



# Family Law Focus

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## The Role of the Marital Standard of Living in Determining Spousal Support

### CASE SUMMARY

This article examines what factors contribute to determining the marital standard of living for the purpose of determining spousal support.

**“The marital standard of living is intended by the Legislature to mean the general station in life enjoyed by the parties during their marriage.”**  
***Marriage of Smith (1990)***  
***225 Cal.App.3d 469.***

Cal. Fam. Code §4330(a) states that a court may award spousal support in an amount and for a period of time that is based on the standard of living established during marriage. The marital standard of living is the base reference point from which the court analyzes the Cal. Fam. Code §4320 circumstances in determining the amount and duration of spousal support. *Marriage of Ostler & Smith (1990)* 223 Cal.App.3d 33.

Once the marital standard of living has been established to serve as a reference point, the trial court must consider the circumstances as set forth in Cal. Fam. Code §4320 in determining whether to order permanent spousal support and

setting the amount of permanent spousal support. Cal. Fam. Code

§4330(a). If the court does not consider and weigh all the Cal. Fam. Code §4320 factors, the order is reversible for abuse of discretion. *Marriage of Geraci (2006)* 144 Cal.App.4th 1278. The Cal. Fam. Code §4320 factors are given different weight depending upon the facts and circumstances of each case.

The fourteen Cal. Fam. Code §4320 circumstances are set forth in their full statutory text below. Cal. Fam. Code § 4320. Determination of amount due for support; considerations

In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or



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education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the

parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

(j) The immediate and specific tax consequences to each party.

(k) The balance of the hardships to each party.

(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 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. 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.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325.

(n) Any other factors the court determines are just and equitable.

The marital standard of living is included in several of the Cal. Fam. Code §4320 factors in addition to being the base reference point

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from which the court analyzes the Cal. Fam. Code §4320 factors.

- Cal. Fam. Code §4320(a): The extent to which the parties' respective earning capacities enable them to maintain the standard of living established during the marriage.
- Cal. Fam. Code §4320 (c): The supporting party's ability to pay spousal support, taking into account his or her standard of living.
- Cal. Fam. Code §4320(d): The parties' needs based on the standard of living established during marriage.

The statutory structure is drafted in this manner to codify the case law establishing that the marital standard of living should be the court's point of reference is setting the amount and duration of spousal support. *Marriage of Smith (1990) 225 Cal.App.3d 469*. Cal. Fam. Code §4332 requires the trial court to make specific factual findings with respect to the standard of living during marriage whether or not requested to make such findings.

The trial court should award spousal support where the supported spouse is unable to maintain the marital standard of living without payment from the payor spouse who is able to pay. The trial court should not award spousal support to enable the spouse receiving payment to enjoy a lifestyle superior to the marital standard of living. Also, the payor spouse should not be required to pay spousal support simply to keep the payor spouse from enjoying

a standard of living in excess of the marital standard of living. The goal of spousal support is to allow the supported spouse to enjoy a standard of living equal to the marital standard of living if possible. *Marriage of Hoffmeister (1987) 191 Cal.App.3d 351*. Of course, in many instances both spouses will enjoy a post-separation standard of living below the marital standard of living simply due to the increased costs

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associated with maintaining two households.

The Legislature directs that the marital standard of living is the starting point for determining the amount and duration of spousal support but no code section defines the marital standard of living. The courts have held that "the marital standard of living is intended by the Legislature to mean the general station in life enjoyed by the parties during their marriage." *Marriage of Smith (1990) 225 Cal.App.3d 469*.

Trial courts ordinarily look to actual expenditures made during marriage to determine the marital standard of living. The court should also take into account the history of marital savings, which can be viewed as future expenditures. The marital

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standard of living is equal to income if the parties spend all of their available income. The marital standard of living is also equal to income if the parties live beyond their means by financing their marital lifestyle. A more thorough analysis and presentation may be required in

the event the parties did not spend all their available income during marriage. The table below is an example of a presentation that should be prepared to demonstrate the level of spousal support required to maintain the marital standard of living.

