

## Testimony Outline Regarding Assembly Bill 362

- (1) You have in front of you AB 362, which has been approved by the Family Law Section of the State Bar of Nevada. The Family Law Section received the approval of the Board of Governors of the State Bar of Nevada to present this bill as a Family Law Section sponsored bill.
- (2) All property acquired after marriage is community property unless otherwise provided in NRS 123.190 or 123.130 (gift, inheritance, personal injury damages), a premarital agreement, or a decree of separate maintenance. NRS 123.220.
- (3) The interest of spouses in community property during marriage are “present, existing and equal interests.” NRS 123.225. Accordingly, upon divorce a court must make an equal disposition of community property unless contrary to premarital agreement, or the court finds compelling reasons for an unequal disposition and sets forth such reasons in a written decision. NRS 125.150(1)(b).
- (4) In some cases, community property or liabilities are omitted from a decree of divorce or separate maintenance. These omissions occur by mistake or by concealment. Under existing law, a party’s only recourse is to file a motion within six (6) months requesting to set aside the decree pursuant to NRCP 60(b) on the basis of mistake, fraud, or newly discovered evidence, or to file an independent action for equitable relief based on exceptional circumstances.
- (5) The proposed legislation would ensure that community property omitted from a decree can be adjudicated by a court, and that every person will have the opportunity to seek his or her rightful share of such community property.
- (6) The Nevada Supreme Court in the recent decision of *Doan v. Wilkerson*, 327 P.3d 498 (2014), essentially invited this legislature to implement this legislation:

The fact that the FAA retirement benefit (omitted asset) was not mentioned in the decree is not an exceptional circumstance justifying equitable relief. It is up to the Legislature whether to create an action, or permit continuing jurisdiction, for partitioning property that was merely left out of the divorce decree. California has done so: “A party may file a postjudgment motion . . . in order to obtain adjudication of any community estate asset or liability omitted . . . by the judgment.” Cal. Fam. Code § 2556 (West 2004); *see also In re Marriage of Thorne & Raccina*, 136 Cal.Rptr.3d at 895 (“[T]he trial court may divide a community property asset not mentioned in the judgment.”). But under current Nevada law, Catherine is barred from maintaining an independent action

to partition the FAA retirement benefit without showing extraordinary circumstances justifying equitable relief, and she has not done so here.

- (7) It must be noted that not only does California allow for division of an omitted asset, but all eight (8) other community property states (Arizona, California, Idaho, Louisiana, New Mexico, Texas, Washington, and Wisconsin) allow post-judgment relief to divide an omitted asset.
- (8) This bill is necessary to protect the property rights of the citizens of this state, and to ensure that such property rights cannot be defeated in a legal action by one party's fraudulent concealment of an asset, or by a simple error or omission.
- (9) This was raised at our Ely Conference (which is attended by approximately 400 family law practitioners and judges) and was distributed to the members of the Family Law Section via our listserv, and to my knowledge, there has been no written or oral objection to this legislation.