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Guide to Family Court “Buzzwords” (Part 1)

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The purpose of this guide is to provide an instant definition of most of the common terms and “buzzwords” heard in a Family Law Department. By reading this guide and taking the accompanying self-study test, readers will have an “Instant Resource” to a case or code section that will provide the authority required to proceed in this challenging and important area of law. (Part Two appears in the Nov. 28, 2023 Daily Journal.)

1. § 2030 Fees: The basic Family Code section for attorney fees to be awarded based upon the respective financial circumstances of the parties after consideration of the impact of the Child Support (CS) or Spousal Support (SS) order. (All statutory references are to this code unless otherwise specified.)

2. § 271 Fees: Fees awarded for poor behavior of litigants. Must be “noticed” with an opportunity to be heard. Ability to pay the amount ordered is an element. “Need” is not a requirement.

3. “300” Proceeding: A juvenile dependency proceeding under Welfare & Institutions Code § 300 that may trump a family court proceeding.

4. § 473 Motion: A standard motion under the Code of Civil Procedure to set aside a judgment for mistake of fact or law. The outside time limit of six months from the “taking” of the judgment or order but must be brought within a “reasonable time”. Refer also to FC § 2121 relief from judgment.



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5. IV-D Case: A “Four-Dee” case. § 5212. Any case established, modified or enforced by the Department of Child Support Services. 42 U.S.C. §§ 654 or 454 of the Social Security Act.

6. § 2320 Requirement: A Judgment of Dissolution may generally not be entered unless one of the parties to the marriage has been a resident of California for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition. Where a Petition is amended from Legal Separation to Dissolution the date of the amended petition is deemed to be the “commencement of the proceeding.” (See § 2321.)

7. § 2640 Claim: A claim for reimbursement based upon one’s separate property contribution to the acquisition of CP or the other parties’ separate property. Requires tracing.

8. § 3557 Fees: Fees awarded for enforcement of a support order.

9. § 4320 Factors: These are the factors set forth in the code for determining the proper amount of permanent SS. Earning capacity, marketable skills, child-rearing, education, the foregoing of education, contributions to careers, “marital standard of living,” interests of the minor children, length of marriage, half the length of marriage, presumption of lengthy marriage and the needs of each spouse.

10. AF: Attorney Fees. See § 2030.

11. AFDC: Aid to Families with Dependent Children, since 7/1/97 called TANF (Temporary Assistance for Needy Families). These are generally heard on the special IV-D calendars and suspend Family Court’s right to proceed on CS issues.

12. After Discovered Assets (or Omitted Assets): Assets discovered by one spouse after the dissolution has been completed. Under §§ 2602 and 1101(h) 100% of these assets may be awarded to the non-hiding spouse. (See *In re Marriage of (IRMO) Rossi*, 90 Cal.App.4th 34 (2001) [involving this exact situation with a winning lottery ticket].)

13. Aid Case: See AFDC or TANF. Jurisdiction lies with the Depart-

ment of Child Support Services (DCSS) for purposes of CS.

14. Alternate Valuation Date: § 2552. See Valuation Date (Part Two).

15. ATRO's: Automatic Temporary Restraining Orders prohibiting disposal of property by any methodology. Printed on the back of the summons and effective as to both parties, when filed as to Petitioner and when served as to Respondent.

16. Bifurcation: California Rules of Court, rule 5.390. Permits the issue of dissolution or other issues to be severed from all other issues. Termination of marital status may be granted without waiting for a complete resolution of all issues. Use caution when there are medical or Social Security termination problems. There are Family Code § 2337 conditions which must be imposed to protect the status quo.

17. BK: Bankruptcy. U.S.C. Title 11. Stops some property actions between the parties and some creditors. Does not stop ongoing CS, SS or family support nor does it stop any proceedings involving those issues except arrears.

18. Brown and Yana: *IRMO Brown & Yana*, 37 Cal.4th 947 (2006). Where there is a final custody determination in a move-away case, an evidentiary hearing is only required if the non-custodial parent can make a prima facie showing of detriment from the planned move; absent such a showing the presumptive right to move controls.

19. Brown Formula: *IRMO Brown*, 15 Cal.3d 838 (1976), known as the "TimeRule." A formula for dividing pension plans (monthly amounts to be paid in the future). The formula is: The CP interest is equal to ½ of The Number of Years the Parties were Married While in the Plan / Divided By the Total Number of Years the Employee was in the Plan.

20. Burgess Case: *IRMO Burgess*, 13 Cal.4th 25 (1996). The California Supreme Court held that custodial parents may live wherever they choose, and unless there is a significant sharing of the custody of the children or a basis for a change of custody based upon a change of circumstances, the children will be permitted to move with them.

