BLACK & LOBELLO
ATTORNEYS AT LAW

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Black & LoBello Newsletter Volume 1.4 2009

Black & LoBello Proudly Welcomes Steven R. Bartell, Esq.

Steven R. Bartell is a trial attorney who joins us with an extensive career in civil litigation. Mr. Bartell is a member of the American Bar Association, Clark County Bar Association, Orange County Bar Association, Maricopa County Bar Association, Defense Resources Institute, Phi Delta Phi (Life Member), and Social Register of Las Vegas (Platinum Member).

He is currently serving as an Arbitrator for the Better Business Bureau of Las Vegas. Mr. Bartell has previously served as a voluntary arbitrator, mediator and settlement officer for the Los Angeles County Courts. He also has served as a Judge Pro Tem for Los Angeles Courts for approximately seven years. Mr. Bartell has tried over 25 cases in three different states, including both judge and jury trials. In addition, he has participated in hundreds of mediations and arbitrations in all of his practice fields, which include, but are not limited to, civil litigation, construction defect, and insuranse defense.

Mr. Bartell was admitted to practice law in the State of California in 1988, the states of Texas and Washington, the U.S. District Courts for the Southern, Central, Western, and Eastern Districts of California and Northern District of Texas, U.S. Court of Appeals for the Ninth Circuit in 1990, the District of Columbia, U.S. District Courts for the Eastern and Western District of Texas, and U.S. Court of Appeals for the Fifth Circuit in 1991, and the states of Nevada and Arizona, and the U.S. District Courts of Nevada in 2000.

Michele LoBello Receives Highest Attorney Rating from Martindale-Hubbell

Michele LoBello was recently awarded an AV® Preeminent Rating, the highest rating obtainable, from Martindale-Hubbell.

These ratings are based on peer reviews from other attorneys and judges. Michele has reached the highest criteria in the areas of legal knowledge, analytical capabilities, judgement, communication ability, and legal experience.

Michele practices exclusively in the area of family law, and handles all domestic matters, including divorce and post-divorce mediation and litigation, paternity, child custody, adoption, termination of parental rights, guardianship, prenuptial and cohabitation agreements, and juvenile dependency.

In this Issue

Join Our New (BL)og

Black & LoBello has a new and improved (BL)og. The new web address is *www.blacklobellolawblog.com.* Be sure to bookmark us and subscribe to view our latest updates on legal news and concerns. Subscribing is easy! Just click the green button in the left-hand corner of the site to get e-mail updates on legal news!

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For instant updates on all posts, social events, and seminars follow us on Twitter at *www.twitter.com/blacklobellolaw.*

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Subleases: Not as Easy as One, Two, Three

Ronald E. Gillette, Esq.

As many businesses are struggling with the recession, down sizing in rental space seems like a natural adjustment. Many businesses, whether in an office or retail setting, are looking to sublease space under a prime lease, while viewing the transaction as merely bringing in someone else to help make rental payments to the landlord. Because of this perception, the tenant ("sublessor"), as well as the sublessee, intends to memorialize the transaction in a simple, one-page sublease which may, or may not, contain the landlord's consent.

It should be noted that although a sublease is similar to an assignment in many respects, it is a transfer of less than all of the tenant/sublessor's interest, and therefore, questions arise regarding the rights and obligations of the three parties involved.

Theoretical inconsistencies become immediately apparent. For instance, a sublessee may have no rights whatsoever against either the sublessor or the landlord if the landlord defaults under the prime lease. In addition, the notice provisions that a sublessor has under a prime lease may not be sufficient for the sublessee. To illustrate: the prime lease may provide the sublessor only five days notice to make a decision to terminate the lease for a material default or significant change in circumstances. The sublessor would have to reduce the notice to three days in the sublease in order to adequately protect itself, which may be unacceptable to the sublessee.

