

Legal Services Expansion



Yvette J. Roberson, Esq.

Black & LoBello is proud to announce our expansion of legal services.

Yvette J. Roberson is an experienced family law attorney with significant experience in contested divorce, custody, support, guardianship and protective order cases. Ms. Roberson also practices in the area of criminal law. Ms. Roberson was admitted to practice law in New Mexico in May 1996, and in Nevada in October 2001. She is currently a member of the New Mexico State Bar, the Nevada Bar Association and the Clark County Bar Association.

Simultaneous with the addition of Ms. Roberson, Black & LoBello welcomed Carlos L. McDade, Colonel, USAF (Ret.) after a successful twenty-two year career as a Judge Advocate in the United States Air Force. Mr. McDade has over twelve years of experience in environmental and land use law. He has

defended against regulatory violations and enforcement actions from state and local regulators and from four EPA Regional Offices in a dozen different states.



Carlos L. McDade, Esq.



Ronald E. Gillette, Esq.

Ronald E. Gillette practices in all areas of business law, including corporate formation and governance, transactions in real estate, construction, litigation, and insurance defense, including premises liability and personal injury defense. A native Nevadan, Mr. Gillette is licensed and admitted to practice before all State and Federal courts of Nevada.

James E. Herbe practices extensively in the areas of personal injury, workers' compensation, criminal law, and family law. Mr. Herbe is a respected member of the Nevada Bar who has received recognition for his volunteer work with the Clark County Pro Bono Project and as a founding member of the Ohio Innocence Project. Mr. Herbe attended law school at the University of Cincinnati and obtained his Juris Doctor in May 2005. Mr. Herbe is a member of the Nevada Bar, and is licensed to practice before all State and Federal Courts of Nevada.



James E. Herbe, Esq.

For more information about our experienced and diverse portfolio of attorneys, please visit our website at www.blacklobellolaw.com.

BLACK & LOBELLO

ATTORNEYS AT LAW

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Don't Let It Spoil
Adrienne C. Duncan, Esq.

Nevada courts will impose a variety of sanctions on parties to litigation who either negligently fail to preserve, or intentionally destroy, evidence after receiving notice of potential litigation. This article discusses two of the sanctions utilized by the courts.

A common sanction for the intentional destruction of evidence with the intent to harm an opposing party's case is a spoliation instruction. A spoliation instruction allows the jury to draw an adverse inference against the party who destroyed the evidence, that if the evidence had been preserved it would have been unfavorable to the destroying party. In *Bass-Davis v. Davis*, the Court held that, that willful or intentional spoliation of evidence requires the intent to harm another party through the destruction and not simply the intent to destroy evidence. 122 Nev. 442, 134 P. 3d 103, 106 (2006).

In more severe cases, courts have held that a plaintiff's complaint may be dismissed, or a defendant's answer may be stricken, for the intentional destruction of evidence. In *GNLV Corp. v. Service Control Corp.*, the Court used the factors set forth in *Young v. Johnny Riveiro Building* to analyze whether dismissal of a complaint with prejudice is an appropriate discovery sanction. Those factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of dismissal relative to the severity of the abusive conduct; (4) whether evidence has been irreparably lost; (5) the feasibility and fairness of alternative and less severe sanctions, such as an order deeming facts relating to improperly lost or destroyed evidence to be admitted by the offending party; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter both the parties and future litigants from similar abuses. 111 Nev. 866, 870, 900 P.2d 323, 325 (1995), (citations omitted).

It is crucial that every possible step is taken to preserve evidence from the moment one receives notice that a lawsuit may be filed. Notice can come in many forms and is not just a letter from an attorney indicating that a complaint may be filed regarding the subject incident. Thus, potential defendants, it is prudent to preserve evidence even if you simply suspect that a person or entity may be litigious and a lawsuit may be on the horizon. Potential plaintiffs have the same duty to preserve evidence related to their claim.

Read It and Weep
Stephanie B. MacKeen, Esq.

Just when you thought it was safe for a foreign citizen to commit a crime in the U.S. then return to the safety of one's home country, a

senior attorney for the American government announced that kidnaping foreign citizens is permissible under American law because the US Supreme Court has sanctioned it. Until recently, it was generally believed that only "terrorist suspects" were subject to kidnaping, or, what is formally referred to as "extraordinary rendition", however, in December of 2007, the American government made it clear to the British Court of Appeal in London, that this law applies to anyone suspected of a crime by Washington. Alun Jones, QC, on behalf of the American Government, confirmed this by stating that "If you kidnap a person outside the United States and you bring him here, the court has no jurisdiction to refuse - it goes back to the bounty hunting days in the 1860's."

As the President aptly put it, in a press conference in April of 2005, "We've got law. But you bet, we're going to find people before they harm us." (emphasis added).

Ask the Attorney
Michele T. LoBello, Esq.

Q. What is an annulment?

A. In some situations, the Court may dissolve a marriage by an annulment, which results in the marriage being treated as if it never existed. A party to a marriage may be granted an annulment if, at the time of the marriage, either party lacked mental capacity to enter the marriage, or if one or both parties were intoxicated under duress, or if the marriage was entered based upon certain types of mistake or fraud.



To qualify to seek an annulment in Nevada, the law requires that either the marriage occurred in Nevada or that the petitioner be a resident of Nevada. The Court has a great deal of discretion to determine whether to grant an annulment, as opposed to a divorce. Generally, an annulment is more likely to succeed in a short-term marriage. As such, when a party to a marriage discovers the grounds for the potential annulment, he or she should immediately consult an attorney and determine whether and how best to proceed, so as to increase the likelihood of succeeding on the petition.