21. Capitalization Rate; Cap Rate: A factor supplied by a business valuator in doing a business valuation. The cap rate is based on risk. The higher the risk the lower the cap rate and the higher the

interest rate. The Cap Rate is the inverse of the interest rate. (i.e., a Cap Rate of 8 reflects and interest rate of 12% [$100 \div 8 = 12$]). The term is also used more loosely as a multiplier for goodwill or excess earnings.

22. Child Care Credit: You qualify for the full amount of the 2023 Child Tax Credit for each qualifying child if you meet all eligibility factors and your annual income is not more than \$200,000 (\$400,000 if filing a joint return).

23. CS – Add-ons: § 4062. Mandatory additions to CS are child-care cost for employment, training or searching for employment purposes and medical expenses not covered by insurance. A court can announce these items when pronouncing the CS. Discretionary add-ons include special education or special needs and travel costs for visitation.

24. CS – Adult Child: § 3910. Father and mother have equal responsibility to support an adult incapacitated child. Where the child is residing with one parent, the obligation is the same as that for a minor child.

25. CS–Fluctuating Income: § 4064. The court can adjust support to accommodate fluctuating income. i.e., teacher's income, a court can do a summer dropdown rather than annualizing the income over 12 months.

26. CS –Guideline: § 4055. CS=k [HN-(H%) (TN)]. TN is Total Net income of both parties. HN is the high earner's net income. H% is the high earner's timeshare. k varies depending on the parties' total net incomes.

27. CS – Job Related Expenses: § 4059(f). A court considers necessity, benefit to the employee and other relevant facts.

28. CS – Garnishment: The proper term is "Income Withholding Order for Support," but the rules are the same. 15 U.S.C. § 1673; Code of Civil Procedure § 706.052.

29. CS – Grandchild: § 3930. No legal obligation to support a grandchild unless the court has granted custody of the child to the grandparent.

30. CS – Hardships: § 4072. Specific findings of hardship are required. The reason the hardship was granted, amount of the hardship and the underlying facts and the duration of the hardship. Permissible hardships

include uninsured extraordinary medicals, catastrophic loss or a natural or adopted child in the home (not step-kids).

31. CS – Health Insurance: § 3750 et seq. If health insurance is available at reasonable cost, it must be kept in effect. The cost of health insurance is in addition to CS, but it is deductible in computing gross or net income. Reasonable cost is defined by § 3751.

32. CS – Registration: § 5600. Inter-county orders may be registered in a county and enforced as if it were a regular filing.

33. CS – Retroactivity: § 4009. CS may be made retroactive to the date of the filing of the petition or filing of the motion.

34. CS – Security: § 4560 et seq. The court may order a security deposit of up to one year's CS as security for the payment of CS, certain criteria being applicable.

35. CS – Wage Assignment: § 5200 et seq. Properly called an Earnings Assignment Order for Support. Required in all cases. Parties by stipulation may agree to stay the wage assignment with findings.

36. CLETS: § 6380. California Law Enforcement Telecommunications System which is administered by the State Department of Justice (DOJ). All CLETS orders are transmitted to the DOJ and are made available to all law enforcement officers throughout the state.

37. COBRA Coverage: Consolidated Omnibus Budget Reconciliation Act. (Pub.L. No. 99–272 (Apr. 7, 1986) 100 Stat. 82). Applies only to employers with over 20 employees. Provides for the continuation of insurance coverage for a period of 36 months at the company's rate. Thereafter for an additional 24 months at retail rates.

38. COLA: Cost of Living Adjustment, usually in the context of military pay. (See www.dfas.mil.)

39. Commingling: § 852. The act of combining bits and pieces of both separate and community property together so that their "unentanglement" becomes impossible. i.e., they cannot be traced.

40. Contempt: Code of Civil Procedure § 1209 et seq. A quasi-criminal proceeding requiring all the formalities of a criminal proceeding. Four elements: (1) valid, unambiguous order, (2) knowledge of the order, (3) ability to comply, and (4) willful violation of the order. Note that in a CS proceeding, abil-

ity is presumed and the burden of proof shifts to the defense. (*Moss v. Superior Court*, 17 Cal.4th 396 (1998).)

41. Contempt – Statute of Limitations: Code of Civil Procedure § 1218.5. Three years from the date that each payment falls due as to both child and spousal support. Two years from the date that the contempt occurred on all other actions.

42. Community Opportunity Doctrine: § 721, Corp. Code § 16404. Pursuant to such a doctrine, a party can be made to disgorge profits made from separate property investments made during marriage when there was community property available with which the investment could have been made, unless the investment was first expressly offered to the other spouse.

43. CP General Presumption: § 760. Property acquired during marriage is presumed to be community. May be rebutted by tracing.