| <b>In re The Marriage of Doe Exhibit I</b>  |                     |                    |
|---|---------------------|--------------------|
| <b>Supported Spouse's Marital Standard of Living Analysis</b>                         |                     |                    |
| <b>Expense</b>  | <b>Annually</b>     | <b>Monthly</b>     |
| Mortgage (statement attached)   | \$105,048.00        | \$8,754.00         |
| Property Taxes (statement attached)   | \$28,404.00         | \$2,367.00         |
| Homeowner's Insurance (statement attached)  | \$494.00            | \$41.17            |
| Homeowner's Association Dues (statement attached)                                     | \$12,000.00         | \$1,000.00         |
| Home Maintenance (total of checks paid year prior to DOS)                             | \$900.00            | \$75.00            |
| Home Repairs (total of checks paid year prior to DOS)                                 | \$12,500.00         | \$1,041.67         |
| Utilities (total paid year prior to DOS)  | \$8,376.00          | \$698.00           |
| Phone, Cable, Internet (total paid year prior to DOS)                                 | \$4,488.00          | \$374.00           |
| Automobile Expenses (total car payment, gas, service paid year prior to DOS)          | \$10,164.00         | \$847.00           |
| Health Insurance (statement attached)   | \$5,748.00          | \$479.00           |
| Unreimbursed Medical Expenses (total paid year prior to DOS)                          | \$9,438.00          | \$78.00            |
| Food at Home (total checking account and credit card statements year prior to DOS)    | \$11,760.00         | \$980.00           |
| Food Eating Out (total checking account and credit card statements year prior to DOS) | \$13,296.00         | \$1,108.00         |
| Laundry (total checking account and credit card statements year prior to DOS)         | \$2,904.00          | \$242.00           |
| Clothing (total checking account and credit card statements year prior to DOS)        | \$4,416.00          | \$368.00           |
| Personal (total checking account and credit card statements year prior to DOS)        | \$2,892.00          | \$241.00           |
| Fitness (total account withdrawals for membership)                                    | \$1,068.00          | \$89.00            |
| Entertainment (total checking account and credit card statements year prior to DOS)   | \$3,252.00          | \$271.00           |
| Gifts (total checking account and credit card statements year prior to DOS)           | \$3,036.00          | \$253.00           |
| Vacations (total checking account and credit card statements year prior to DOS)       | \$10,140.00         | \$845.00           |
| Charitable Contributions (average from last three years income tax returns)           | \$3,500.00          | \$291.67           |
| Savings, Investment, Retirement (total 401k and IRA contributions year prior to DOS)  | \$52,000.00         | \$4,333.33         |
| Federal and State Income Taxes (CPA estimate on support requested)                    | \$27,360.00         | \$2,280.00         |
| <b>TOTAL EXPENSES</b>   | <b>\$333,184.00</b> | <b>\$27,056.83</b> |
| (Supported Spouses Current Earnings)  | -\$69,458.00        | -\$5,788.17        |
| (Investment Income)   | -\$14,246.00        | -\$1,187.17        |
| <b>Spousal Support Necessary to Replicate MSOL</b>                                    | <b>\$249,480.00</b> | <b>\$20,081.50</b> |

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The amount of spousal support calculated as necessary to maintain the marital standard of living is moot if the supporting spouse does not earn income sufficient to pay. An exhibit should be prepared to present to the court to establish the supporting spouse's earned income to demonstrate his or her ability to pay the support necessary to maintain the marital standard of living. In cases where one spouse is the sole wage earner, the same table can also be evidence of the marital standard of living. The table below is an example of an exhibit prepared to demonstrate to the court the supporting spouse's ability to pay spousal support in an amount necessary to maintain the marital standard of living.