Black & LoBello's family law attorneys are familiar with not only the laws of this State, but also the local Court system. In the event you are seeking to dissolve your marriage by annulment, we have the experience to ensure that your case is presented properly and efficiently, which will increase the likelihood of dissolving your marriage by annulment rather than by divorce.

Do you have a question to ask the attorney? Submit your question to the editor at editor@blacklobellolaw.com and your question may be featured in our next issue!

Non-Charitable Contributions

Tisha Black-Chernine, Esq.

The federal government encourages your generosity by allowing you to deduct your gifts to charities on your income tax return if you itemize. However, you must follow the IRS's reporting and substantiation rules to assure your charitable deduction. I hope that this article highlighting the IRS's requirements will be helpful to you when preparing your federal income tax return for the year 2008 (due by April 15, 2009).

The rules are numerous and overlapping. This article tells about:

- (1) Reporting requirements for noncash charitable contributions;
- (2) Rules for hard-to-value property; and
- (3) Receipts you need to substantiate cash and noncash contributions.

For some noncash charitable gifts, Form 8283 (Noncash Charitable Contributions) must be filed. Before filing your income tax return, I suggest that you check the IRS's latest forms and instructions for any last-minute changes (<http://www.irs.gov/app/picklist/list/formsInstructions.htm>).

If your noncash gifts for the year total more than \$500, you'll have to include Form 8283 with your income tax return. Section A, the simpler part of the form, is used to report gifts valued at \$5,000 or under. Section A can be completed by you or your tax return preparer.

When the property's value is more than \$5,000 (\$10,000 for closely held stock), you'll need to have it appraised.

The appraiser's findings are reported in Section B of Form 8283. Those rules also apply if you give "similar items of property" with a total value above \$5,000, even if you gave the items to different charities. The IRS says that "similar items of property" are items of the same generic type, including stamps, coins, lithographs, paintings, books, nonpublicly traded stock, land and buildings. So, for example, if you have six paintings worth \$1,000 each and contribute each one to six different charities, the appraisal rules would apply.

Special rule for publicly traded securities. You don't need an appraisal or Section B of Form 8283 for gifts of publicly traded securities, even if their total value exceeds \$5,000. But you must report those gifts (when the value is more than \$500) by completing Section A of Form 8283 and attaching it to your return.

Closely held stock. For gifts of nonpublicly traded stock, an appraisal is not required as long as the value is not over \$10,000, but part of Section B of Form 8283 must be completed if the value is over \$5,000. And if the gift is valued at over \$10,000, then both an appraisal and Section B of Form 8283 are required.

If you need an appraisal, the gift must be made within 60 days after the date of the appraisal. The property can be appraised after the date of the gift (the appraisal to state the property's value on the date of the gift). You must receive the appraisal by the due date (including extensions) of the return on which the deduction is first claimed.

Section B of Form 8283. It must be signed by the appraiser and by the charity that received your gift. It's essential to complete Section B of Form 8283 and to attach that Form to your tax return.

Qualified appraisal. A qualified appraisal is an appraisal document that is prepared by a qualified appraiser in accordance with generally accepted appraisal standards and otherwise complies with the qualified appraisal requirements.

Qualified appraiser. The requirements to be a "qualified appraiser" are stringent. The definition is critically important: no qualified appraiser, no deduction for property gifts valued over \$5,000 (over \$10,000 for closely held stock).

Under the current definition, a qualified appraiser is an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements (established by the IRS in regulations); (2) regularly performs appraisals for which he or she receives compensation; and (3) can demonstrate verifiable education and experience in valuing the type of property for which the appraisal is being performed. An individual has education and experience in valuing the relevant type of property, as of the date the individual signs the appraisal, if the individual has: successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework in valuing the relevant type of property, and has two or more years of experience in valuing the relevant type of property; or earned a recognized appraisal designation for the relevant type of property.

Ifs, ands, buts. A qualified appraiser may not be related to, or regularly employed by you, or the charitable donee and may not be a party to the transaction by which you acquired the property being appraised, unless the property being appraised is donated within two months of the date of acquisition and its appraised value does not exceed the purchase price.



Appraisal fee. Generally, no part of the appraisal fee can be based on a percentage of the property's appraised value. An appraisal fee isn't a charitable gift. If you itemize, the appraisal fee is deductible on your income tax return as a miscellaneous deduction. But it's only deductible if it, together with other miscellaneous deductions, exceeds a 2% of adjusted gross income floor.

Special rule for art gifts. If you donate artworks with a total value of \$20,000 or more, your return has to include a copy of the signed appraisal itself, not just Section B of Form 8283. If any single artwork is worth \$20,000 or more, IRS may ask you for an 8 × 10 color photo (or a 4 × 5 color slide) of the donated property. You don't have to send the photo with your tax return, just have one ready.

Special rule for very large gifts. For gifts valued at over \$500,000, the donor must attach the qualified appraisal, as well as Section B of Form 8283, to his or her tax return. For purposes of the dollar thresholds, property and all similar items of property donated to one or more charitable donees are treated as one property. As noted above, a copy of the appraisal must be attached to the tax return when an artwork is worth \$20,000 or more.

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We're interested in your opinion. If you have any suggestions about how we can improve the *You Have Been Served!* publication, please let us know by contacting your Black & LoBello attorney or email the editor at editor@blacklobellolaw.com.

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