

MONDAY, NOVEMBER 27 2023

MCLE

## Guide to Family Court “Buzzwords” (Part 2)

By Patti C. Ratekin

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 1 appeared in the Nov. 27, 2023 Daily Journal.)

80. Fluctuating Income – Child Support: Family Code § 4064. The court can adjust support to accommodate fluctuating income, i.e., teacher’s income. (All references are to this code unless otherwise specified.)

81. Expedited Child Support: § 3620. A party may bring a request before the court for Expedited Child Support.

82. Extrinsic Fraud: § 2122. A basis for the court to set aside a Family Law Judgment.

83. Facilitators: § 10000 et seq. Every county shall have a licensed attorney available to assist parents in matters of child and spousal support and process. They may provide information and assist in the preparation of forms.

84. Fajota (§ 3044): In re Marriage of (IRMO) Fajota, 230 Cal.App.4th 1487 (2014). When there is a finding of domestic violence or a court issues a domestic violence restraining order, the court may not grant sole or joint legal or physical



Shutterstock

custody to perpetrator until the § 3044 presumption is overcome.

85. Family Court Services: § 1800 et seq. The Counselor of the county appointed under § 1814 has broad powers to meet with the parties, investigate case, conduct mediation of custody and visitation disputes, and make recommendations to the court.

86. Family Support Order: § 4066. Permits an unallocated support order where neither Child Support (CS) nor Spousal Support (SS) is broken out separately.

87. FAOH/OAH: Findings and Order after Hearing/Order After Hearing

88. FDD: § 2105. Final Declaration of Disclosure. The parties, during separation, are in a fiduciary rela-

tionship with each other and not only file a Preliminary Declaration of Disclosure (PDD) but must file a FDD no less than 45 days prior to trial unless the Final Declaration of Disclosure is waived.

89. FERS: Federal Employee Retirement System. One of two major retirement systems for federal public employees. This is an older federal defined benefit system.

90. Fiduciary Duty: the parties in a marriage are duty bound to act with the utmost good faith for the benefit of the other party.

91. FLA: The initial legislation in 1969 that established the Family Law Act.

92. Frequent and Continuous Contact: § 3040. (See Custody.)

93. FS: Family Support. § 4066. (See Family Support.)

94. USFSPA: 10 U.S.C. § 1408. Uniformed Services Former Spouses Protection Act. Sets the federal rules for the division and enforcement by the military of military pensions.

95. Gavron Warning: IRMO Gavron, 203 Cal.App.3d 705 (1988), § 4330. Stands for the basic proposition that every supported person, where circumstances dictate, should make reasonable efforts to assist in providing for their own support.

96. Gillmore Election: IRMO Gillmore, 29 Cal.3d 418 (1981). An election for the immediate distribution of an Alternate Payee’s retirement benefits, even though the Employed Spouse has yet to retire.

97. Grandparent Visitation: § 3104(a): On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent.

98. Great Grandparent Visitation: Grandparent visitation statutes do not extend to great-grandparents. (*Ed H. v. Ashley C.*, 14 Cal.App.5th 899 (2017).)

99. Hague Convention: § 3442, 42 U.S.C. § 9001 at seq.. California can enforce custody orders where a child has been removed from their “country of habitual residence.”

100. Hardships: (See Child Support – Hardships.)

101. Head of Household status: You may qualify for head of household filing status even though you aren’t entitled to claim your child as a dependent if specified requirements are met.

102. I & E Annual Demand: § 3664. A party may, without leave of court, serve a request for a completed Income and Expense form on the other party.

103. I & E Mandatory: California Rules of Court, rule 5.92. A current Financial Declaration and a current Property Declaration shall be served and filed by any party appearing at a hearing where such issues are relevant.

104. Innocent Spouse: An IRS concept. Internal Revenue Code § 6015. Both parties on a joint tax return are jointly and severally liable unless there has been undisclosed income not reported or unauthorized deductions taken for which there is no support and the innocent spouse did not know nor had reason to know.

