



### **Report regarding federal case**

We've had our first hearing in federal court on the League's lawsuit challenging the Chief's interference in disciplinary cases being heard by the Board of Rights. As we explained previously, everyone knows that the Chief's thumb has been on the scale of Board of Rights proceedings—we even had four captains file lawsuits alleging that they were retaliated against for ruling against his recommendations.

Our lawsuit asserts both federal and state law due process claims, as well as supporting allegations. We have additional claims under California law, including the argument under the Police Officers' Bill of Rights Act (POBAR), section 3304(b), that the Los Angeles Charter does not provide an administrative appeal from the Chief's decision over what discipline to impose after a Board of Rights hearing.

In the Aug. 29 hearing, the federal judge advised the attorneys for the League and the City that the federal court was not prepared to hear the state court claims and would hold them in abeyance until it had determined the federal claims—a process that could take a year or longer. As an alternative, and because our state law due process claims replicate the federal due process claims, he gave the League the option of dismissing its federal claims and refile the action in state court. After consultation, the League decided to accept the judge's offer and try to move all of our claims to state court. Accordingly, the League has directed its attorneys to file a state court action as soon as possible to get these serious claims against the Chief and the Charter system heard by a state court jury.

Over the last several years, officers have asked me various questions regarding liability during marriage and in some cases, while going through the divorce process. Below is an article written by Attorney at Law Christopher Mahan about some of the situations that occur and potential remedies.

### **Liability for debts during marriage and in divorce cases**

*In divorce cases, the many issues may arise, including custody of children, visitation, child and spousal support, and division of property and debts. If there is a pending divorce or legal separation case, all property and debts acquired during the marriage and prior to the "separation" of the parties are generally considered to be community assets and debts and must*

be divided equally between the parties (unless they agree to some other division). This is true as to debts even if the debt was incurred in the name of just one party, so long as it was incurred during the marriage and prior to separation (Family Code Section 2622). However, there are some significant exceptions to this “equal division of community debt” rule, set out below.

Some debts must always be assigned by the family law court to the party who incurred the debt even if it would normally be deemed “community.” For example, student loans incurred by a party during the marriage must be assigned to the party incurring the loan for his or her education, and if additional community funds were used to contribute to that spouse’s education, the community is also entitled to be reimbursed those funds unless it can be proven that “the community substantially benefited” from the education and/or student loan, according to the standards and requirement set forth in Family Code Section 2641.

Debts incurred by one spouse during the marriage that harmed or reduced the value of the community estate must be assigned to the party incurring the debt. This would include gambling losses, criminal conduct, misappropriation of community funds and debts incurred due to improper management of community property.

Also, if community debts exceed the value of the community property, the family law court does not have to equally divide the debts. Instead, the court can divide the debts in a “just and equitable” way, taking into consideration the parties’ “relative ability to pay” (Family Code Section 2622).

However, a family law court cannot order one spouse to pay the separate debts of the other spouse incurred before marriage or after separation (Family Code Sections 2621 and 2623), unless such debts were incurred after separation were for the “common necessities of life” of the spouse or children.

If there is no divorce case pending and the parties are still married and living together, other issues regarding debts may arise as to whether a married person is personally liable to the creditor for a debt incurred by the other party, or whether the married person’s liability is limited to exposure of community and/or separate property. the general rule is that in most instances where a spouse solely incurs a debt from a creditor, whether before or during the marriage, the other spouse normally cannot be sued personally by the creditor for repayment of the debt, (unless, of course, the debt was incurred on a jointly held credit card or account).

However, once a judgment is established against the spouse who incurred the debt, the community property of both parties is liable for payment of the debt. Family Code Section 910 says: “(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment on the debt.” Therefore, the parties’ community property is usually always liable for repayment of debts incurred by either party whether before or during the marriage, but the other spouse’s separate property may not be. The case of Robertson v. Willis, (1978) 77 Cal. App. 3d 358, affirmed that the community property of the defendant

*and her husband could be used as payment of defendant's husband's debt to plaintiff. However, the defendant wife was not personally liable for the debt and so her separate property could not be used as payment.*

*Further, there is a major exception to the liability of community property for the debts of a spouse incurred before marriage: Family Code Section 911 exempts the earnings of a spouse "during marriage" (i.e. community earnings) from liability for debts incurred by the other spouse before marriage, so long as those earnings are held in a separate deposit account from which the debtor spouse has no right to withdraw funds and the account is not comingled with any other community estate.*

*Additionally, the separate property of a spouse (property which was acquired prior to marriage or after separation or by gift and/or inheritance) is not liable for a debt incurred by the spouse before or during the marriage (Family Code Section 913), unless that debt was incurred by a spouse for the "necessaries of life of the person's spouse while the spouses are living together." In that case, the other spouse is "personally liable" for the debt and his or her separate property is also liable (Family Code Section 914). Further, this Family Code section also makes a spouse personally liable for the "necessaries of life" debts incurred by the other spouse even if the parties are not living together, unless there is an agreement between the spouses to live separate and apart.*

*The rules and statutes regarding liability for debts can be confusing. One way to redefine a spouse's liability for premarital and marital debts is to enter into a prenuptial agreement (before marriage) or postnuptial agreement (during marriage) which clearly establishes that party is liable for debts incurred during the marriage as well as prior to the marriage. These agreements require each party to fully disclose all of the assets and debts known to the parties. If the agreement is recorded, it can have the effect of giving notice to all creditors and can stop a spouse's creditors from looking to the other spouse's assets for enforcement.*

*For answers to your questions regarding this and all family law issues, please feel free to contact Christopher L. Mahan, an LAPPL family law panel attorney of the firm of Grossman & Mahan located at 18663 Ventura Blvd., Ste 220, Tarzana CA 91356. You can also contact him at (818) 757-2330.*

As always, please feel free to contact me at [CraigLally@lappl.org](mailto:CraigLally@lappl.org), or call me at (213) 251-4554.