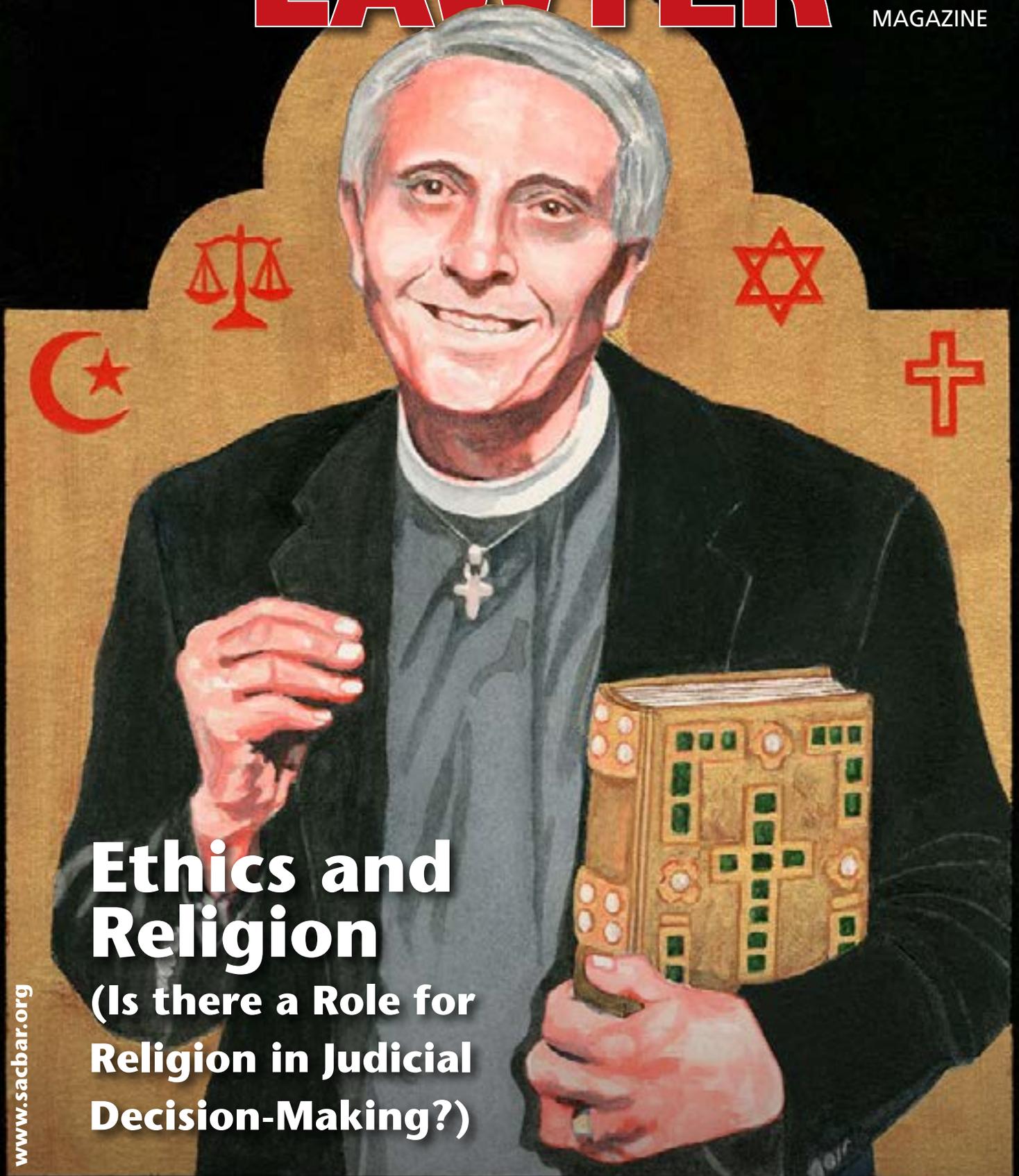


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SacLEGAL and SCBA Probate and Estate Planning Law Section Partner for Program on Taxing Same-Sex Couples after *Windsor* by Penny R. Brown



Penny R. Brown is Of Counsel with the law firm of Boutin Jones Inc. and the 2015 Treasurer of the Probate and Estate Planning Section of the SCBA. She may be contacted at PBrown@boutinjones.com.



