

# A FEW SMALL STEPS TOWARD THE GREATER GOOD



SDCBA members share experiences with special pro bono cases, and why they were compelled to assist.

*By Elizabeth Blust*

The State Bar of California and the San Diego County Bar Association (SDCBA) encourage their members to perform fifty hours of pro bono legal service per year. Earlier this year, the SDCBA asked its members to share some of their experiences with pro bono cases they have taken on recently. We received responses from lawyers in a variety of practice areas, including bankruptcy, child custody, landlord/tenant, prisoner's rights, immigration, and even a case of first impression involving donated eggs and taxation. Here are summaries of a few.

**Richard Carpenter**, professor of tax litigation at University of San Diego School of Law (USD); **Jody Swan** of Arizona; and **Kevan McLaughlin** teamed up for a case that is “unique, especially in the tax arena where ‘unique’ doesn’t happen very often,” said McLaughlin.

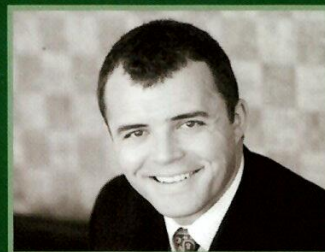
The case is still ongoing, but the gist of it is whether the money accepted by a woman who donates her eggs should be taxed as income. The case started out as a typical tax audit: a woman in San Diego had received a 1099 after having donated her eggs but failed to report the income.

Her original hearing was supposed to be an “S” type election; “a ‘small potatoes’ hearing with no opportunity for appeal,” said McLaughlin. Apparently, some “heavy hitters” in Washington D.C. caught wind of the scheduled hearing and realized that if the IRS lost, it would not be able to appeal. Suddenly, the woman found herself facing a non-“S” type hearing – without a lawyer. Someone in Washington “knew about Richard Carpenter through his work with the USD tax clinic,” McLaughlin said, and encouraged the taxpayer to contact Carpenter, who brought McLaughlin and Swan on board. The case was tried before the U.S. Tax Court on January 6, 2014, and is currently being briefed. The process that follows looks something like an appeal, but is a procedure peculiar to tax court: the taxpayer’s opening brief was due in March with the IRS’s reply due in May. In an unusual turn for the U.S. Tax Court, it agreed to accept amicus briefs on this issue.

“This client has a modest background and resources,” McLaughlin said. “Had we not helped her, she would not have been able to put on anything that in any way defended her position. If she had lost, she would have been put on a payment plan including back taxes, interest and penalties. But the case also would have set a precedent. This is a case of first impression on how to tax the money a woman receives for donating her eggs.”



Richard Carpenter



Kevan McLaughlin



Jody Swan