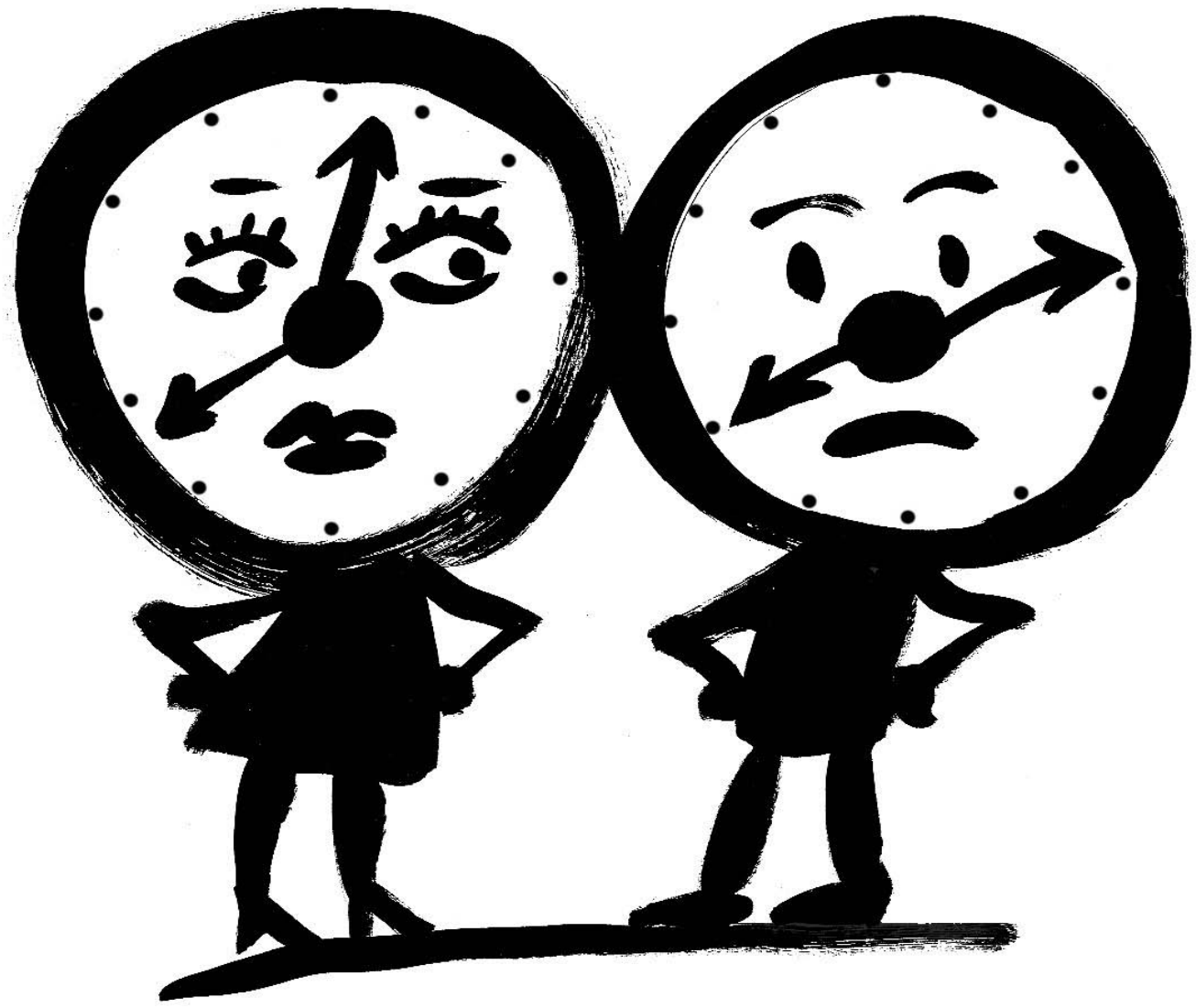
Unequal Support



By Fred Silberberg

Bob and Carol were married for 9½ years before they separated. Ted and Alice were married for 10½ years before they separated. The two couples had been neighbors for years before they each split up. They moved to the suburbs in the early years of their marriage, and Carol and Alice, who had both been employed before their marriages, had stopped working and were stay-at-home mothers at the time that they split from their husbands. Bob and Carol were a middle-class couple who at times struggled to pay the bills. Ted and Alice were much better off financially, having made money in the real estate market as a result of wise investments. Both women were 40 at the time of their separations. Each couple had two children. Before stopping work, Carol had been a schoolteacher, and Alice a secretary.

