

# SPOUSAL SUPPORT

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## SPOUSAL SUPPORT

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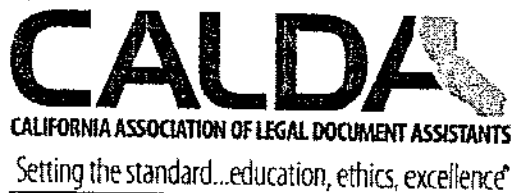
### Legal Assistants of San Diego County

(619) 447-3188

560 Broadway

El Cajon, CA 92021

[www.legal-assistants-san-diego.com](http://www.legal-assistants-san-diego.com)



*This guide will help you understand the process available under California law to petition the court for spousal support. We have tried to answer many of the most frequently asked questions about the process and address the available procedures in California.*

The following information was derived from the Judicial Branch of California, California Courts On-Line Self-Help Center

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When a couple legally separates or divorces the court may order one spouse or domestic partner to pay the other a certain amount of support money each month. This is called “spousal support” for married couples and “partner support” in domestic partnerships. It is sometimes also called “alimony.”

## **HOW SPOUSAL OR PARTNER SUPPORT STARTS**

In order for spousal or partner support to be legally established and officially start there must be a court case. A spouse or domestic partner can ask the judge to make a spousal or partner support order as part of one of these types of cases:

- Divorce, legal separation, or annulment
- A domestic violence restraining order

You can ask for spousal or partner support to be paid while your case is going on. This is called a “temporary spousal support order” or a “temporary partner support order.” Support can also be ordered once the divorce or legal separation becomes final, as part of the final divorce or separation judgment. When it is ordered, once the case becomes final, it is called “permanent (or long-term) spousal or partner support.”

## **CALCULATING SPOUSAL OR PARTNER SUPPORT**

For temporary spousal or partner support, judges in many local courts generally use a formula to calculate the amount. Courts in different counties may use slightly different factors in calculating temporary support. Your court’s local rules should explain how temporary support is calculated in your county. Check your court’s local rules for the temporary support guideline.

The judge will not use a formula to figure out how much spousal or partner support to order at the end of your case. When the judge makes his or her final spousal or partner support order the judge must consider the factors in California Family Code section 4320<http://www.courts.ca.gov/11529.htm> - Linking and Third. These factors include:

- The length of the marriage or domestic partnership
- What each person needs based on the standard of living they had during the marriage or domestic partnership
- What each person pays or can pay (including earnings and earning capacity) to keep the standard of living they had during the marriage or domestic partnership
- Whether having a job would make it too hard to take care of the children
- The age and health of both people
- Debts and property
- Whether one spouse or domestic partner helped the other get an education, training, career or professional license
- Whether there was domestic violence in the marriage or domestic partnership
- Whether one spouse's or domestic partner's career was affected by unemployment or by taking care of the children or home
- The tax impact of spousal support (note: federal and state tax laws have not been changed to recognize domestic partnerships)

The spousal or partner support order then becomes part of your final divorce or legal separation judgment.

## **UNDERSTANDING THE FACTORS THE JUDGE MUST CONSIDER**

### **Earning capacity and the standard of living during the marriage or partnership:**

A judge must consider what each spouse or partner can earn to keep a standard of living close to what they each had during the marriage or partnership. To do this the judge looks at the:

- Marketable skills of the spouse or partner getting support
- Job market for those skills
- Time and expense the spouse or partner who gets support will need to get the education or training to develop more marketable skills or to get a job
- Extent that the earning capacity (the ability to earn income) of the spouse or partner who gets support was impaired by periods of unemployment during the marriage/partnership when he or she was devoted to domestic duties

### **Length of the marriage or domestic partnership:**

The duration of a permanent or long-term spousal or partner support order is closely related to the length of the marriage or domestic partnership. The goal of spousal or partner support is that the spouse or partner getting support will be able to support himself or herself within a reasonable period of time.

The law says that, in general, a “reasonable period of time” may be one-half the length of the marriage/partnership, BUT the law also says that the judge has discretion (power) to make a different decision given the specific circumstances of the case. There is an important exception. When a marriage or partnership is considered a “long-term” marriage or partnership (usually 10 years or more) the judge may not set an end date to the spousal or partner support.

The length of the marriage or domestic partnership is generally from the date of the marriage to the date of the separation. Because the date of separation can have very important consequences when it comes to deciding spousal or partner support the parties in a divorce or separation case may not be able to agree on a date of separation and the judge may have to decide what that date will be. Also, the judge can take into account the periods of separation during the marriage/partnership in deciding if the marriage/partnership is of long duration.

**Domestic violence and spousal or partner support:**

When deciding spousal or partner support the judge must take into account documented evidence of any history of domestic violence between the parties. When the spouse or partner that would pay the support is the abusive person the judge will consider any emotional distress resulting from the violence suffered by the spouse or partner to be supported.

