can take a tax deduction for paying spousal support. If the spousal support deduction is not important for the breadwinner, negotiating a non-taxable spousal support arrangement means paying a lower amount of tax-free support, thereby freeing money for retirement funding or living expenses.

When spouses in these divorces face increased health care and insurance expenses, the costs are mostly met from the breadwinner's income. Using insurance, Social Security benefits, asset liquidation, and living expense reductions to mitigate these costs is critical.

In the current economic climate, the breadwinner may find it a good idea to keep the real estate investments (and their tax benefits) as part of the divorce settlement. However, this must be discussed with an estate-planning attorney to understand how this will affect the breadwinner's estate after death. Moreover, the tax benefits, rental income, rental losses and phantom income, which sometimes result from real estate investments, all affect support obligations and the cash flow available to meet them. Consult an accountant on the complete tax impact of the proposed divorce settlement.

Your Mom - the non-breadwinner - may never receive future assets or income other than the divorce award. A settlement that meets estimated current and future financial needs may not always be feasible, making it possible she will have to work. Your Dad -

have to pay for infringing seven Java patents in its Android operating system.

Healthcare/Hospital Law

Fraudulent billing lands doctor in jail

A Corona del Mar cancer doctor was sentenced Monday to 18 months in federal prison and ordered to pay more than \$1 million in restitution for fraudulently billing government and private health plans for cancer drugs.

Antitrust & Trade Reg.

GSI sues Cypress over price fixing

GSI Technology Inc. announced Monday it has sued Cypress Semiconductor Corp. in the Northern District, alleging it conspired to monopolize the market for high-performance static random access memory chips.

Government

California may issue bonds

California's general-obligation bond drought may soon come to an end, as the possibility of short-term notes appears on the horizon.

Law Practice

Locke Lord continues California expansion

Locke Lord Bissell & Liddell LLP picked up former SEC official Michael F. Perlis to lead a new securities litigation and insurance practice group in Los Angeles as part of the firm's efforts to grow a stronger California base.

Obituaries

Charles T. Manatt, founder of Manatt, Phelps & Phillips, has died.

Charles T. Manatt, founder of Manatt, Phelps & Phillips, died Friday of complications from a stroke.

Admin/Regulatory

Orange county courts still in the black

While Superior Courts around the state are closing courtrooms and eliminating key services, Orange County's court is not. It plans no layoffs, no closures and no shutdowns, and it has money in the bank.

Perspective

Your parents' grey divorce: No more Ozzie and Harriet

Older couples ending their lengthy marriages face a complex and unique set of issues. By **Marlo Van Oorschot** of Law Offices of Marlo Van Oorschot APLC

Law Practice

The collapse of civility among lawyers

Although contrary to human instinct, being civil can lead to better results and less monetary and emotional costs. By **Richard M. Mosk** of the 2nd District Court of Appeal

Government

Hypocrisy in the name of foreign relations

The Obama administration cozies up to alleged torturers in the name of "foreign relations." By **Roger Clark** of The Clark Law Group

the breadwinner - faces similar difficult choices at age 65 and may be unable financially to retire due to support obligations. "Grey Divorce" thus requires cooperation in a spirit of partnership that once made the marriage workable.

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[Previous](#) [Next](#)

Law Practice

It's time to match lawyers who need work with clients who can most benefit

California will produce almost twice as many attorneys as the labor market will be able to absorb over the next four years. By **Lincoln Ellis** of UCLA School of Law

Entertainment & Sports

Drama at the diamond: the Donnelly pine tar incident of 2005

One night in baseball history - a dramatic tale akin to the best legal drama. By **Dan Lawton** of Lawton Law Firm

Corporate Counsel

William Niles

Executive vice president, general counsel and secretary for Ascent Capital Group, Inc. (Denver, CO)

Judicial Profile

Hugh Walker

Superior Court Judge, Alameda County (Pleasanton)

California Courts of Appeal

Jury instruction remains murky

A statewide committee is refusing to change a criminal jury instruction that a federal judge criticized last year as being unconstitutional. Even more frustrating to some is that the committee chair now refuses to talk about the reasons.

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