44. CP Title Presumption: § 2581. Property acquired during marriage in joint title is presumed to be community property. May not be rebutted except by clear statement in the deed or other documentary evidence of title or written agreement of the parties.

45. CS: Child Support. § 3900.

46. CSRS: The Civil Service Retirement System is a defined benefit, contributory retirement system.

47. Custody – Best Interests: § 3011. The initial doctrine in making a custody award.

48. Custody – Frequent & Continuing contact: §§ 3040, 3100. A doctrine affecting the award of custody.

49. Custody – Joint: § 3002. Means both physical and legal custody.

50. Custody – Legal: §§ 3002, 3006. Affects the responsibility to make the decisions relating to the health, education, and welfare of the child. May be joint or sole.

51. Custody – Physical: §§ 3004, 3007. The actual physical care of the child.

52. Custody – Order of Preference: § 3040. 1st is joint, 2nd is to either party, next is to a 3rd party where child has lived, finally to a suitable and able person.

53. Custody – Presumption against joint legal or joint physical custody when there is domestic violence: § 3044. Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the

child or the child's siblings, or against a person in § 3011(a)(2)(A) with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child.

54. Custody – Visitation Rights: § 3100. The court shall grant visitation, unless it is detrimental to the best interests of the child.

55. DCSS: § 17000 et seq. Department of Child Support Services.

56. Deferred Comp: Any form of compensation or retirement benefits that is deferred until a later receipt date. Usually involved with a either a tax-deferral or other economic benefit conferred by the employer.

57. Defined Benefit Plan: A retirement plan that is defined in terms of the future retirement payments that will be paid.

58. Defined Contribution Plan: A retirement plan that is defined by the contribution that is made to fund the plan. A pension/profit sharing plan is a DCP.

59. Dependency Exemption: Internal Revenue Code § 151(d). The exemption gives a deduction from taxable income for a dependent child or adult.

60. Disclosure Statutes: PDD (Preliminary Declaration of Disclosure) & FDD (Final Declaration of Disclosure). §§ 2104, 2105.

61. DOS: Date of Separation. Controls the characterization of earnings.

62. DRO: Domestic Relations Order. A family court order for the

division of retirement benefits before it has been qualified by the employer or an order to a government agency.

63. Duke Orders: § 3800. Named after an old case from San Diego (*IRMO Duke* (1980) 101 Cal.App. 3d 152, 158–159.) The current statute provides for the deferred sale of the family residence if there is a child involved and a variety of other tests are met.

64. DV/TRO – Conduct: § 6320 et seq. The court may issue an ex parte order enjoining a party from, inter alia, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

65. DV/TRO – EPO's: § 6250. If a person is in immediate and present danger of domestic violence a judge or commissioner may issue an emergency protective order (EPO) over the phone.

66. DV/TRO – Extending the Order: § 6345. A DV/TRO may be issued for up to five years. The orders may be extended for either five years or permanently upon application without a showing of further violence.

67. DV/TRO – Mutual Orders are Prohibited: § 6305. Each party must make the request, personally appear and allege facts that permit the court to conclude that both parties were aggressors and neither were acting in self-defense.

68. DV/TRO – Property: § 6324.

The court may determine the temporary use and possession of personal or real property.

69. DV/TRO – Restitution: § 6342. The court may order restitution for loss of earnings and out-of-pocket expenses, including medical expenses, after a noticed hearing.

70. DV/TRO – Guns and Warning: § 6389. After the issuance of a DV/TRO the court shall issue a warning that the person restrained is not permitted to own or possess guns.

71. DV/TRO – Kick outs: § 6321. The court may exclude a person from the family dwelling where there is an assault or threat of assault to the party or anyone under their care.

72. DVRO: Domestic Violence Restraining Order.

73. Earning Capacity: §§ 4058(b), 4320. A theory proffered by counsel on support issues that the other person has the capacity to earn more income than they are earning. If successful in persuading the court, the court will impute a greater income to that party.

74. Educational Loans: § 2627. The party who gets the education gets the loan that goes with it unless spent on community property living expenses.

75. Elkins: Court may not adopt local rules that conflict with state law; declarations are generally inadmissible hearsay and may not be used as a basis to decide trials (as opposed to motions). Elkins Family Law Task Force identified issues which Family Court must modify, including testimony at RFO; hearing from the child 14 or over; etc.

76. Emancipation: § 7000 et seq. A minor is emancipated under the age of 18 if they entered into a valid marriage, joined the military or received a court-authorized declaration of emancipation (see § 7122).

77. EPO: Emergency Protective Order. § 6250.

78. Epstein Credit. *IRMO Epstein*, 24 Cal.3d 76 (1979). The court has jurisdiction to order reimbursement for debts paid after the date of separation from either a party's separate property or separate earnings.

79. ERISA: Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. § 1003 is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

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