105. IRMO: In Re Marriage Of.

106. Joint Property – Reimbursement: § 2640. Separate property contributions to the acquisition of joint property shall be reimbursed to the contributing party without interest or accretion in value. Joint property is any form of joint title.

107. Joint Property Acquired During Marriage: § 2581. Includes Community Property (CP), Joint Tenants and Tenants in Common.

108. Judgment Set-Asides (Non CCP, § 473): § 2122. (See Extrinsic Fraud.)

109. Kick-Out Order: §6321. (See DV/TRO Kickouts.)

110. La Musga: (Pronounced La-mushay) *IRMO La Musga*, 32 Cal.4th 1072 (2004). A “clarification” of *IRMO Burgess*, 13 Cal.4th 25 (1996), indicating that “the non-custodial parent bears the initial

burden of showing that the proposed relocation of the children’s residence would cause detriment to the children, requiring a reevaluation of the children’s custody.” Substantial involvement by the non-custodial parent is still required.

111. Lesterize: Named after an old U.S. Supreme Court case (*Commissioner v. Lester*, 366 U.S. 299 (1961)). Means to combine CS and SS in a manner that fails to specify any amount for CS, thus making the entire amount tax deductible to the payor and taxable to the payee as if it were all SS.

112. Management and Control: §§ 1100, 1102. Each spouse has equal management and control over the community personal and real property. Both signatures are required to convey property or to lease it for more than a year.

113. Marvin Action: An action named after the old Lee Marvin v. Michelle Triola Marvin case (*Marvin v. Marvin*, 18 Cal.3d 660 (1976)). No statutory duty to support or divide property with a non-married cohabitant. The law provides the same contractual or estoppel rights to cohabitants as it would to any other unrelated litigants.

114. Mediators: § 3164. Family Court Services child custody mediators.

115. Minor’s Counsel: § 3150 et seq. The court may appoint counsel to represent children if it is in their best interest. Counsel shall receive reasonable compensation for their services and costs, which shall be paid by the parties or by the county at the court’s discretion.

116. Moore/Marsden Calculation: *IRMO Moore*, 28 Cal.3d 366 (1980); *IRMO Marsden*, 130 Cal.App.3d 426 (1982). This is a formula that compares the party’s CP contributions to a party’s Separate Property (SP) house, usually by virtue of the house payments contribution toward the equity or loan reduction. The contributions to the equity, made as a result of monthly payments, after subtracting interest from the payment leaves very little equity reduction to go onto the CP ledger.

117. Move-away Case: A new version of custody cases with a name all its own. Starting with the *Burgess* and *LaMusga* cases and their progeny, a “move-away” identifies a specialized custody battle where the custodial party is seeking to move, with the child, out of the county.

118. MSA: Marital Settlement Agreement.

119. MSC: Mandatory Settlement Conference.

120. MSOL: § 4320(d). Marital Standard of Living. An elusive concept considering that the parties are now in two separate households, however, it is one of the elements that must be considered in setting permanent support or modifying support that previously did not meet the MSOL.

121. NCP: Non-custodial parent

122. Negative Asset Case (a.k.a. Eastis case): § 2622; *IRMO Eastis*, 47 Cal.App.3d 459 (1975). The court may divide an “upside down” estate by directing that the greater earning party pay the bills. However, if there are assets, those assets must be equally divided and the court may allocate debts.

123. New Mate Income: § 4057.5. The earnings of a new spouse that must be considered by the computer in calculating the taxes of the newly married couple in doing a child support calculation for the old couple. The income of a new spouse or a new mate is not to be considered for use in the actual support of the child unless it would lead to extreme and severe hardship to the child to ignore the income.

124. Nunc Pro Tunc: § 2346. The backdating of a dissolution judgment to a date prior date where there was a mistake, negligence, or inadvertence in granting the judgment. The court may sign, date, file, and enter it at a prior date if there is going to be no appeal.

125. OAH/FAOH; Order after Hearing. Findings and Orders After Hearing.

126. “Oops” Assets: §2556. Not to be confused with misappropriated assets under § 2602. The court has continuing jurisdiction to award CP assets or liabilities that have not previously been adjudicated. The same equal division rules apply.

