

Broken Homes, Broken Courts

By Fred Silberberg

According to our Family Code, a court is to warn a supported spouse that he or she needs to make “reasonable” efforts to provide for his or her own support needs when making an order for spousal support. Cases addressing the issue of spousal support and under what circumstances it can be reduced or terminated have stated that the question of whether a termination can occur is determined in part, by the spouse being warned of his or her obligation to contribute to or furnish his or her own support.

In practical terms, what happens is one person seeks an order for spousal support fairly early on in the case. An order that is deemed by family law attorneys and courts to be “temporary” in nature is made. Temporary in that the order stays in effect until there is a further court order, a settlement between the parties, or a trial. At that point, the court will revisit the issue of spousal support and make an order that is referred to as a “permanent” order. This order is intended to specify the obligations that the parties have concerning support over the long haul, and once the estate has been divided and the issues in the case resolved. Depending on any number of factors, the court may make an order that lasts months, years or for a party’s lifetime. In some cases, the court may not make an order at all.

In order to get a termination date, or what is called a “step-down” (an

automatic reduction in the payment at some future date), the party who is receiving the support must be given a warning that they are under the obligation to contribute to their own needs. However, these warnings are not given at consistent times in every case, and when they are given varies from county-to-county, and even from judge-to-judge within a county.

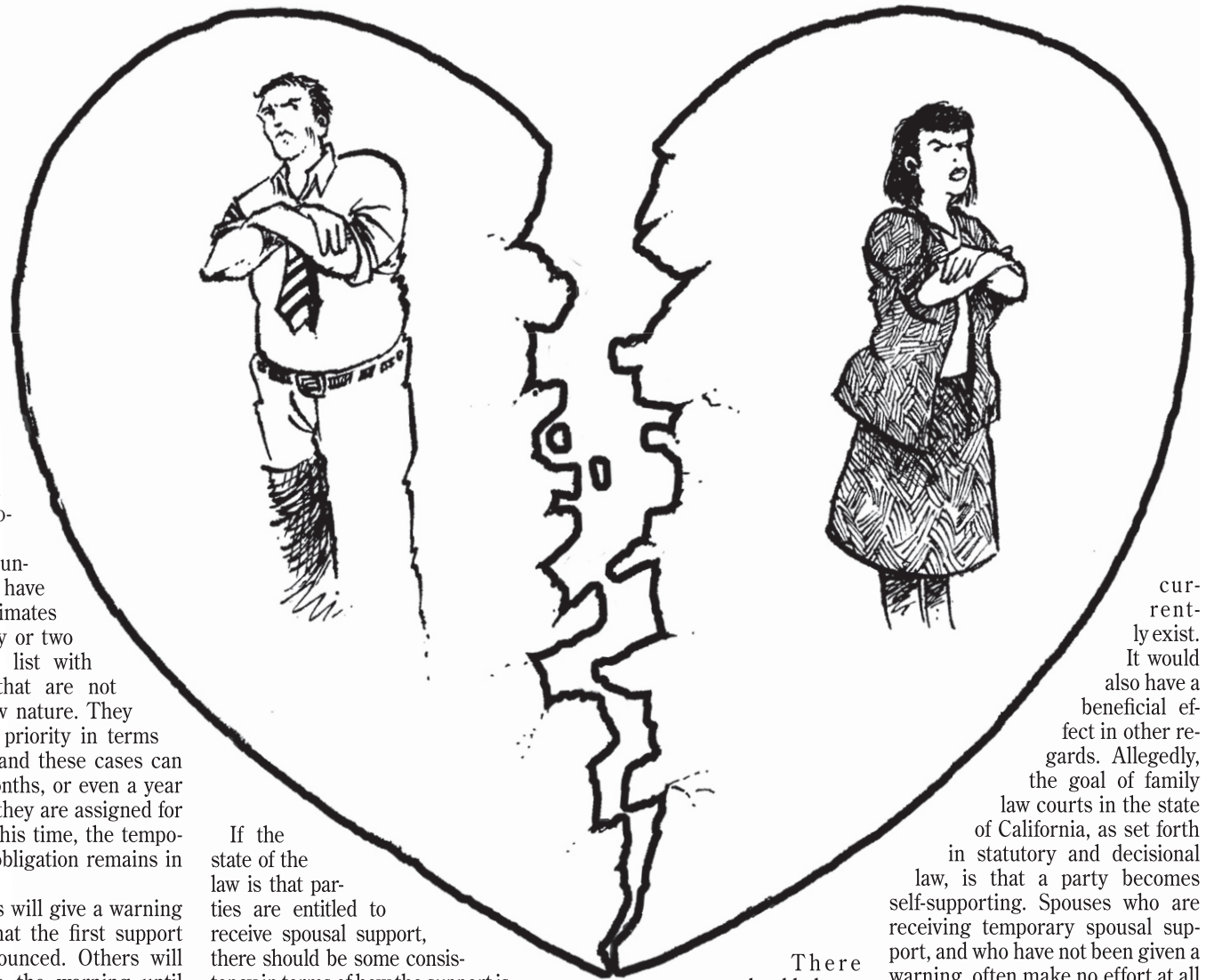
Family Code Section 4330 states that the court may advise the recipient of support of the obligation to contribute to their own support. It states that this advisement is given at the time of the support order. It does not, however, state whether the admonition is given at the time of the temporary support order, or the permanent order. The fact that there is no specification in regard to when the warning is given is problematic for several reasons.