Furthermore, Options and Renewal Periods may not pass to the sublessee without the landlord's consent. One can imagine a situation where the sublessee is growing its business and is looking forward to the sublessor exercising a renewal period of five years. On the other hand, the sublessor's business is suffering and cannot wait until the end of the term to vacate the premises and close the business. Without the landlord's consent to the right to renew or to take over the premises, the sublessee may be out of luck.

An even bigger problem may be a situation involving the waiver of subrogation provision. Generally, the landlord insures the building and the tenant insures the premises. If the tenant caused a fire that damaged the building, the landlord's insurance would not have a subrogation claim against the tenant because the right had been waived in the lease. Absent a provision in the sublease containing the landlord's agreement, the same would not hold true for the sublessee. In such a situation, if the sublessee caused a fire to the building, the landlord's insurance could file an action in subrogation against the sublessee and there may not be insurance available to cover the sublessee.

Practically, a whole host of other issues arise where the sublessor partitions off some of its space for the sublessee. The location of control switches for mechanical devices, such as the master lights or HVAC systems can pose a problem for the internal climate of the now shared space. Which party is responsible for demolishing or installing new demising walls will need to be addressed. Furthermore, reserved parking is a right the sublessor may want to protect, while the sublessee intends to secure some of that prime parking for its executives/employees.

In short, bringing in a sublessee raises both theoretical and practical issues that were not contemplated by the prime lease, and therefore, it may not be sufficient to copy the prime lease and change the landlord to sublessor and tenant to sublessee. In fact, current and future business plans of the sublessor and sublesse may be so dissimilar that drafting a new sublease may be warranted. This may not be what the parties desire as they typically are interested in sharing space and continuing on with business. Nonetheless, it would be wise for any party considering a sublease to review the prime lease and compare it to the terms of the sublease to determine how such provisions apply, as well as to consider their intentions, both current and future, and then decide whether to incorporate those terms, modify them or even get the prime landlord involved with a brand new sublease that is tailored to meet the intent of the parties.

Mediating Your Divorce Case

Michele Touby LoBello, Esq.

We often hear from many clients and prospective clients that they cannot afford to get divorced in today's economy. Since many couples can barely afford to separate and support their own household, they find themselves without funds, nor credit to borrow funds, to pay for attorneys. A contested divorce and/or custody battle can be a very expensive proposition, as generally, both parties hire attorneys, thus greatly elevating the cost of litigation. A more economical path is for both parties to retain one attorney to mediate the issues and accomplish a dissolution that is legally sound and realistic.

Every potential client should know that both parties to a divorce can hire one attorney not only to mediate the terms of a divorce, but also to prepare and file the required documents. Due to an attorney's ethical obligations, both parties must be advised up front that if you hire one attorney to mediate and complete your divorce, the attorney must represent both parties fairly and even-handedly. As such, if there is a breakdown in the progress of mediation and the matter becomes a contested court case, one attorney generally cannot represent both parties in court. Nevertheless, the goal in hiring an attorney to mediate your divorce should be to avoid a contested court battle. Hiring an attorney to mediate the terms of your divorce will allow both parties to become fully educated as to each side's rights and obligations concerning child custody, child support, spousal support, division of assets and debts, attorneys' fees, and any other related issues.

Even if you have reached an agreement on all issues, it is prudent to have an attorney handle the drafting and filing of the pleadings. Hiring an experienced attorney will provide both sides with a full education as to dissolution issues not commonly understood by laymen. While dividing assets and debts "in half" may seem simple, there are often complex issues associated with the division of certain assets, including retirement and pension benefits, stock options, businesses and real property. In today's market, many assets are encumbered and "underwater." It is important to consider strategies for dividing such assets so as to protect each party's credit to the extent possible.

Likewise, an unfortunate reality in today's financial climate is that one or both parties may be contemplating bankruptcy. The impact of bankruptcy either

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Attorney Spotlight with
John D. Jones, Esq.

Merina Berkey, Editor for Black & LoBello, sits down with John D. Jones, Esq., for an exclusive interview.

MB: John, what are your primary practice areas?

