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How Relevant Is the Marital Standard of Living in a Post-Judgment Spousal Support Modification Request?

Let's play word association—I say post-judgment spousal support modification request and you say? No, not "retainer." I was going someplace else. "Marital standard of living?" There you go. Family law litigators often place the marital standard of living at the footsteps of a spousal support modification request. It seems like the Rubicon of such proceedings; one you must cross to get to the intended goal—the post-judgment order. But is that wise and, even more important, is that what precedent commands? In true family law fashion, the answer is yes and no.

How do you measure the marital standard of living?

Family Code Section 4320 does not actually define it for us nor does it give us a formula to follow. Fortunately, California case law gives guidance.

> We hold that the marital standard of living is intended by the [l]egislature to mean the general station in life enjoyed by the parties during their marriage. The [l]egislature did not intend it to be a precise mathematical calculation, but rather a general reference point for the trial court in deciding this issue.

In re Marriage of Smith, 225 Cal. App. 3d 469, 475 (1990).

Is the court required to give the marital standard of living the *greatest* weight?

No. The marital standard of living is *a* factor but not necessarily *the* most important. "The [l]egislature has never specified that spousal support must always meet the needs of the supported spouse as measured by the marital standard of living." *In re Marriage of Smith*, 225 Cal. App. 3d at 488. The focus is to "achieve a just and reasonable result under the facts and circumstances of the case." *Id.* at 475.

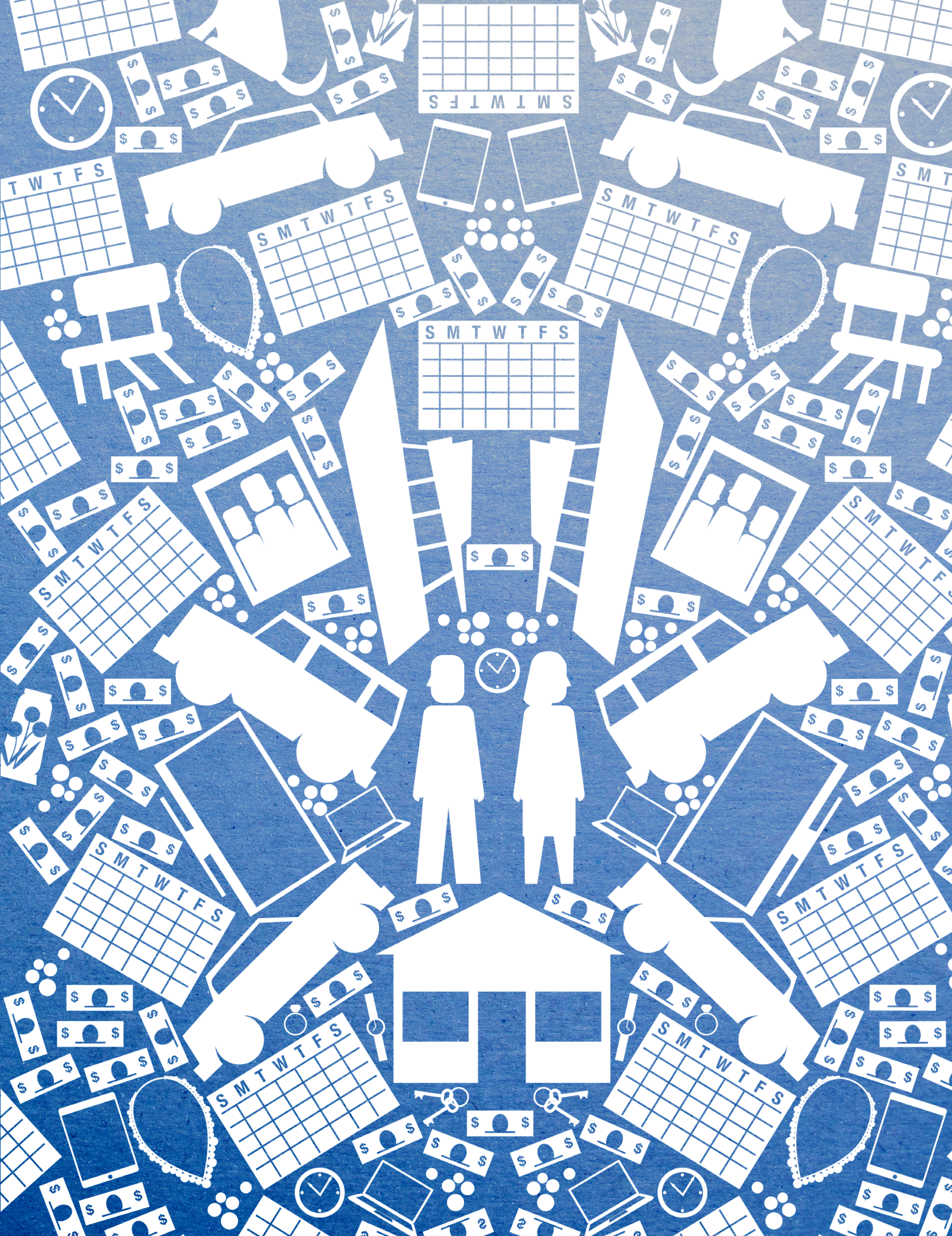
Consider a situation where meeting the marital standard of living was not realistic because it was unreasonably high. Husbands and wives may live beyond their means, live on debt, spend $1.10 of every $1.00 they make, and create a lifestyle built to crumble upon itself. How is that maintained? It may not be. "The court was not required to maintain an over-extended lifestyle based heavily on borrowing." *In re Marriage of Weinstein*, 4 Cal. App. 4th 555, 566 (1991).