On Friday, March 13, 2015, Sacramento Lawyers for the Equality of Gays and Lesbians (SacLEGAL) and the SCBA's Probate and Estate Planning Section (Probate Section) partnered for a two-hour continuing legal education program at Pacific McGeorge School of Law. SacLEGAL and the Probate Section were honored to have guest speaker Professor **Patricia A. Cain** from Santa Clara University School of Law present "Taxing Same-Sex Couples after *Windsor*." The event drew a good mixture of SacLEGAL members, SCBA Probate Section members, and professors from Pacific McGeorge. A reception followed the event at the Oak Park Brewing Company.

is unconstitutional. The discussion focused on those federal agencies that adopted "place of celebration" criteria for same-sex married couples when qualifying for various federal benefits. Cain noted that the IRS was the first federal agency to recognize same-sex marriages using "place of celebration" criteria. Revenue Ruling 2013-17 holds that for federal tax purposes, the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

required to file a joint federal income tax return. The differences between federal and state laws provide challenges for taxpayers. Some states do not permit same-sex couples to marry, but do recognize same-sex marriages from other jurisdictions. Some states provide for a legal status such as registered domestic partnerships (RDP) and civil unions. Some states automatically convert civil unions to marriage, while other states that now permit same-sex marriage no longer offer any other legal status.



Frances An and Laury Porter enjoy the presentation



Speaker, Professor Patricia A. Cain

Professor Cain briefly discussed the facts of *Windsor v. United States* and the Supreme Court's ruling in June 2013. The discussion led to how federal agencies, such as the IRS, Social Security Administration, and the Veteran's Administration, have implemented procedures to comply with the Supreme Court's finding that Section 3 of the Defense of Marriage Act (DOMA)

Not all federal agencies can adopt the "place of celebration" rule. For those agencies (Social Security Administration and Veteran's Administration) that are precluded from implementing a "place of celebration" standard, Cain discussed that there are statutes currently in place that guide spousal benefits for those agencies and discussed the legal action that is pending to correct those statutes. The discussion also focused on the complications that arise for those who are registered domestic partners or in a civil union (a marriage equivalent), but not married.

Cain described the rapidly increasing number of states (37 as of March 1, 2015) where same-sex couples may marry. Same-sex married couples who could not file a joint return prior to *Windsor* and Revenue Ruling 2013-17 are now

Dissolution of legal status such as RDP and civil unions prior to marriage raises further confusion and complexity. Cain spoke about the complications that couples face when deciding whether to dissolve their existing legal status before getting married. California is the only state that allows a couple to be both RDPs and spouses, provided of course that each spouse is married to and registered with the same person

The holding of *Windsor* is retroactive. Whether to file amended income tax returns following recognition of the marriage has been a big issue. Cain described the general statute of limitations and whether or not filing amended returns is in the clients' best interest. Cain also touched on the complex issues associated with ERISA plans and other retirement plans. She described several ongoing cases on the issue of denial of retirement benefits to a sur-



vivor of a same-sex spouse who died prior to *Windsor*, based on the DOMA definition of a spouse.

Professor Patricia A. Cain is the Inez Mabie Distinguished Professor of Law at Santa Clara University School of Law (SCU). Before joining the SCU faculty in 2007, she served as Vice Provost and Aliber Family Chair in Law at the University of Iowa. She was a member of the faculty at the University of Texas for 17 years before moving to the University of Iowa, School of Law in 1991. She also held the H.O. Head Centennial Professor in Real Property Law at the University of Texas (1990-91). A member of the American Law Institute and prior board member of Lambda Legal Defense and Education Fund, she is a former co-president (with **Jean Love**) of the Society of American Law Teachers. She is a frequent lecturer on tax planning for same-sex couples and in 2008 contributed to continuing legal education

programs for same-sex couples at The Williams Institute, UCLA (Los Angeles), Lavender Law (San Francisco), Kasner Estate Planning Symposium (San Jose), the Santa Clara Estate Planning Council (Santa Clara), Merrill Lynch Wealth Management Group (Sacramento) and ALI-ABA (national webcast). She has published more than 50 law review articles in journals such as the *Iowa Law Review*, the *Southern California Law Review*, the *Virginia Law Review*, the *Wisconsin Law Review* and the *Journal of Legal Education*. She also has published several book chapters, treatises and casebooks including *Tax Planning for Unmarried Couples* (Prentice Hall 1980), *Rainbow Rights: The Role of Lawyers and Courts In the Lesbian and Gay Civil Rights Movement* (Westview Press 2000), and *Sexuality Law* (with Arthur S. Leonard) (Carolina Academic Press 2005).

The CLE event and reception at Oak Park Brewing Company were a



Penny R. Brown and Pamela Jones at the SacLEGAL happy hour following the presentation

great opportunity for those who work with same-sex couples to hear from a nationally known speaker about the legal issues facing their clients after *Windsor*. SacLEGAL thanks the Probate Section for partnering to bring Professor Cain to Sacramento and looks forward to continuing to serve the Sacramento legal community, as well as the broader Sacramento community. 



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