Neither couple could come to an agreement in their divorce on the issue of spousal support and ended up in court arguing over it. When it was over and done with, the court made orders concerning spousal support. Carol received support for 4 years, after which time it would terminate. Alice received support until she died, remarried, or further order of court.

The scenario described above, although hypothetical in terms of the facts, illustrates the problem in California concerning the duration of spousal support. A legislatively imposed but completely arbitrary statutory guideline results in significant disparity in spousal-support orders, a disparity which is grossly inequitable, which seems to have no basis in logic and which creates an incentive for people to attempt to stay together longer as well as a basis to exacerbate litigation and expense. That guideline is the presumption, affecting the burden of proof that a marriage in California is one of "long duration" if it lasts for more than 10 years from the date of marriage to the date of separation. The presumption is that a supported spouse who has been in a marriage of more than 10 years is entitled to support until "death, remarriage, or further order of court," and a spouse in a marriage of less than 10 years is not.

The law in California supposedly states that a person is obligated to contribute to his or her own support. The law also states that one is to become self-supporting within a "reasonable period of time," which is generally defined as one-half the length of the marriage except in a marriage of "long duration," that being of at least 10 years.

When the statute first went into effect, it defined a marriage of long duration under California standards as more than 10 years. Although there could be plenty of social commentary on that point alone, there seems to be no logical reason why a bright-line rule that does not in any way relate to the other facts of the case (such as economics) should be imposed on people seeking divorce. The imposition of this rule seems to go directly against the public policy in California as set forth in other statutes and decisional law that a party is obligated to become self-supporting.

The 10-year rule creates a cottage industry of unhappy people attempting to force something to last longer than it should.

Supported spouses who are unhappily married not uncommonly ask their divorce lawyer when they should separate. Often, potential divorcees ask their attorneys about the "10-year rule." The general public seems aware of the statute. More often than not, a spouse seeking support hangs in there solely to get over the 10-year mark. Also, the spouse who is going to pay support not uncommonly walks out the door just before the 10th anniversary to avoid coming within the 10-year time limit and risking a long-term support order. When things are shaky around the 10-year mark and a couple ends up in divorce court, a battle often occurs over the date of separation that has more to do with making it over the 10-year mark than anything else.

The existence of this 10-year rule in a sense creates a cottage industry of unhappy people attempting to force something to last longer than it should, solely to insure the continuing receipt of private welfare and the ability to delay the need to take financial responsibility for oneself as long as possible. That is not a message that we should be sending; nor is it the type of behavior that should be condoned legislatively. The statute essentially has the Legislature talking out of both sides of its mouth. On one hand, people are supposed to become self-supporting. On the other hand, because they were in a marriage for 10 years and a day, they may not have to become self-supporting. This is unfair for both parties. The one receiving support has little incentive to go back to work that may be the best thing to do after a divorce rather than focusing on how to maximize the financial recovery. The one paying support is penalized because, either by design or by happenstance, the marriage lasted just over 10 years. This is, after all, a no-fault divorce state. That policy should apply across the board. One should not be treated differently simply because of the application of this time rule, yet that is exactly what happens in California divorce cases.

There is no reason to allow one party longer-term support based solely on having overcome the 10-year period but cut off another party for not having made it quite that long. The law is supposed to treat people equitably, yet it does not do so in this regard. Other states have confronted this issue and resolved it. The length of the marriage does not automatically set forth a prescribed support duration that the supporting party has the burden of overcoming. Cases are judged on the facts presented and with consideration of the time needed for one to become retrained or able to rejoin the work force. In Texas, for example, there is no ability to obtain spousal support for more than three years after trial, and in the event a support order is obtained, the maximum allowable amount of support that can be ordered is the sum of $2,500 per month to meet basic living expenses. Although some may consider this statutory scheme harsh, the truth of the matter is that it insures that all litigants are treated equally, and it requires individuals who are no longer married to become self-supporting. Years ago, the federal government decided to send welfare recipients back to work, and the results as reported in the media have been beneficial. Spousal support is not all that different. A private party should not be forced to pay support beyond a reasonable period that, in turn, would create an incentive for the support spouse to become self-supporting. The rule does just the opposite. It encourages the supported spouse to stay on the dole as long as possible. This is not in keeping with the no-fault divorce policy. If you are no longer married, at some point the supported spouse should be able to move on and use his or her earnings for his or her own support, not that of the former spouse.

The Legislature should abolish the 10-year rule. Doing so would allow and in fact require a court to decide each case on the merits. It would end an arbitrary classification that results in the treatment of family law litigants in a disparate manner, leading to differing results that are not logical. Most important, requiring someone to provide for his or her own support would be consistent with the policy of the law.

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