

Divorce Digest

February 2011

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Dear James,

Greetings! In this month's newsletter, we have included articles written by attorneys David E. Rickett, Lovette T. Mioni, and James P. Reape regarding child custody/visitation and the appointment of minor's counsel, claims against a spouse for emotional distress, and spousal support considerations. Mr. Rickett's article provides information regarding a child's preferences during a divorce and how minor's counsel can help articulate these preferences, while Ms. Mioni's article discusses the factors which determine the amount and duration of spousal support a spouse may receive. Mr. Reape's article discusses whether a spouse can sue for emotional distress.

We hope you find these articles informative and we encourage you to visit our website, www.divorcedigest.com to review other articles written by attorneys at The Reape - Rickett Law Firm. You can also find our articles in The Magazine of Santa Clarita and periodically in The Signal's "It's the Law" section.

Sincerely,
James Reape and David Rickett
The Reape-Rickett Law Firm

My Child Can Have an Attorney?



by **David E. Rickett, Esq.**

Generally in divorce or paternity cases (cases where there is a child(ren) but no marriage), the parties battle over custody and/or visitation. Oftentimes, it is very difficult for the bench officers to make custody/visitation orders based on the "he said/she said" paperwork filed by the parties. Under Family Code, Section 3042, IF the child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody. But how is the court to determine if the child is of sufficient age and capacity to reason? Is the child to come into the courtroom, in front of his/her parents and the general public, and answer questions by attorneys? Or is the child supposed to sit down at the dinner table and write the judge a letter regarding where the child wants to live and why? The answer to both is, of course, no. While the law gives the wishes of a child weight in making a custody order, how to get this information, as well as other necessary information before the court for its consideration of all relevant information prior to making a custody/visitation order that is in the best interest of the minor child(ren), is where Minor's Counsel involvement can come into play. Family Code, Section 3150, states, in pertinent part, that if the court determines it would be in the best interest of the minor child(ren), the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding. The attorney is appointed by the Court and is charged with the representation of the child(ren)'s best interest. Their role is to gather facts that bear on the best interest of the child(ren), and present those facts to the Court. This may include the minor's attorney to interview the child(ren), interview relevant witnesses, review the court files, and make any further investigations as minor's counsel considers necessary to ascertain facts relevant to the custody or visitation hearings. [Read More...](#)

Staff Spotlight



Lovette Mioni, received her Bachelor of Art Degree in Political Science with a minor in Economics, *Cum Laude*, from California State University Bakersfield in 2006. She received her Juris Doctorate from Southwestern Law School in 2010. While at Southwestern, Ms. Mioni was the recipient of the John J. Schumacher Leadership Scholarship, served as the American Bar Association Law School Division Representative and was the Assistant Director of Community Affairs for the Student Bar Association.

Hot Topics on the Interactive Forum

View the hot topics, ask a question, or voice your opinion on The Reape-Rickett Law Firm's [Divorce Digest Message Forum](#).

Can You Sue For Emotional Distress?

by James P. Reape, Esq.



Steven and Wendy married on January 1, 1990. On November 25, 1990, Wendy gave birth to a daughter, Stephanie. Unbeknownst to Steve, Wendy had been having a sexual relationship with a man named H.T., both before and during his and Wendy's marital relationship. It was through this liaison that Stephanie was conceived. Wendy learned of H.T.'s paternity one day after Stephanie's birth. Steve was not privy to this information, and Wendy did not make him aware. As a result, Steve believed Stephanie to be his natural daughter and he developed a close parental bond with her. In mid 1993, Steve and Wendy separated. Steve filed a Petition for Dissolution of Marriage, and sought sole legal and physical custody of Stephanie. Wendy, in a malicious attempt to interfere with Steve's relationship with the child, told him Stephanie was not his child, but was a result of rape. At Wendy's suggestion, Steve took a blood test which confirmed his lack of paternity over Stephanie. Further scheming to interfere with the relationship between Steve and Stephanie, Wendy attempted to introduce the results of the blood tests into the dissolution proceeding in order to challenge Steve's paternity. The Family Court, however, found Steve was entitled to the conclusive presumption of paternity, based on the fact that a child born to a married woman cohabiting with her husband is conclusively presumed to be a child of the marriage. This determination was affirmed on Wendy's appeal. In July 1994, Steve filed a suit against Wendy alleging fraud, intentional infliction of emotional distress, and negligent infliction of emotional distress. Wendy objected to Steve's complaint, however, her objection merely contended Steve's cause of action for intentional infliction of emotional distress was barred by public policy. The trial court agreed with Wendy. Upon Steve's appeal, the appellate court affirmed the trial court's decision. Public policy considerations which were ruled to have barred Steve's claim included an improper attempt by Steve to recover damages for the creation of a close and loving relationship between Steve and Stephanie, as well as Steve's claim that Wendy attempted to destroy the father/child relationship between him and Stephanie, and the possible adverse affects on Stephanie by her being dragged into the civil proceedings. The arena in which Steve's claims arose was a dissolution proceeding. Dissolution and custody