127. OSC (currently called Request for Order, RFO): Order to Show Cause. Code of Civil Procedure §§ 1003, 1005. An order is required on a motion when there has been no prior general appearance or on a contempt motion where specific personal jurisdiction is required.

128. Parent Locator Service: § 17506. Under the Department of Justice, it provides information to locate a missing parent for purposes of CS enforcement and SS enforcement. This is available to

the Department of Child Support Services.

129. Parentage – Advisement: §§ 7572(b)(3), 7574, 17404(b), 17410. Before admission of parentage a prospective parent must be advised of the right to have counsel, a court trial, and contest the parentage.

130. Parentage – Conclusive Presumption: § 7540 creates the same conclusive presumption of parentage for a father living with the mother in a valid marriage where the father is not sterile or impotent. § 7541 hedges this “conclusive” language by permitting a motion for blood tests up to two years after birth. A clear “non-parentage” finding will negate the conclusive presumption.

131. Parentage Index– Rebuttable Presumption: § 7555. There is a rebuttable presumption where the blood tests show a genetic marker that is 99% or greater.

132. PDD: § 2104. Preliminary Declaration of Disclosure. (See also FDD.) To be served (not filed with the court).

133. Pereira/Van Camp: *Pereira v. Pereira*, 156 Cal. 1 (1909); *Van Camp v. Van Camp*, 53 Cal.App. 17 (1921). Calculating the range of business allocation between SP and CP on a SP business.

134. PERS: Public Employees Retirement System. This is both a federal and a state term encompassing retirement systems for public employees.

135. PKPA: 28 U.S.C. § 1738A. Parental Kidnapping Prevention Act a.k.a. FPKPA. Sets conditions for child custody jurisdiction. Works in conjunction with UCCJEA.

136. POS: Proof of Service. Code of Civil Procedure § 1005 et seq. Must be filed with the court prior to any proceeding.

137. Putative Spouse: § 2251. A “make believe” spouse where the spouse did not know it was “make believe.” Sets forth the procedures for when a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid.

138. QDRO: Qualified Domestic Relations Order. 29 U.S.C. § 1056 (d)(3). Governed under both the Federal Labor Code and the Internal Revenue Code. Essentially a Family Court order, dividing pension plans under specific federal rules requiring qualification of the order by the plan manager.

139. REA: Retirement Equity Act. 29 U.S.C. § 1056(d). Federal law

that created the pension rules under the Labor Code and Internal Revenue Code.

140. *Reiflerized: Reifler v. Superior Court*, 39 Cal.App.3d 479 (1974). The case stands for the proposition that the judge has broad discretion to not take oral testimony at an OSC.

141. Request for Order (RFO): Filed by a party seeking temporary relief on custody, visitation, support or exclusive use and possession of property orders.

142. Richmond Order: *IRMO Richmond*, 105 Cal.App.3d 352 (1980). Essentially a contingent termination order for SS; e.g., the court orders SS for 3 years and then reduces it to \$0 unless a spouse shows good cause why SS should continue.

143. RURESA, a.k.a. URESA: Uniform Reciprocal Enforcement of Support Act. Outdated terminology since repealed and replaced by UIFSA (below).

144. Sanchez: *People v. Sanchez*, 63 Cal.4th 665 (2016). Expert may not testify about case-specific hearsay.

145. SSA: Social Security Act; Provides for a divorced spouse in a marriage of more than 10 years (date of marriage to date of divorce) to receive Social Security Payments directly from Social Security Administration in an amount equal to 50% of the wage earner's amount. See <https://www.benefits.gov/benefit/4388>.)

146. Special Master: § 2554 allows the court to submit property issues under \$50,000 to an arbitrator. Evidence Code § 730 permits the court to send matters to an outside expert.

147. Spousal Support–Assignment: § 5208. Slightly different from CS earnings assignments. CS is under Federal mandate. 42 U.S.C. § 666.