JDJ: Complex domestic relations matters with an emphasis on business valuation, stock options and child custody.

MB: How many years have you been practicing law?

JDJ: Fifteen years total. Three in Pennsylvania and twelve in Nevada.

MB: You are a Certified Family Law Specialist ("CFLS"). What does that mean and what are the certification requirements to become one?

JDJ: At my last count, there were a total of 19 CFLSs in Nevada, eight of which are located in Las Vegas. CFLSs are comprised of two groups: (1) those who were members of the American Academy of Matrimorial Lawyers at the time specialization was established by the State Bar of Nevada; and (2) those who have taken and passed the Nevada specialization test. Only three lawyers have done the latter, myself included.

MB: When have you been most satisfied in your career as an attorney?

JDJ: When getting a fair result for a worthy client; anyone can be happy winning.

MB: What would be your best advice be to our readers?

JDJ: Always look at the big picture. Always find ways to channel negative energy in a positive direction.

MB: Who inspired you to get into law?

JDJ: I refuse to answer this question on the grounds that the individual(s) may try to take credit for my success.

MB: What is the most important thing you have learned from your mentors?

JDJ: Being "right" does not always equate to a victory, particularly in Family Court. As such, settling the case yourself, rather than putting your fate in the hands of a stranger, is the best course of action.

MB: What are your top five favorite movies?

JDJ: Casablanca, Philadelphia Story, The Shawshank Redemption, Love Actually, and Notting Hill.

MB: What book are you reading right now?

JDJ: If I find the time away from work, I will read Dan Brown's The Lost Symbol.

Mediating Your Divorce Case

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before or after a divorce must be considered when formulating an appropriate dissolution. For these reasons, having input of counsel where you might otherwise handle a divorce yourself makes sense. Most importantly, while custody issues are usually not complex, having an experienced attorney mediate, negotiate, and draft a parenting agreement which will determine all aspects of sharing parental rights and responsibilities can save divorcing parents significant time, expense, and grief in the future. As the court maintains jurisdiction over child custody matters, you may end up involved in child custody litigation long after your divorce is complete. Accordingly, appropriate, complete divorce pleadings at the outset may mitigate your exposure to problems in the future if custody litigation ensues.

The family law attorneys at Black & LoBello are skilled and experienced as both litigators and mediators. We can guide you through the process of mediating your divorce so that all issues are resolved and included in your final Divorce Decree, in an environment that minimizes acrimony, stress, and interruption of your day-to-day activities. We begin by having each party complete a Mediation Questionnaire to determine all facts at issue and each party's goal. We then counsel both parties as to each of their respective expectations and whether or not they are reasonable. We discuss likely outcomes if the case ends up in court, help both parties determine whether the mutual outcome is one each can live with, and we evaluate associated costs.

The goal of any mediator is to resolve the case. As a mediator, your attorney will not make decisions for you, but will help both parties make rational decisions which are fair and balanced in light of all circumstances. The mediator must remain neutral and impartial, rather than taking sides and advocating for one party over another. Now more than ever, most prospective clients should and do appreciate the idea of hiring one attorney to handle the divorce from a mediation perspective.

Ask The Attorney!
Carlos L. McDade, Esq.

Q: I'm a big fan of Michael Jackson and am so sorry that he passed away. While I was watching the funeral, his children looked so sad. Then I found out their mother and grandmother may get into a big legal fight over their custody and money to raise them. If Michael Jackson had a will why didn't it take care of these problems?

A: That is an excellent question. Of course, we are not privy to Michael Jackson's will or estate plan so we cannot provide information on his specific situation. We can, however, give you some information on basic estate planning tools.

A will is a basic legal document that is a starting point for any discussion of an estate plan. A will explains to the world, and a judge, what you plan to have happen to your family and assets after you pass away. A will allows you to designate specific property to be given ("bequeathed") to specific persons, to select a guardian for your children if the other parent has predeceased you, and to choose whom you want to receive your property.

