

*T. Elizabeth Fields authored the below article. An abridged version of this article was published in the Los Angeles Business Journal, August 15, 2005.*

## Navigating the Minefield of Divorce & Support

Parties often find themselves in court at the onset of the divorce process, in order to request temporary orders such as for custody, exclusive use of a family home, restraining orders, support and payment of attorney fees. Whereas the courts often justify these orders as restoring parties to their original status quo immediately prior to the divorce commencement or to ensure order, often the initial orders obtained will be determinative of the outcome of the case. It is for this reason that careful attention and effort must be given to the work done at the initial stage of a divorce.

In California, the soonest parties can be restored to “single” unmarried status is six months. Nonetheless, if the parties agree in advance, their agreement may be submitted to the court as a judgment prior to the expiration of the six month period. It may specify the future date that the parties will be restored to “single” status, but may also contain orders that become effective immediately upon signature by a judicial officer of the court.

Often, it takes time to sort through and evaluate the marital estate and resolve the primary issues of custody and support. Once a couple has obtained a Judgment on some aspects of their case, the case may still not be over if there are lingering issues that have not yet been resolved or addressed by the court.

Most times, life altering issues are decided during the divorce, which have significant ramifications in each of the party’s lives for many years to come after the divorce is “final”. Even when couples agree, careful attention and scrupulous detail must be given to their Judgment to prevent serious and unintended results which affect a client’s custody, visitation, property and support rights.

When parties divorce, often times one spouse needs financial support from the other spouse for a period of time after the separation. The determination of the amount and length of support is a complex matter involving a balancing application of facts and law. California provides for a two tier approach to spousal support.

The first form of spousal support is commonly known as Temporary Support (pre-judgment), which may be awarded shortly after the onset of the divorce case. This is intended to assist the supported spouse to continue to live on a temporary basis at the lifestyle he/she had immediately prior to the separation and to satisfy his/her financial needs. It can be awarded by way of a stipulated order or order of the Court after a hearing called an “Order to Show Cause”. The Court in its discretion may elect its own support figure, or may rely upon a standardized

computer software program to determine support by considering parties' incomes (or imputed incomes) and select tax effected expenses. Temporary Spousal Support may include a payment directly to the supported spouse, or may be in the form of a direct payment of the supported spouse's expenses, or a blend of both.

The second form of spousal support is commonly known as Permanent Support (post-judgment), which is awarded in a divorce judgment. It may have an expiration date or may be open-ended. Factors which affect the length and amount of permanent support include the marital standard of living, the duration of the marriage, the needs of the parties, the ability to pay, the ability of each spouse to be self supporting, the age and health of the parties and many other factors known as the *Family Code* 4320 factors. Since permanent support has such long term ramifications to both the payor and recipient of support, the proper handling of this issue is absolutely critical for both parties.

Often the issue of permanent spousal support is argued before and decided by a judicial officer at trial, in which case the Court may make specific factual findings with regard to the standard of living during the marriage, and may make appropriate factual determinations with respect to other circumstances.

Generally, spousal support payments are tax deductible to the paying spouse. They are also deemed taxable income to the receiving spouse. Therefore, it is wise for the supported spouse to consult a tax attorney to assure the proper payment of income taxes. However, the parties can agree by way of a stipulated order to have the spousal support not be taxable income to the receiving spouse, if it is also not deductible to the paying spouse. The parties can also agree to a lump sum buy-out payment. Competent legal counsel is a critical component to assure that the form and structure of a spousal support stipulated order is carefully drafted to avoid potentially serious and expensive tax pitfalls and complications.

Parents bear support obligations regardless of whether or not they are married. If they are unmarried, then the support is determined under a parentage action, formerly known in California as a "paternity" action. If the parties are married, then the support is determined under the divorce action.

In California, child support is determined based upon many factors including the income of the parties, the timeshare with the children, tax deductions available to each party, the cost of healthcare and child care, and many other factors. All courts and attorneys now utilize various software programs to make the child support calculations. These programs allow the input of the relevant data and then make the calculations to determine what the support should be.

Each parent bears the duty to help in the support of the children. However, individual circumstances may require one parent to work only part time or not at all depending upon the needs of the children. Generally, this duty to support continues the child graduates from high school or turns 19, whichever occurs first. However, there are other factors that may cut this support time short or even extend it beyond the child's 19<sup>th</sup> birthday.

After the Court has ordered support at any time during any proceeding involving children, including both before and after the final Judgment terminating the marital status of the parties, if the factors setting the support (income/timeshare/etc.) materially change, the Court may change the support at any time. Moreover, a party may request once per year that the other party produce a statement listing his/her income and expenses, and attach a copy of his/her last filed tax returns as well as his/her most recent pay check stubs or schedule of profit and loss. A motion must be filed with the court, known as an Order to Show Cause, to request modification of support. Child support, like custody and visitation, is an issue that remains open even after the judgment for divorce is pronounced. In fact, each party has the right to request of the other party each year after a judgment of

If support is not paid, it can accrue significant legal interest, which in California currently is at 10% per annum. Even more significant civil penalties are only available to the private litigant. Penalties accrue to unpaid child support once due and proper notice has been given. Penalties include up to 6% of the delinquent payment for each month that it remains unpaid, up to a maximum of 72% of the original arrearage. Hence, penalties can be a significant charge against a delinquent payor. In addition, if the litigant selects to pursue public enforcement of a child support order using a local child support agency (known in Los Angeles as the Department of Child Support Services) the delinquent payor could suffer loss of his drivers license, passport, license to practice in certain businesses, tax refunds, and many other significant consequences.

Because divorce and support can be a landmine of legal issues, experienced legal representation is essential.

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