

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

CASE LAW UPDATE

1. *In re Marriage of Hearn* (2023) 94 Cal.App.5th 380

- H appealed from an order awarding W \$25,000 in need-based attorney fees under Family Code section 2030. H argues that the trial court erred in denying his request for an evidentiary hearing and in awarding fees without considering the factors specified in the applicable statutes. He also argues that there is no evidence that he can comply with the court's order.
- Order Affirmed
 - H forfeited the right to live testimony under Family Code § 217 by not asking to testify or to cross-examine W and the trial court made a sufficient finding of good cause to refuse live testimony. A court is not required to set forth its conclusions as to all factors listed in California Rules of Court, rule 5.113, but instead is required only to state the facts upon which the finding of good cause is based.
 - A fee award is limited to the amount that is “reasonably necessary” to maintain or defend the proceeding (Fam. Code, § 2030, subd. (a)(1)), and must be “just and reasonable under the relative circumstances of the respective parties.” (Fam. Code, § 2032, subd. (a).) In determining what is just and reasonable under the circumstances, the court is directed to consider the circumstances listed in section 4320. (Fam. Code, § 2032, subd. (b).) The fact that the party requesting a fee award has resources to pay the party's own fees does not bar an order that the other party pay all or part of the requested fees. The trial court made the required findings to support its award of need-based attorney fees under Family Code § 2030, and those findings were supported by substantial evidence.
 - Fam Code § 4059 provides that when calculating net disposable income, the only deductions from gross income are the party’s state and federal income tax liability, FICA contributions, mandatory retirement deductions, health insurance premiums, child support, and related expenses.

2. *In re Marriage of Cole* (2023) 94 Cal.App.5th 450

- Trial Court denied F’s request to reduce or eliminate child support for calendar year 2020, finding F’s testimony regarding his personal finances “largely unbelievable.” The trial court ordered F to pay \$90,444 in total child support for 2020. The trial court also ordered F to pay M’s attorney fees pursuant to Family Code § 271 in the amount of \$123,909.
- Order Affirmed.

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

- Where a parent seeks to reduce a support order, that parent shoulders the burden of proving changed circumstances and a lack of ability and opportunity to earn the income necessary to pay the court-ordered support. The trial court did not abuse its discretion in imputing income to F in excess of his actual salary after concluding that F's reported salary in 2020 was not determinative of his ability to pay the court-ordered support amount and that he possessed sufficient financial assets to meet his 2020 child support obligation. F's voluntary decision to substantially reduce his income while continuing to support his lifestyle using other assets, instead of drawing a salary that would cover his child support obligation, also constituted special circumstances to depart from the guideline support amount under Family Code § 4057(b)(5). (Published portion of opinion).
- The court did not abuse its discretion in awarding attorney fees to M under Family Code § 271, as F had both notice and an opportunity to be heard on the requested fees, and there was no question that the course of the litigation was protracted with numerous motions, cross-motions, and oppositions filed. (Unpublished portion of opinion).

3. *In re Marriage of Rangell* (2023) 95 Cal.App.5th 1206

- The family court ordered H to pay a total of \$70,000 (\$22,000 and \$48,000) in attorney fees and costs in the nature of sanctions. H appealed arguing that the trial court abused its discretion in ordering him to pay “excessive” attorney fees and “an egregious amount of sanctions as a result of [W’s] litigation.” He contends the trial court erred because he cooperated throughout the case, produced the accounting and documents requested, and “demonstrated willingness to settle.”
- Order affirmed.
 - A trial court has discretion to award attorney fees in the nature of sanctions against a party who frustrates the policy to promote settlement and cooperation in family law litigation. The court must take into consideration “all evidence concerning the parties’ incomes, assets, and liabilities,” in particular the party's ability to pay; and in no event may the amount of the sanction impose “an unreasonable financial burden” against the sanctioned party. The party who wishes to contest their ability to pay any sanctions award bears the burden to submit evidence in opposition to the sanctions request and to present their inability to pay argument at the trial court level, with reference to that evidence. The record was replete with evidence demonstrating H’s steadfast, continued disregard of the court's orders and the terms of the parties’ settlement agreement and judgment, and there was nothing in the record to suggest the trial court

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

disregarded evidence of H's ability to pay or that it otherwise abused its discretion in awarding sanctions against him.