The judge will also consider any history of violence at the hands of the spouse or partner to be supported against the person that would pay the support. Also, there is a rebuttable presumption against giving spousal or partner support to an abusive spouse or partner who has a criminal conviction for domestic violence against the other spouse or partner.

**FALLING BEHIND IN SPOUSAL OR PARTNER SUPPORT PAYMENTS**

Once a court orders one spouse or partner to pay support to the other it becomes a court order that must be followed until the court changes or ends it or, if the support order has an end date, until then.

If you have to pay spousal or partner support and fall behind in your payments you must pay 10% interest per year on the balance due. Interest charges are added by law and the judge cannot stop them.

If you owe arrears (past-due spousal or partner support) it is possible that your court order or wage assignment (garnishment) if there is one, will include an amount over the monthly spousal or partner support. This amount goes toward paying off your arrears and it is often called a “liquidation amount.” However, even if you are paying off your arrears in installments, interest continues to be added to your balance.

Not paying the spousal or partner support the court ordered you to pay can have very serious consequences. If the court finds that you have the ability to pay support but are willfully not paying it the court can decide that you are “in contempt of court.” Being in contempt of court can

be very serious because you can be sent to jail. This enforcement tool is generally used only when all others have failed.

If you are the spouse or partner getting support you may be able to get help collecting on your support order. If the local child support agency (LCSA) is currently helping you collect (enforce) a child support order for a child you have with your spouse or domestic partner, the LCSA can help you collect (enforce) the spousal/partner support order along with the child support order. If the LCSA has not helped you yet but you do have a child support order as well as a spousal/partner support order you can ask them to open an enforcement case on your behalf and help you collect both types of support.

### **CHANGING SPOUSAL OR PARTNER SUPPORT**

Depending on the situation, either spouse or domestic partner might have to change the amount of spousal or partner support that is paid. To ask for a change in the support amount there has to be a "change in circumstances." This means something significant has changed since the spousal or partner support order was made. Maybe the spouse or partner that was getting support no longer needs it or the person paying support has had a significant drop in income and can no longer afford the amount of support. Sometimes the spouse/partner getting support is not making a good faith effort to become self-supporting so the paying spouse/partner can ask the court to end or change the support order based on this. Take a look at *Spousal or Partner Support Declaration Attachment* (Form FL-157). This form can be used to ask the court for spousal or partner support or to ask for a change in the order and it can help you see what factors the judge will consider when deciding whether to change the amount of support.

**IMPORTANT!** *If you are the person paying spousal or partner support you will still owe the full amount of support in your current court order until you get the order changed even if your situation has changed. So, for example, if you lose your job today but you do not change your spousal or partner support order until three months from now you will still owe spousal or partner support from today until three months from now even though you were not working. Also, if you owe that amount, but are unable to pay it, you will owe interest (at the rate of 10% per year) on any unpaid balance.*

### **ENDING SPOUSAL OR PARTNER SUPPORT**

Spousal and domestic partner support usually ends when:

- A court order or judgment says it ends
- One of the spouses or domestic partners dies
- The person getting the support remarries or registers a new domestic partnership

## **SPOUSAL OR PARTNER SUPPORT AGREEMENTS**

Spouses or domestic partners can agree to a spousal or partner support order. By agreeing and signing a written agreement (a stipulation) they do not have to go in front of a judge and leave the decision up to him or her.

Spouses or domestic partners can agree to a spousal or partner support amount but it will not become a court order until the judge accepts your agreement and signs it as an order. To write up a spousal or partner support agreement:

**1. Inform yourself about your rights and responsibilities about spousal or partner support**

Before you sign an agreement with your spouse or domestic partner about spousal/partner support (whether you will be paying it, getting it or agreeing to no support) you should understand how spousal/partner support works and what your rights are. That way, when you write up and sign your agreement, you are fully informed.

- Ask the family law facilitator in your court for help understanding spousal or partner support. He or she may also be able to help you mediate with your spouse or partner and may even write up your agreement for you.
- Also, take a look at *Spousal or Partner Support Declaration Attachment* (Form FL-157). This form can be used to ask the court for spousal or partner support or to ask for a change in the order and it can help you see what factors the law considers in determining spousal or partner support.

**2. Decide on an amount and the duration of spousal/partner support**

Once you understand spousal or partner support you and your spouse or partner must agree on:

- An amount (or no amount, if you agree that no one will pay spousal/partner support to the other)
- The duration of the support payments — how long the payments will last
- How the payments will be made, directly between the two of you or by wage garnishment (an automatic deduction from the paying person's paychecks)

**3. Consider other issues to see if you can agree about those as well**

As part of your divorce or legal separation the court will decide other issues like property and debt division or, if you have children, child support and custody and visitation of the children. Consider working on an agreement about these issues too.

**4. Write up your agreement**

There is no existing court form for a spousal or partner support agreement (also called a "stipulation"). You have to write up your own or include the spousal/partner support order in your overall marital/partnership settlement agreement or stipulated settlement for your divorce, if you have one. You can use the *Spousal, Partner, or Family Support Order Attachment* (Form FL-343) as an attachment to your agreement. This form includes a lot of details that you should include in your order.