***Testimonial of the Month Comment from a current client:**

" I want to express my appreciation for your consideration and sympathetic ear during my intense divorce. Your expedient responses to my questions and genuine concern have been a blessing."

***This testimonial does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.**

proceedings are often fraught with emotionally charged issues and competing charges of impropriety. As married persons share an intensely personal and intimate relationship, when discord between them arises, it is inevitable that they will suffer distress.

Steve's claim, if allowed, would also contravene policies underlying California's abolition of Heart-Balm Actions, and causes of action for alienation of affection. The judiciary should not attempt to regulate all aspects of the human condition. Relationships can take varied forms, and this begets complications and entanglements which often defy reason. [Read More...](#)

Am I Entitled to Spousal Support?

by Lovette T. Mioni, Esq.



California Family Code Section 4320 sets forth the circumstances necessary to determine if, and for how long, a spouse may receive spousal support. In order to determine if you are entitled to support, you should review some of the factors the court considers by asking yourself the questions below:

Is the earning capacity of each party sufficient to maintain the standard of living established during the marriage? If each party is capable of maintaining the lifestyle they had during marriage on their own, they are expected to do so. Within this first factor, the court also considers two subfactors:

1. The marketable skills of the supported party: When looking at this, the court determines what job skills the support party has and if there is a job market for these skills. If the supported party has no marketable skills, the court will usually grant spousal support for a reasonable amount of time so that the party seeking support can be supported while he/she acquires the appropriate education or training to develop those skills into something more marketable.
2. Periods of unemployment: The court also looks to see if the party seeking support has not worked for any substantial amount of time. If the party seeking support has not worked and instead has devoted time to domestic duties, spousal support will likely be granted for a longer period of time giving the supported spouse a better chance of reentering the job market.

Did the supported party contribute to the attainment of an education, training, career, or license by the supporting party? For instance, working a job and putting your spouse through medical school in hopes of one day being able to stay home or live a more comfortable lifestyle can work in your benefit when seeking support.

What is the ability of the supporting party to pay spousal support? The higher the income of the supported party, the better their ability to pay support.

What are the needs of each party based on the standard of living established during marriage? The goal of spousal support is to mimic the lifestyle of the parties during marriage. The court does not like to see one party suffering financially because the other was the breadwinner of the family. Thus, the court tries to make the living situation after marriage equitable until the supported party can become self sufficient.

What are the obligations, assets and separate property of each party? If the party seeking to be supported can be self sufficient because of assets or separate property, it will be harder for the party seeking support to show a need for the support.

How long were parties married? If the marriage was for 10 years or less, spousal support is usually awarded for half the length of the marriage. If the marriage was for longer than 10 years, the court has the authority to potentially make it last for an unlimited amount of time.

Is the party seeking support responsible for the care of the children? If seeking employment will have a negative impact on the dependent children, the court is a little hesitant to make that party seek employment at the detriment of the children.

Are the parties healthy? The court takes into consideration the age and health of the parties. If someone is over the retirement age, the court is not likely to order them to find employment and become self sufficient. Support will likely be granted to a party seeking support who cannot work.

Are there hardships to either party? If there are any hardships, financially or otherwise, that you feel would benefit you, be sure to bring them up. This could be a number of things, including spousal support paid to a previous spouse.

While this is not a complete list of factors and questions you should consider, it is a good initial idea of what the court looks at when determining whether to award support or not.

The Reape-Rickett Law Firm

Our mission is to provide Family Law legal services that are second to none. We conduct ourselves in accordance with the highest ethical standards and are committed to providing quality services. Each firm member takes special care to understand the unique and individual concerns of our clients. Our team approach to each case ensures efficient and timely responses to simple or complex issues. We empower our clients with knowledge and information, enabling them to make reasoned and results-oriented decisions. The Reape-Rickett Law Firm is the firm of choice when results matter.