4. *Jimenez v. Chavez* (2023) 97 Cal.App.5th 50

- Trial court denied defendant Chavez's motion to vacate a default judgment and default in favor of plaintiff Jimenez because the motion was filed more than 180 days after the default judgment was entered. The motion was made pursuant to the mandatory relief for attorney fault provision of Code of Civil Procedure section 473, subdivision (b).
- Order Affirmed
 - The six-month limitations period of the mandatory and discretionary relief provisions of section 473(b) is either 182 days or six calendar months, whichever period is longer. Although Chavez's motion was timely under the 6-calendar month rule, the order was affirmed because Chavez failed to satisfy the form requirements for mandatory relief under section 473(b).

5. *Tran v. Nguyen* (2023) 97 Cal.App.5th 523

- Putative father brought action against child's mother alleging she was liable for civil extortion because she obtained money from him without his consent by threatening to expose their affair and his paternity of the child to his wife. Putative Father also alleged that mother was liable for intentional infliction of emotional distress. Trial court sustained M's demurrer without leave to amend as to both causes of action.
- Reversed in part and remanded
 - Civil Code §§1566, 1567, and 1570 establish a right to rescission in cases in which a person's consent to a transaction was obtained by "menace" (threats of confinement, of unlawful violence to the person or his or her property, or of injury to a person's character), which is effectively the civil version of extortion. M's threats to expose the existence of putative father's child birthed by another woman during his marriage falls within the statutory prohibition. The judgment entered against putative father was reversed and remanded, with directions to the trial court to allow him leave to amend his cause of action for recovery of the funds he paid to M as a result of her threats. However, because the civil extortion/rescission cause of action does not give rise to emotional distress damages, the trial court did not err in sustaining M's demurrer to putative father's separate cause of action for intentional infliction of emotional distress.

6. *In re Marriage of Tara & Robert D.* (2024) 99 Cal.App.5th 871

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

- Trial court denied F’s application of for continuance after allowing F’s attorney to withdraw on eve of the trial on Father’s request for sole legal and physical custody of the children. F appealed from the final custody order, arguing the court abused its discretion by refusing to grant a continuance after his attorney withdrew from the case the day before trial was set to begin, effectively depriving him of the ability to retain new trial counsel.
- Order Affirmed
 - The trial court abused its discretion by denying F’s application for continuance. “In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination.” (Rule 3.1332(d).) Losing counsel shortly before trial often constitutes good cause for a continuance. In such a situation, the court has a special obligation to assess the length of a continuance that would be required for the affected party to obtain a new lawyer and balance that against other pertinent circumstances that would be adversely affected by a delay in the proceedings. Here, the trial court failed to conduct the necessary inquiry of balancing the general interest in efficiency and finality, against the new “facts and circumstances ... relevant to the determination.” However, the order was nevertheless affirmed because F failed to show that the court's error resulted in a “miscarriage of justice.”

7. *Bailey v. Murray* (2024) 102 Cal.App.5th 677

- Bailey filed a request for a DVRO against Murray, a former intimate partner, alleging that Murray sexually assaulted her. Bailey was not represented by counsel. Rather than have her question herself while testifying at the DVRO hearing, the trial court asked her questions, and Bailey responded. Upon objection by Murray’s counsel, the court assured Murray's counsel that it was only asking open-ended questions and he would “be able to cross-examine her just as if an attorney did her direct examination” and make objections at any time. The trial court ultimately granted Bailey's request for a DVRO after finding incidents of abuse.
- Order affirmed.
 - In general, “[a] trial court has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony” and so long as the court does not “assume the role of either the prosecution or of the defense.” The trial court did not compromise its neutrality. The trial court acted appropriately in conducting its questioning, restricting itself to eliciting material facts with general questions and clarifying confusing and incomplete testimony. The trial court’s questions were not in some way advocacy for a side.