The same issue arises if the spouses live a very frugal lifestyle where there was little spending. A court should not look solely at a "deliberately depressed marital standard of living" when coming to its spousal support decision. *In re Marriage of Watt*, 214 Cal. App. 3d 340, 352 (1989).

Passage of time may diminish the marital standard of living's importance.

I present two California appellate cases of importance to this topic. The first is *In re Marriage of Rising*, 76 Cal. App. 4th 472 (1999). The second is *In re Shaughnessy*, 139 Cal. App. 4th 1225 (2006). The issue of the marital standard of living wasn't the main topic of discussion in either of these cases. In fact, if you read them (and you should read them), they don't spend a lot of time on it. But the time they do spend on the subject and the appellate court's words do make them relevant precedent.

In *Rising*, the trial court modified a spousal support order. David Rising was the obligor. Jane Rising was the obligee. The trial court immediately lowered the spousal support payable to Jane from $3,750.00 to $3,000.00 per month. It also ordered that on July 1, 1999 (eleven months after the order date), support would automatically step down to $2,000.00 per month and on January 1, 2001 would step down further to $1,500.00 per month. The trial court found



Jane's financial situation had improved while David's physical and financial condition had deteriorated.

Jane appealed. As a relevant aside, the appellate court commended the trial court on its very detailed statement of decision but still reversed the order because the trial court didn't state whether the step down was justified by the parties' current financial circumstances (no good deed goes unpunished?). Interestingly, the appellate court also stated that the trial court would have been justified to immediately decrease the support payments to $1,500.00 per month and, had it done that, the appellate court would have affirmed.

Now comes the important part. In footnote nine of the decision, the appellate court stated:

> Wife contends an order setting spousal support significantly below $3,000 per month would be an abuse of discretion in this case because the court specifically found this was the amount wife needed to maintain the "marital standard of living." Although it is true the trial court did make this finding, the court also found that the marital standard of living is no longer the proper measure of support in this case. . . . The parties were married for eighteen years and [husband] has been paying spousal support for thirteen years. [Wife] was [forty-three] years old when the parties separated, is [fifty-six] years old today, and is still in good health. . . . The court finds that the marital standard of living is not entitled to the same weight today as it was thirteen years ago as a factor in determining how much spousal support [husband] should pay to [wife].

Rising, 76 Cal. App. 4th at 479, n.9. The appellate court went on to state, in relevant part, "[t]hus, the court clearly expressed its belief it was not necessary (or appropriate) to award wife the amount of support required to allow her to maintain the marital standard of living. The court did not abuse its discretion in reaching this conclusion . . . ." *Id.*

Shaughnessy involved a fifteen-year marriage with no children. The parties married in November of 1979 and separated in March of 1995. In 2003, C. Greg Shaughnessy was ordered pursuant to a judgment to pay $2,000.00 per month in spousal support. The court labeled their lifestyle as "upper middle class." By 2005, he had been paying this amount for ten years (presumptively on an informal basis since Greg did not file a dissolution petition until August of 2000).

Greg sought a post-judgment modification in 2005. Michelle Shaughnessy had continued to supplement her income as a self-employed florist. There were some discrepancies as to how much she earned from that business. There were also issues related to her earning ability, capacity and/or opportunity, and whether or not she had taken the necessary and reasonable efforts to become self-supporting. It didn't help Michelle that the trial court found her parents were paying her $20,000.00 per year. The trial court reduced the spousal support from $2,000.00 per month to $1,000.00 per month and ordered a termination date of June 30, 2006 unless Michelle could demonstrate a compelling reason to extend the duration of spousal support. Michelle appealed from the post-judgment order entered on April 14, 2005.

For our purposes, the most important takeaway was this:

> The trial court could have reasonably concluded that in view of all of these circumstances, Michelle could become, and should become, sufficiently self-supporting within the dates the court set for the reduction and termination of spousal support. Further, in view of the fact that the date for termination of spousal support was approximately eleven years after the date of separation, the court could reasonably conclude that achieving the marital standard of living was at this point in time deserving of less weight in balancing the Section 4320 factors.

Shaughnessy, 139 Cal. App. 4th at 1247-48 (citing *In re Marriage of Rising*, 76 Cal. App. 4th at 479 n. 9).

What do *Rising* and *Shaughnessy* teach us?

With the passage of time, the marital standard of living may become less relevant in some cases and, as the standard of living becomes less relevant, other Family Code Section 4320 factors may weigh more in a trial court's analysis.

On that note, remember that Family Code Section 4320 provides us with factors that rest on facts and equity. From one case to another, how much weight is given to each factor will likely vary. One size does not fit all. Family Code Section 4330's "just and reasonable" goal of a spousal support award becomes a moving target with the passage of time. Family law judges have a tough job when making the order at the time of judgment, just as the parties and their counsel may struggle to come up with a number that makes sense within the context of a settlement. In post-judgment proceedings, placing the marital standard of living as a firm floor or an immovable ceiling without taking into consideration all of the Section 4320 factors may put too many living standard eggs into your spousal support basket.

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