

THE PRACTITIONER

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Supporting Role

Code Modifications Affecting Spousal Provisions

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Changes to the Family Code that took effect this year involve a wide range of issues, not the least of which include modifications to the spousal support provisions. Prior to these amendments, attorneys and courts followed a rule of thumb in which spousal support is paid for one-half the length of the marriage, at least for marriages lasting less than 10 years. Two related amendments appear to come close to codifying this rule, and even to enlarging it to apply regardless of the length of the marriage.

Subsection (k), added to the list of Section 4320 factors that a court is to consider in determining the amount of support, states: "The goal [is] that the supported party shall be self-supporting with a reasonable period of time. A 'reasonable period of time' for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section and the circumstances of the parties."

New Section 4330(b) provides that the court shall give the following admonition to the parties: "It is the goal of this state that each party shall make reasonable good faith efforts to become self-supporting as provided for in Section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support."

Section 4330(b) also codifies and perhaps expands the seminal case of *Marriage of Gavron*, 203 Cal.App.3d 705 (1986). In *Gavron*, the court held that support to a wife who failed to become gainfully employed or to seek vocational training could not be reduced to nothing, even with a retention of jurisdiction until the wife's death or remarriage, unless the wife received "some reasonable advance warning that after an appropriate period of time the supported spouse was expected to become self-sufficient or face onerous legal and financial consequences."

Such a warning to spouses receiving support has become known as a Gavron warning. However, the language of the warning has been litigated in many cases, with no clear statement in reported opinions. This issue appears to have been resolved by the new section's exact language.

The Section 4330(b) admonition includes a warning that support can be terminated, not just modified. Previously, some parties in litigation have taken the position that support could only be reduced, but not terminated, upon a failure to make a good-faith effort to become self-supporting.

These new additions to the Family Code, however, raise almost as many is-

suues as they answer. Undoubtedly, one of many issues is exactly what factors a court will consider in deviating from the simple half-of-the-marriage formula.

Another issue is whether the time period after separation, but before termination of the marital status, is considered part of the marriage. To support the position that the marriage should be measured to the separation date, one could rely on the provision dealing with the length of time a court should retain jurisdiction over support. For purposes of retaining jurisdiction, Section 4336(b) defines the length of the marriage as "from the date of marriage to the date of

Legislature may have intended to employ the guidelines to equalize the standards of living of the parents making spousal support unnecessary, except in high income cases."

With all this emphasis on the marital standard of living, one could argue that "self-supporting" should be interpreted in light of the marital standard of living and not just the ability to provide for bare necessities of life.

On the other hand, if the Legislature intended that "self-supporting" be measured against the marital standard of living, it could have easily added that qualification. The sections cited above show that

the Legislature is very aware of the marital standard of living as a reference, and so the absence of the reference in these new sections should be viewed as a conscious omission.

Also, cases such as *Marriage of Smith*, 225 Cal.App.3d 469 (1990), stress that the marital standard of living is only one factor the court is to consider in determining support.

It is clear that many parties receiving support will never be able to be self-supporting at the marital standard. For example, a common situation is where one spouse works and earns a high or relatively high wage, and the other spouse does not work. The nonworking spouse's earning capacity may be such that he or she could never earn enough to live at the marital standard of living. So one could argue that the Legislature could not have possibly intended for support to continue until a party was able to support himself or herself at the marital standard of living.

Additionally, a party receiving support could cite these new sections in arguing that as long as the party is making a good-faith effort to be self-supporting, but is not able to be self-supporting, the party should continue to receive support. In any case, it seems that the term "self-supporting" will be the subject of future litigation and judicial decisions.

Although a party may be ordered to pay support for a certain amount of time, the court may still retain jurisdiction to order support after that time expires. Family Code Section 4336, the provision establishing the presumption that the court should retain jurisdiction over spousal support indefinitely for marriages lasting 10 years or more, was not changed. Thus, for a marriage lasting 12 years in which one party pays support, it appears that a likely result will be an amount of support ordered for six years, with the court retaining jurisdiction over support indefinitely.

However, the Legislature's idea of indefinite may not be as long as one would initially believe. Section 4336(c) provides that the court has discretion to terminate support "in later proceedings on a showing of changed circumstances." Thus, indefinite lasts only as long as circumstances do not change.

Thus, as with other significant amendments, these changes resolve certain issues, and create others. Nevertheless, it appears that the new changes will result in support being paid in many cases for one-half the length of the marriage. This rule may even apply regardless of the length of the marriage.

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separation." Thus, by analogy, this same definition should apply to determining the length of the marriage for awarding the support amount.

Until this issue is clearly resolved, prudence suggests that unless a stipulation can be reached about the length of the marriage, the party paying (or who will pay) support should always seek a bifurcation of marital status at the earliest possible date so that at least this gray area can be minimized.

Another issue that will probably arise is what is meant by the term "self-supporting." One could argue that this term means that the party can support himself or herself at the marital standard of living. This argument finds support in the prominence that the marital standard of living plays in some Family Code sections and cases.

For example, Section 4330(a) provides in part that the court may order support "based on the standard of living established during the marriage, taking into consideration the circumstance" of Section 4320. Section 4320(a) states that one of the factors the court is to consider is "the extent to which the earning capacity of each party is sufficient to maintain the standard of living of the parties during the marriage."

Another factor the court is to consider is "the needs of each party based on the standard of living established during the marriage." Section 4330(d). Section 4331, which allows the court to order a party to submit to a vocational examination, states: "[T]he focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain himself or herself at the marital standard of living."

The court in *Marriage of McCann*, 41 Cal.App.4th 978, 984 (1996), determined: "[S]pousal support must bear some relationship to the parties' standard of living during the marriage." However, *McCann* also makes the statement, arguably dicta, that when a party is receiving guideline child support there is no need for spousal support: "It has been suggested that, since the new [child-support] guidelines frequently leave the payor spouse with little income to pay spousal support, the

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