

TEMPORAY SPOUSAL SUPPORT

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- Prior to trial, the court makes temporary (pendent lite) spousal support orders based on need and ability to pay.
- The purpose of temporary spousal support is to maintain the living conditions and standards of the parties in as close to the status quo position as possible pending trial
IRMO Burlini (1983) 143 Cal. App. 3d 65
- The need may arise any time after DOS. *IRMO Askmo* (2000) 85 Cal. App. 4th 1032
- Some counties have adopted guidelines for temporary spousal support. OK to use.
- Jurisdiction
 - Dissolution – FC 3600
 - Legal Separation – FC 3600
 - Nullity – FC 2254
 - Personal jurisdiction required to make a spousal support order
- Amount
 - Discretionary. The court may order temporary spousal support in any amount after considering the moving party's needs and the other party's ability to pay. *IRMO Murray* (2002) 101 CA4th 581
- Calculation
 - Guideline Calculator or other authorized program
 - NEVER use a guideline calculator to determine permanent support. *IRMO Schulze* (1997) 60 Cal. App. 4th 519

- Broad Discretion: The propriety and amount is solely within the discretion of the court subject to need and ability to pay. IRO Tong & Samson (2011) 197 Cal. App. 4th 23
- Nothing prevents considering FC 4320 factors when awarding temporary spousal support. IRMO Left (2012) 209 Ca. App. 4th 1137
- FC 4324.5 & 4325 limit the court's authority when domestic violence has occurred
 - Statute limiting use of misdemeanor no contest plea as admission did not bar use of ex-wife's misdemeanor domestic violence conviction to trigger presumption against spousal support [*IRMO Priem* (2013) 214 CA4th 505]
 - Imputing Income: May impute income but must have competent evidence that the party has the ability and opportunity to earn. Better to adjust. IRMO Wittgrove 120 Cal. App. 4th 1329.
- Duration
 - FC 4320(l): The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration [10 years] . . . , 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, Section 4336, and the circumstances of the parties. See IRMO Left (2012) 208 Cal. App. 4th 1137

- FC 4336. Marriage of long duration: rebuttable presumption that spousal support is indefinite or “until death or remarriage.”
- Retroactivity: Nothing in FC 3600 limits the court’s authority to make a retroactive order back to the date of filing the dissolution or legal separation IRMO Dick (1993) 15 Cal App. 4th 166
- “Gavron” Warning: Prior to modification of an order for spousal support due to failure to become self-supporting, the support recipient must have been given an admonition that failure to do so can result in reduction/termination of spousal support. *IMRO Gavron* (1988) 203 CA3d 705
 - Give warning when making first temporary spousal support order.
 - “It is the goal of the State of California that both parties shall become self-supporting within a reasonable period of time. In your case, that means...”
- Very Short Marriage: It is not an abuse of discretion to award spousal support even if the marriage lasted less than a year.
 - **TIP:** May want to order temporary support for a short

period of time and then set support at zero pending trial.

TIP:

With temporary spousal support **only**: give parties Dissomaste/Xspouse print out and incorporate into findings.

SPOUSAL SUPPORT – FC 4320 FACTORS

<p><u>MARITAL STANDARD OF LIVING:</u></p>	<p>1) Home - 2) Vehicles - 3) Vacations -</p>	<p>4) Assets/Savings - 5) Annual Income - 6) Recreational Activities -</p>
<p>IN ORDERING SPOUSAL SUPPORT <u>UNDER THIS PART, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING CIRCUMSTANCES:</u></p>	<p>HUSBAND</p>	<p>WIFE</p>
<p>(a) The extent to which the <u>earning capacity</u> of each party is sufficient to maintain the <u>standard of living</u> established during the marriage, taking into account all of the following:</p>	<p>A</p>	
<p>(1) The <u>marketable skills</u> of the supported party; the <u>job market</u> for those skills; the <u>time & expenses</u> required for the supported party to acquire the appropriate <u>education or training</u> to develop those skills; & the possible need for <u>retraining or education</u> to acquire other more <u>marketable skills</u> or employment</p>	<p>A1</p>	
<p>(2) The extent to which the supported party's present or future <u>earning capacity</u> is impaired by <u>periods of unemployment</u> that were incurred during the marriage to permit the supported party to devote time to <u>domestic duties</u>.</p>	<p>A2</p>	
<p>(b) The extent to which the supported party contributed to the <u>attainment of an education</u>, training, a career position, or a license by the supporting group.</p>	<p>B</p>	
<p>(c) The <u>ability of the supporting party</u> to pay spousal support, taking into account the supporting party's <u>earning capacity</u>, earned and unearned income, assets and standard of living.</p>	<p>C</p>	

<p>(d) The <u>needs of each party</u> based on the standard of living established during the marriage</p>	<p>D</p>	
<p>(e) The obligations and assets, including the separate property of each party</p>	<p>E</p>	
<p>(f) The <u>duration</u> of the marriage.</p>	<p>F</p>	
<p>(g) The <u>ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children</u> in the custody of the party</p>	<p>G</p>	
<p>(h) The <u>age and health of the parties</u></p>	<p>H</p>	
<p>(i) Documented evidence of any <u>history of domestic violence</u>, as defined in Section 6211, between the parties.</p>	<p>I</p>	
<p>(j) The <u>immediate and specific tax consequences</u> to each party.</p>	<p>J</p>	
<p>(k) The balance of the <u>hardships</u> to each party.</p>	<p>K</p>	
<p>(l) <u>The goal</u> that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage.</p>	<p>L</p>	
<p>(m) The <u>criminal conviction of an abusive spouse and the elimination of the award</u> in accordance with Section 4325</p>	<p>M</p>	
<p>(n) <u>Any other factors</u> the court determines are just and suitable.</p>	<p>N</p>	