Make sure you use the right case number for your agreement which will be the case number of your divorce or legal separation case.

**5. Sign your agreement**

Each spouse or partner must sign the agreement or stipulation. Make sure you understand it and that you are signing it voluntarily and are not being pressured or forced to agree.

**6. Turn in your agreement/stipulation to the court for the judge to sign**

Find out from the court clerk if you have to make copies ahead of time and turn them in with the original or just turn in the original and make copies afterward. The procedures for how to do this will be a little different from court to court so make sure you find out from the clerk what to do and when you should return to pick up your papers.

- o If you are agreeing to have the spousal or partner support paid by wage garnishment, also turn in an *Earnings Assignment Order for Spousal or Partner Support* (Form FL-435).

**7. File your agreement/stipulation after the judge signs it**

After the judge has signed the agreement/stipulation, file the original with the court clerk (after making copies if you did not already make them). The clerk will keep the original and stamp your copies "Filed" and return them to you. One copy will be for you, the other will be for your spouse or domestic partner.

- o Also file the *Earnings Assignment Order for Spousal or Partner Support* (Form FL-435) if you turned in one.

**8. Send the Earnings Assignment Order to the employer of the obligor (the person ordered to pay support)**

If you agreed to have the obligor's (person paying support) wages garnished send a copy of the filed *Earnings Assignment Order for Spousal or Partner Support* (Form FL-435) to his or her employer.

**FORMS - Asking for a Spousal/Partner Support Order**

Forms for Asking for a Spousal or Partner Support Order (a divorce or separation case must exist):

Form Name	Form Number	Instructions
<i>Request for Order</i>	<u>FL-300</u>	Use the <i>Information Sheet for Request for Order (Form FL-300-INFO)</i> for information on how to fill out the <i>Request for Order</i> .
<i>Income and Expense Declaration</i>	<u>FL-150</u>	You need to attach: A copy of your paystubs for the last two months or a recent profit and loss statement if you are self-

		employed or own any rental property.
<i>Spousal or Partner Support Declaration Attachment</i>	<u>FL-157</u>	Use this form when asking to change a spousal or partner support order made as part of the divorce or legal separation judgment, or after the judgment.  This is an optional form so you do not have to use it, but it can help you make sure you give the judge the information s/he will need.
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of Personal Service</i> (Form FL-330-INFO).
<i>Proof of Service by Mail</i>	<u>FL-335</u>	For instructions, read <i>Information Sheet for Proof of Service by Mail</i> (Form FL-335-INFO).
<i>Responsive Declaration to Request for Order</i>	<u>FL-320</u>	Form includes instructions. Attach this form blank.

**Forms for Preparing a Temporary Spousal or Partner Support Order:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Findings and Order After Hearing(Family Law — Custody and Support — Uniform Parentage)</i>	<u>FL-340</u>	Cover sheet with attachments that you prepare stating the terms of the order or referencing the form attachments.
<i>Spousal, Partner, or Family Support Order Attachment (Family Law)</i>	<u>FL-343</u>	
<i>Earnings Assignment Order for Spousal or Partner Support (Family Law)</i>	<u>FL-435</u>	Use this form to garnish (assign) wages of the person ordered to pay spousal/partner support. Do NOT use if you also have a child support order. When filling out Form FL-435 make sure to write <i>only</i> the last four digits of the social security number of the person ordered to pay support – the



		law requires it to protect their privacy.
<i>Income Withholding for Support</i>	<u>FL-195</u>	When filling out Form FL-195 make sure to write <i>only</i> the last four digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy. <i>Income Withholding for Support - Instructions</i> (Form FL-196). Use this form if you have an order for child support AND spousal or partner support.
<i>Additional Page — Attach to Judicial Council Form or Other Court Paper</i>	<u>MC-020</u>	

**Forms for Preparing a Spousal or Partner Support Order As Part of the Judgment for Divorce or Legal Separation:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Judgment (Family Law)</i>	<u>FL-180</u>	Cover sheet with attachments that you prepare on blank paper stating the judgment terms or form attachments.
<i>Spousal, Partner, or Family Support Order Attachment (Family Law)</i>	<u>FL-343</u>	
<i>Earnings Assignment Order for Spousal or Partner Support (Family Law)</i>	<u>FL-435</u>	Use this form to garnish (assign) wages of the person ordered to pay spousal/partner support. Do NOT use if you also have a child support order. Use Form FL-195 if you have both child AND spousal support orders. Make sure to include <i>only</i> the last four digits of the social security number of the person ordered to pay support. The law requires it to protect their privacy.
<i>Income Withholding for Support</i>	<u>FL-195</u>	<i>Income Withholding for Support - Instructions</i> (Form FL-196). Use this form if you have an order for child support AND spousal or partner support.