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February 27, 2023

Hon, Thomas M. Goethals, Acting P.J.  
Hon. Joanne Motoike  
Hon. Thomas A. Delany  
Court of Appeal of California  
District Four, Division Three

Via TrueFiling

Re: Publication Request—*In re the Marriage of Jacobsen* (G060633)

Dear Justices:

I write on behalf of the Association of Certified Family Law Specialists (ACFLS) to request publication of the opinion in *In re the Marriage of Jacobsen* (G060633) under California Rules of Court, rule 8.1120. The ACFLS Board of Directors has adopted the unanimous recommendation of the amicus committee to seek publication.

The case involves apportionment of the community interest in a defined benefit pension under the time rule, i.e. the ratio of the community and separate property interests. A time rule pension uses its last date in the denominator of when the pension benefits stop increasing.

*Jacobsen* follows two cases 20 plus years, and 30 plus years ago. The arguments for publication are that it (a) provides a fresh case following old law and (b) it addresses an issue of continuing public interest.

*Jacobsen* points out that not all years of employment service affect the value of a defined benefit pension. Counsel frequently draft the time rule based on numerator service during marriage and denominator as total years of service. In all cases, we believe the better language is to

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say "credited or creditable service" for both numerator and denominator because it focuses the court on "credited" service, not simply actual service. This opinion brings that practice to the attention of newer practitioners in an era where we see more defined contribution plans and fewer defined benefit plans.

More broadly, the case is useful for the holding that the exercise of discretion is not limited to selecting one of the two outcomes (in this case number of months) proposed by the parties. ("The parties' dispute boils down to whether the denominator in the time rule's formula should be 252 as Laurie argues or 371 as Wayne contends and the court used. We are not convinced either is the right answer." As one member of our amicus committee observed, "Family law is not baseball arbitration." Courts are not limited to electing between the parties proposed outcomes.

## **About ACFLS as Amicus**

ACFLS is an independent non-profit bar association, composed of approximately 669 California certified family law specialists, and dedicated to promoting and preserving the practice of family law since 1980. ACFLS members actively practice family law in California family courts and appellate courts. Our members also serve as court-appointed minors' counsel, mediators, private judges, judges pro tempore, and expert witnesses in child custody proceedings.

Since its founding at the inception of the certification of family law specialists by the State Bar, ACFLS has played an active public policy role when the Appellate Courts, Legislature and Judicial Council consider matters of significance to family courts, family court populations or the family law bar. ACFLS has appeared as amicus in many family law appellate cases, including cases where the organization's participation was invited by the appellate court.

ACFLS has an active all-volunteer amicus committee with 21 members who review cases, and makes recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or depublishing of opinions, letters supporting or opposing California Supreme Court review, and amicus briefs.

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ACFLS's active, all-volunteer, amicus committee includes all four California lawyers who hold dual certification as family law and appellate specialists (two more committee members recently passed the appellate specialization exam), and other leaders in the family law community including Hon. Thomas Trent Lewis (ret.), and Garrett C. Dailey .

ACFLS's board of directors and amicus committee have no direct ties to or interest in the litigants or their attorneys in this matter – ACFLS is solely concerned with the development of the law for children and families in California. Committee members take turns reviewing the unpublished decisions on the California Courts website. Lisa McCall and E. Stephen Temko were recused from all consideration of this case since they represent parties in the appellate court.

The *Jacobsen* opinion meets the publication criteria of Cal. Rules of Court, rule 8.1105 (3.) (“(3) Modifies, explains, or criticizes with reasons given, an existing rule of law;” (6) (“Involves a legal issue of continuing public interest;”) and (7) “Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.”) The opinion explains the policy and application of the time rule for a new generation of family law practitioners and bench officers. It also has a useful observation about the broad scope of judicial discretion.

Respectfully submitted,



Leslie Ellen Shear, CFLS, CALS, IAFL  
Co-chair ACFLS Amicus Committee

cc: Sherry Peterson, ACFLS, ACFLS President  
Rick Cohen, ACFLS, ACFLS Amicus Committee Co-chair