

The ins and outs of spousal support in divorce

Understanding the financial impacts

BY STEPHANIE BLUM



When couples split up, both spouses ponder: How can I continue to afford my lifestyle?

That is especially true in families where one spouse has given up a career to take care of the children and run the household. In California, when the court is asked to determine support, they will order the higher earning spouse to pay the lesser earning spouse monthly spousal support (historically called alimony). But how much money will the court order? Will that amount of money change over time? And for how long will the spousal support order last?

The purpose of spousal support while the parties are going through the divorce is to allow the supported spouse to maintain the status quo. But at the end of the proceeding, the court makes a different order. At that time, the court may order one party to pay for the support of the other party in an amount, for a period for time, that the court determines is "just and reasonable," taking into a consideration a whole host of circumstances that are outlined in the Family Code.

Those factors include among them the



earning capacity of each party. How much can the payor pay and still have money left over to pay for his/her own living expenses? What are the marketable skills of the supported party, the job market for those skills, the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills?

The supported party is expected to go back to work if possible, so the court may consider the possible need for retraining or education to acquire other more marketable skills or employment. Even though mom, for example, gave up her career to have children, what would be required for her to re-enter the workforce?



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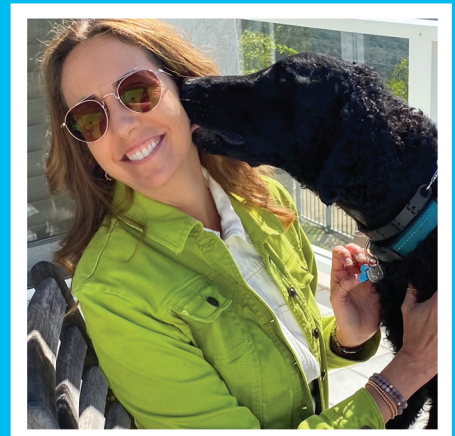
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The court is also supposed to consider the extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties. The court may take into account if the supported party contributed to the support payor's attainment of an education, training or career.

Of course, the real question is, after the court has considered all the relevant factors, how does it actually arrive at a monthly dollar amount?

In California it's typically by the use of the software program Dissomaster, originally devised to calculate only child support. The court inputs information including for example, the income of each party (earnings as well as investment), their tax filing status, the amount each pays for health insurance, if either party owns a home, the mortgage interest and property tax paid relating to same, and the percent of time each parent has custody of the children. The Dissomaster then magically calculates dollar amounts for both child support and spousal support.

The court may rely on the spousal amount calculated only when ordering temporary spousal support during the divorce proceeding. However, the court is absolutely not allowed to rely on that formula when arriving at the spousal support amount in the final judgment at the end of the divorce process. At that point, a judge is supposed to consider all the relevant factors outlined in the Family Code section, as well as any other factors the court determines are just and equitable.

Usually, the court's final spousal support orders are less than the amount ordered at the temporary stage. The duration typically

depends upon the length of the marriage. If the marriage lasted less than 10 years, one can expect spousal support to be ordered for half the length of the marriage. If the marriage is for longer than 10 years, then the duration can be difficult to predict. Presumably, the family court will not treat a 34-year marriage the same as a 12-year marriage.

The age and health of the parties can play into the decision also. A 76-year old person married for 40 years will not be treated the same as a 43-year-old who was married for 15 years. Notably, however, income earners are not required to work forever, and when they retire, they are entitled to seek to modify or even terminate their support obligation.

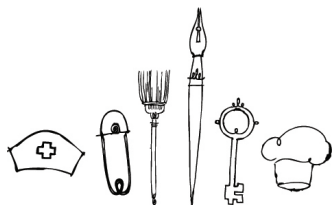
Because of the complexity of this area of the law, it is important to consult competent family law counsel. If you are considering divorce and have, for example, given up your career to focus on caring for the family and will most certainly need financial assistance from your spouse, the process can be unpredictable. Similarly, if you are the higher earning spouse, you too should understand how a court could view your obligations and how to potentially limit them.

Moreover, the length of the marriage and even the timing and circumstances of separation can impact the duration of the spousal support order. Parties need to obtain the advice of experienced legal counsel before making a decision about ending a marriage, since that decision will have not just emotional trauma, but also long lasting financial consequences on you and your family.

Stephanie Blum has practiced exclusively in the area of Family Law for 25 years, and is a Certified Family Law Specialist. For more information see Reuben Raucher & Blum at <https://rrbattorneys.com/>

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