

Moving on After Divorce

Ending Spousal Support Would Force Adults to Be Responsible For Themselves

By Fred Silberberg

Family law is fraught with emotion. There are disagreements over sharing children, houses and dividing assets.

But there is one area in particular that seems to evoke a visceral reaction on the part of most divorcing couples: spousal support. Feelings of anger and entitlement can turn what should be a relatively simple divorce into a battle.

Despite the legislature's numerous attempts over the years to try to provide uniformity in an area that frequently produces differing results between similar cases, there are really only two certainties: the spouse who pays always pays too much for too long and the spouse who receives it never gets enough.

The legislature has played with spousal support rules, then allowed enough elbow room to permit persuasive lawyers to get around them. For instance, the legislature has defined what is a long-term marriage (more than 10 years) and what is not (less than 10 years), to give guidance to judges regarding spousal support awards, but the courts may modify support as they see fit, regardless of the 10-year rule.

It would appear that there are no real solutions to the problem. How about this: get rid of it altogether. Eliminating spousal support serves a number of useful purposes and would be in line with public policy as it seems to be evolving. Eliminating spousal support (or severely restricting it to limited situations) would cause adults to take responsibility for themselves. Isn't that what we adults do? After all, welfare mothers are required to become trained and go back to work, so why shouldn't everyone else? Isn't spousal support really a private welfare system, anyway? Our economy is strong, and unemployment is at an all time low. It should not be difficult for almost anyone to find a job.

Eliminating spousal support would also relieve some court congestion because one time-consuming issue would be gone. Even more importantly, there are a certain percentage of cases that go on for years with continued battles over extending, increasing or reducing spousal support. No



longer would judges be burdened with testimony as to all of the reasons that a spouse could not get back on his or her feet notwithstanding the fact that they had been receiving support for years.

Eliminating spousal support might also change the attitude of certain people toward divorce. It is no great surprise that some people stay married longer than they otherwise would only because they know that the longer the marriage, the longer the duration of support they will receive. Conversely, knowing that there would be no spousal support down the road may make people try harder to get a marriage to work.

Because there is no statewide spousal support guideline like the one for child support, there is little uniformity among courts in terms of the amount of temporary support ordered and how that is calculated. This problem would also be solved.

There are implications in the custody area as well. If both parents are working, the custodial time awarded to each is more like-

ly to be equal than when one works and another doesn't. You may think that this suggestion is harmful to children because if both parents work, young children must go to day care. Although those concerns are worthy of merit, this doesn't seem to be a problem in Texas. In Texas, spousal support is an issue in few cases. Texas gives temporary support during the period between separation and finalization of the division of property, but that is typically the end of the road. Under Texas law, a party cannot request spousal support after the property is divided unless the spouse from whom support is sought was convicted of a family-violence crime within two years preceding the request, or the marriage was more than 10 years in duration and there are insufficient assets to provide for support, or the supported spouse cannot be employed due to a mental or physical disability or because he or she must care for a child with such a disability or one spouse clearly lacks the earning ability sufficient to meet even minimal needs.

Although the lack of availability of support is probably disturbing to many Texans, it doesn't seem to be disturbing enough to cause the legislature to amend the statute. There is no reason to think that the Texas model wouldn't work in California. If the citizens of Texas can take responsibility for themselves, why can't Californians? If mothers who have spent years on welfare can be responsible for themselves, why can't private citizens?

If we eliminated spousal support in California, it would give people the opportunity to move forward with their lives. It would result in increased productivity and would probably boost the self-esteem of the spouse who would now be supporting himself or herself. Society as a whole be better off if no one lived with a sense of entitlement. Don't the benefits far outweigh the disadvantages in the long run? It is certainly something to think about.

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