In many counties, divorce cases progress very slowly. They can linger for years. Depending on the policy of the court in terms of how cases are assigned, the control over whether a case will resolve in a reasonable time is dependent in part on the judge to whom the case is assigned. There is no consistent policy governing when cases have to be resolved. So, in the case of a judge who liberally grants continuances, a case can languish for years in the pre-trial stage before being assigned a trial date. During this time, the support order that was initially made remains in effect. For that reason, some attorneys employ the strategy of dragging the case out as long as possible because most

are aware that the permanent support order is going to result in a lower payment than the temporary order did.

In some counties, cases that have longer trial estimates than just a day or two get put on a list with other cases that are not of a family law nature. They are not given priority in terms of resolution, and these cases can also sit for months, or even a year or two before they are assigned for trial. During this time, the temporary support obligation remains in effect.

Some judges will give a warning at the time that the first support order is pronounced. Others will refuse to give the warning until the permanent order is made. The length of a marriage is one factor to consider in terms of the duration of spousal support. Where the marriage didn’t last long, the failure to give a warning promptly can mean that a supported spouse receives support longer than he or she otherwise would have, simply because the case drags on and on. In two adjoining courtrooms, different cases can have completely different outcomes because the judge in one courtroom gave the warning immediately upon making the temporary support order, but the judge next door refused to.



If the state of the law is that parties are entitled to receive spousal support, there should be some consistency in terms of how the support is determined and how long it goes on for. The lack of consistency results in lawyers and litigants attempting to forum shop as best as they can, and to keep cases going on longer than they should to maximize the benefit of what may be an inequitable, or even inappropriate support order. If knowledgeable family law counsel know that the judge in courtroom A gives a warning at the outset of each case, but the judge in courtroom B does not, depending on the side of the case that they have, a preemptory challenge, or a refusal to stipulate to the commissioner in that courtroom may well ensue.

There should be a consistent policy in order to solve the problem of this inequity. That policy should be that a warning is automatically given to both spouses upon the filing of the case. The warning could be placed in the Judicial Council Form Petition, or on the reverse side of the summons. We already have “automatic” temporary restraining orders that are printed on every summons filed in a California divorce, so there is no reason not to include a warning regarding spousal support.

If such a warning were included, it would address the inequities that

currently exist. It would also have a beneficial effect in other regards. Allegedly, the goal of family law courts in the state of California, as set forth in statutory and decisional law, is that a party becomes self-supporting. Spouses who are receiving temporary spousal support, and who have not been given a warning, often make no effort at all to contribute to their own support during pending temporary support orders, thinking that the clock does not start to run on that obligation until they are given the warning. Giving the warning up-front addresses this problem as well, and makes clear that the policy of the state is exactly what the law tells us it is, and it provides for uniform application of a principle in cases where there presently is nothing but inconsistency.

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