148. Spousal Support–Cohabita-

tion: § 4323. Cohabitation creates a rebuttable presumption of a reduced need for support.

149. Spousal Support – Factors: § 4320. This is a one of the code sections that should be known by number. It delineates all of the factors that a judge must consider in establishing SS.

150. Spousal Support – Reconciliation: § 3602. Unless the order specifies otherwise, support is not enforceable during any period the parties have reconciled and are living together.

151. Spousal Support – Resort to Sep. Prop.: § 4321. Resort to the other's SP only after earnings and CP are exhausted.

152. Spousal Support – Retroactivity: § 4333. SS is retroactive back to the date of the filing of the motion or the RFO. May go back to date of filing of the petition provided there was an RFO filed for temporary support.

153. SS: Spousal Support. § 4320.

154. Statement of Decision: Code of Civil Procedure § 632. Generally rendered after a trial on a factual issue.

155. Stay Away Order: See DV/TRO. An order to stay a certain distance away from the protected person, or their house, place of employment or car.

156. Step-Down Orders: §§ 4334, 4335. a.k.a. Richmond orders. (*IRMO Richmond*, 105 Cal.App.3d 352 (1980)), i.e., support is ordered for three years and then reduces to \$0 (or some other figure). There must be a reasonable basis for the "step-down."

157. STRS: State Teacher Retirement System.

158. Support Person: § 6303. In a domestic violence case, the victim may designate a "support person" to accompany them at all stages of a proceeding, including sitting

with them at counsel table and even accompanying them in mediation sessions. They cannot participate, nor give advice.

159. TANF: Temporary Aid to Needy Families. (Pub.L. No. 104-193 (Aug. 22, 1996) 110 Stat. 2105.) Implemented on 7/1/97 to replace AFDC and JOBS (Job Opportunities and Basic Skills Training).

160. Tracing: Tracing is not a law, but rather a methodology to trace SP or CP to its origins in a trial. There is direct tracing and family expense tracing. As an example, under § 2640, where a person is asserting a SP interest in jointly owned property, they must provide direct evidence of their contribution to the acquisition of the property.

161. Transmutation: § 852. Transmutation has strict rules. Any form of property – SP, CP or Quasi-CP (QCP) – may be transferred, without consideration, to any other form, between spouses as long as it is done in writing.

162. TRO: Temporary Restraining Order § 6320.

163. UCCJEA: § 3400, et seq. Uniform Child Custody Jurisdiction and Enforcement Act. Adopted in a substantial majority of the other states. Works in conjunction with FPKPA (above).

164. UIFSA: § 5700.101 et seq. Uniform Interstate Family Support Act. Generally used by the Bureau of Child Support Enforcement for the interstate collection of CS. Operates in tandem with FFCCSOA – Federal Full Faith and Credit for Child Support Orders Act – to resolve interstate jurisdictional competition over CS.

165. UPA: § 7600 et seq. Uniform Parentage Act. The rules to determine the legal relationship, including support, existing between

a child and the child's natural or adoptive parents.

166. URESA: See RURESA and UIFSA.

167. Valuation Date/Alternate Date: § 2552. A court shall value the assets and liabilities as nearly as practicable to the date of trial, except that a party upon thirty days noticed motion may, for good cause, seek an alternate valuation date.

168. Vomacka Rights: *IRMO Vomacka*, 36 Cal.3d 459 (1984). An agreement to terminate spousal support must be explicit.

169. Wage Assignment: Now known as Income Withholding Order for Child Support, Earnings Assignment Order for spousal support.

170. Watts Credits: *IRMO Watts*, 171 Cal.App.3d 366 (1985). A credit or reimbursement claim sought by the out-spouse on behalf of the community for the other spouse's use of CP after separation – usually the family residence – at a below rental market rate or at no rate at all.

---

**Patti C. Ratekin** is a retired San Diego County Superior Court Commissioner who is currently a Neutral with Signature Resolution. The original guide was initially compiled and edited in 2005 by the late San Diego Superior Court Judge **Edward B. Huntington**.