| <b>In re The Marriage of Doe Exhibit II</b> |  |                     |                     |                     |                       |               |                     |                |                    |
|---|--|---------------------|---------------------|---------------------|-----------------------|---------------|---------------------|----------------|--------------------|
| <b>Supporting Spouse's Earned Income</b>    |  |                     |                     |                     |                       |               |                     |                |                    |
| <b>(Income derived from tax returns)</b>    |  |                     |                     |                     |                       |               |                     |                |                    |
| <b>Year</b>                                 | <b>2003</b>  | <b>2004</b>         | <b>2005</b>         | <b>2006</b>         | <b>2007</b>           |               |                     |                |                    |
| Wages and Salary                            | \$729,468.00   | \$758,634.00        | \$742,587.00        | \$814,004.00        | \$894,325.00          |               |                     |                |                    |
| Other Income:                               |  |                     |                     |                     |                       |               |                     |                |                    |
| Interest                                    | \$928.00   | \$1,577.00          | \$1,622.00          | \$1,588.00          | \$2,248.00            |               |                     |                |                    |
| Dividends                                   | \$22,671.00  | \$24,789.00         | \$26,874.00         | \$21,957.00         | \$29,824.00           |               |                     |                |                    |
| Capital Gain (Loss)                         | -\$3,000.00  | -\$3,000.00         | -\$3,000.00         | -\$3,000.00         | -\$3,000.00           |               |                     |                |                    |
| Other Gain (Loss)                           | \$0.00   | \$0.00              | \$0.00              | \$0.00              | \$0.00                |               |                     |                |                    |
| Rents, Royalties, etc                       | \$0.00   | \$0.00              | \$0.00              | \$0.00              | \$0.00                |               |                     |                |                    |
| Subtotal Income                             | \$750,067.00   | \$782,000.00        | \$768,083.00        | \$834,549.00        | \$923,397.00          |               |                     |                |                    |
| Adjustments to Income                       |  |                     |                     |                     |                       |               |                     |                |                    |
| Retirement Contributions                    | \$62,000.00  | \$80,000.00         | \$84,000.00         | \$88,000.00         | \$90,000.00           |               |                     |                |                    |
| Less: Capital Gains                         | \$3,000.00   | \$3,000.00          | \$3,000.00          | \$3,000.00          | \$3,000.00            |               |                     |                |                    |
| Less: Other Gain (Loss)                     | \$0.00   | \$0.00              | \$0.00              | \$0.00              | \$0.00                |               |                     |                |                    |
| Subtotal Adjustments                        | \$65,000.00  | \$83,000.00         | \$87,000.00         | \$91,000.00         | \$93,000.00           |               |                     |                |                    |
| <b>Total Income</b>                         | <b>\$815,067.00</b>  | <b>\$865,000.00</b> | <b>\$855,083.00</b> | <b>\$925,549.00</b> | <b>\$1,016,397.00</b> |               |                     |                |                    |
| <b>Avg Monthly Income</b>                   | <b>\$67,922.25</b>   | <b>\$72,083.33</b>  | <b>\$71,256.92</b>  | <b>\$77,129.08</b>  | <b>\$84,699.75</b>    |               |                     |                |                    |
| <b>5 Year Average</b>                       | <table border="1" style="width: 100%;"> <tr> <td style="text-align: right;"><b>Annual</b></td> <td style="text-align: right;"><b>\$895,419.20</b></td> </tr> <tr> <td style="text-align: right;"><b>Monthly</b></td> <td style="text-align: right;"><b>\$62,181.89</b></td> </tr> </table> |                     |                     |                     |                       | <b>Annual</b> | <b>\$895,419.20</b> | <b>Monthly</b> | <b>\$62,181.89</b> |
| <b>Annual</b>                               | <b>\$895,419.20</b>  |                     |                     |                     |                       |               |                     |                |                    |
| <b>Monthly</b>                              | <b>\$62,181.89</b>   |                     |                     |                     |                       |               |                     |                |                    |
| <b>4 Year Average</b>                       | <table border="1" style="width: 100%;"> <tr> <td style="text-align: right;"><b>Annual</b></td> <td style="text-align: right;"><b>\$915,507.25</b></td> </tr> <tr> <td style="text-align: right;"><b>Monthly</b></td> <td style="text-align: right;"><b>\$76,292.27</b></td> </tr> </table> |                     |                     |                     |                       | <b>Annual</b> | <b>\$915,507.25</b> | <b>Monthly</b> | <b>\$76,292.27</b> |
| <b>Annual</b>                               | <b>\$915,507.25</b>  |                     |                     |                     |                       |               |                     |                |                    |
| <b>Monthly</b>                              | <b>\$76,292.27</b>   |                     |                     |                     |                       |               |                     |                |                    |
| <b>3 Year Average</b>                       | <table border="1" style="width: 100%;"> <tr> <td style="text-align: right;"><b>Annual</b></td> <td style="text-align: right;"><b>\$932,343.00</b></td> </tr> <tr> <td style="text-align: right;"><b>Monthly</b></td> <td style="text-align: right;"><b>\$77,695.25</b></td> </tr> </table> |                     |                     |                     |                       | <b>Annual</b> | <b>\$932,343.00</b> | <b>Monthly</b> | <b>\$77,695.25</b> |
| <b>Annual</b>                               | <b>\$932,343.00</b>  |                     |                     |                     |                       |               |                     |                |                    |
| <b>Monthly</b>                              | <b>\$77,695.25</b>   |                     |                     |                     |                       |               |                     |                |                    |

There are exceptions to the general rule of looking at marital expenditures plus marital savings to determine the marital standard of living where the marital standard of living was unreasonable. The court should focus on what a reasonable marital standard of living would have been in the case where the parties' marital standard of living was unreasonable. The trial courts have discretion in this area and may adjust spousal support up or down depending upon what is determined to be the reasonable marital standard of living but nothing compels them to do so.

The marital standard of living may have been unreasonably high where the parties lived off of excessive credit, one or both parties worked excessive overtime or second jobs, or where the marital lifestyle was financed by assets. The parties should present evidence of what the marital standard of living should

have been had the parties not borrowed excessively or worked excessive hours. However, the trial court may order the supporting spouse to pay support congruent with an excessive marital standard of living by ordering the supporting spouse to continue to liquidate assets to fund the high standard of living.

The marital standard of living may have been unreasonably low where the parties suppressed their lifestyle to allow one or both parties to complete their education, or due to gambling or substance abuse issues. The court may order spousal support in excess of that necessary to finance the marital standard of living where the former student spouse becomes employed or where the former gambler or substance abuser recovers. Also, the trial court may order spousal support in an amount above that necessary to fund the marital standard of living where the parties enjoyed an upwardly mobile standard of living due to community efforts.