A trust is another estate planning tool. A trust is more flexible than a will, because you can use it while you are still alive. A trust is a legal arrangement in which the "grantor" transfers property to the trust for the benefit of a person or persons. The grantor appoints a "trustee" to manage the property and assets in the trust. A trust may be designed to protect the assets from a young, immature beneficiary until that person becomes of legal age. By using a trust, one parent can provide support to his or her children without giving control of the money to an ex-spouse or ex-partner after a divorce. Trusts may also be used to care for elderly parents or disabled children.

Another estate planning tools is life insurance. Term life insurance provides coverage for periods of time. Whole life insurance can provide coverage for the rest of one's life. There are also IRAs, mutual funds and stocks that can provide money for survivors.

A lot of estate planning advertising discusses "avoiding probate." Probate takes place in court. There are procedures, set out in Nevada law, which survivors must follow to ensure the decedent's assets pass to survivors. There are planning techniques that can be used to avoid probate in the correct circumstances.

Estate taxes are taxes charged by the federal government, and some states, on the amount of money and other assets left behind by the deceased. Some estate planning techniques may allow a person to legally reduce the amount of taxes that will be owed by an estate.

Estate planning can help a person plan what happens to their family and assets while they are alive and after they pass away. If you are interested in estate planning, consult a professional for advice

Legislative Update - New Business Laws in Nevada

Doing Business in Nevada without Proper Registration (Senate Bill 350)

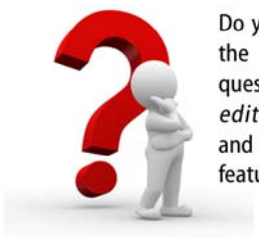
Foreign and domestic business entities and those businesses purporting to do business in the state without filing organizational documents with the Secretary of State are subject to a fine of from $1,000 – $10,000. The Secretary of State now will contact the district attorney or the Attorney General to commence action to recover the fine.

"Restricted" Designation for Limited Liability Companies and Limited Partnerships (Senate Bill 350)

Limited Liability Companies and Limited Partnerships may elect to be restricted. Designation requires certain conditions. Forms will be amended to include a place to designate the restriction and made available prior to October 1, 2009.

Payment & Issuance of State Business License Fee (Assembly Bill 146)

The State Business License applications, renewals and related fees will be collected and issued by the Secretary of State. Pursuant to AB 146 passed by the 2009 Nevada Legislature, the authority for the State Business License was transferred from the Department of Taxation to the Secretary of State. The due date of the application or renewal of the business license is based upon the due date of the initial or annual list, whichever is applicable, required to be filed with the Secretary of State. Business entities that are not required to file organizational documents or an initial or annual list of officers with the Secretary of State, such as sole proprietorships and general partnerships will also be required to file for the State Business License with the Secretary of State when they commence business in Nevada and renew every year by the end of the month in which the anniversary of their initial registration falls. The State Business License fee increased from $100 to $200 as of July 1, 2009, however, the Secretary of State collection is not effective until October 1, 2009.



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!

1031 Tax Exchange

Robert B. Noggle, Esq.

A 1031 exchange defers capital gains and depreciation recapture taxes on the sale of investment, trade or business property as long as the exchanger purchases another like kind of property.

In a delayed exchange, the most common type, the owner sells the relinquished property to a buyer, has the sale proceeds held by a Qualified Intermediary, and then purchases another property from a different party. In a simultaneous exchange the investor swaps the property for one owned by another investor.

For example, if an investor sells a property to a buyer and later purchases that property from the buyer with an LLC in which investor is a member, technically we have not had an exchange. It is two separate transactions. An exchange would require either that the investor swap the building with the LLC or that the investor sell to a buyer, go through the exchange process, and buy another property from seller. Either type of exchange would require an analysis of the related party rules.

The rules and procedures for 1031 exchanges are complex. If you have specific questions, consult a 1031 attorney for advice and guidance.

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

If you would like to be removed from our mailing list, please email the editor at *editor@blacklobellolaw.com*.

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