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

LEGISLATIVE UPDATE

2024 Chaptered and Pending Legislation:

AB 161 (Committee on Budget) Human Services.

Status: Chaptered by Secretary of State - Chapter 46, Statutes of 2024

Summary: Budget Trailer Bill relating to Human Services. Child support related provisions include repealing the reporting requirement for the Department of Child Support Services regarding the ongoing implementation of the California Child Support Automation System; and repealing the provision that provides additional funds to the 10 counties with the best performance standards in child support collections (the program has been suspended for the 2002-03 to 2022-23 fiscal years, inclusive).

AB 1846 (Bauer-Kahan) Judicial Officers: Training: Sexual abuse and assault.

Status: Senate Appropriations Committee

Summary: Requires the Judicial Council, on or before July 1, 2026, to establish judicial training programs for judges related to best practices related to treatment of alleged sexual abuse and assault victims in courtroom cases, as specified. Requires the training to be provided to new judges, and to judges assigned to family court, juvenile court, criminal court, and any others deemed appropriate by the Judicial Council, and to be made available to all judges annually.

AB 2397 (Maienschein) Child Support: Special Needs Trusts.

Status: Chaptered by Secretary of State - Chapter 25, Statutes of 2024

Summary: Clarifies that a family court may order a support payment for a child of any age who is incapacitated and unable to earn a living and without sufficient means to be paid into a special needs fund defined as means a trust that meets the requirements of section 1396p(d)(4)(A) or (C) of Title 42 of the United States Code and paragraphs (3) or (4) of subdivision (a) of section 50489.9 of Title 22 of the California Code of Regulations.

AB 3072 (Petrie-Norris) Child Custody: Ex Parte Orders.

Status: Senate Floor

Summary: Clarifies that a court, when determining whether there is a showing of immediate harm to the child warranting an ex parte custody order, should consider a parent's illegal access to firearms and ammunition, as defined; and clarifies that a court, when making an ex parte custody order, should consider whether the best interests of the child warrant suspending

**List of Citations for Presentation:
CASE LAW & LEGISLATIVE UPDATE**

visitation or ordering supervised or virtual visitation with the parent whose conduct gave rise to the need for the ex parte order.

AB 3281 (Committee on Judiciary) Judiciary Omnibus.

Status: Senate Floor

Summary: Judiciary committee omnibus bill. Contains numerous provisions, including authorizing a court to transfer jurisdiction of any proceeding under the Family Code, other than a proceeding involving the local child support agency subject to specified venue requirements, to another county when it appears that both the petitioner and the respondent have moved from the county that entered the original order.

AB 1427 (Allen) Marriage: Joint Petition for Dissolution of Marriage.

Status: Assembly Floor consent calendar.

Summary: Effective January 1, 2026, establishes a process by which parties to a marriage that does not meet the requirements for summary dissolution may file a joint petition for dissolution or legal separation on forms to be adopted by the Judicial Council.

Update to Previously Covered Legislation:

SB 1055 (Kamlager) – Child Support Enforcement: License Suspension

Status: Chaptered by Secretary of State - Chapter 830, Statutes of 2022

Summary: Added Section 17520.5 to the Family Code to prohibit the Department of Child Support Services from including in the list sent to the Department of Motor Vehicles, for the purpose of denying, withholding, or suspending a driver's license, the information of a support obligor whose annual household income is at or below 70% of the median income for the county in which the department or the local child enforcement agency believes the support obligor resides. Family Code section 17520.5 becomes operative on January 1, 2025, and will apply only to noncommercial driver's licenses.