

1 THURMAN W. ARNOLD, III, SBN: 107101  
2 Certified Family Law Specialist  
3 225 South Civic Drive, Suite 1-3  
4 PALM SPRINGS, CA 92262  
5 TEL: (760)320-7915  
6 FAX: (760)320-0725

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8 Attorney for Respondent,  
9 JANE DOE

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF RIVERSIDE, RIVERSIDE BRANCH

13 IN RE THE MATTER OF:

14 PETITIONER: JOHN DOE

15 and

16 RESPONDENT: JANE DOE

CASE NUMBER: RID

RESPONDENT'S POINTS AND  
AUTHORITIES RE ATTORNEY  
FEES

DATE:  
TIME:  
DEPT:

17 POINTS AND AUTHORITIES

18 A. Statutory Authorities Re Attorney Fees

19 The 2011 Amendments to Family Code section 2030 provide:

20 (a) (1) In a proceeding for dissolution of marriage, nullity of marriage, or legal  
21 separation of the parties, and in any proceeding subsequent to entry of a related  
22 judgment, the court shall ensure that each party has access to legal  
23 representation, including access early in the proceedings, to preserve each  
24 party's rights by ordering, if necessary based on the income and needs  
25 assessments, one party, except a governmental entity, to pay to the other party,  
26 or to the other party's attorney, whatever amount is reasonably necessary for  
27 attorney's fees and for the cost of maintaining or defending the proceeding  
28 during the pendency of the proceeding.

(2) When a request for attorney's fees and costs is made, the court shall make  
findings on whether an award of attorney's fees and costs under this section is  
appropriate, whether there is a disparity in access to funds to retain counsel, and  
whether one party is able to pay for legal representation of both parties. If the  
findings demonstrate disparity in access and ability to pay, the court shall make  
an order awarding attorney's fees and costs....

(b) Attorney's fees and costs within this section may be awarded for legal

1 services rendered or costs incurred before or after the commencement of the  
2 proceeding.

3 (c) The court shall augment or modify the original award for attorney's fees and  
4 costs as may be reasonably necessary for the prosecution or defense of the  
5 proceeding, or any proceeding related thereto, including after any appeal has  
6 been concluded. \* \* \* [Emphasis added].

7 Family Code section 2032 makes clear that the Court must, upon a proper  
8 showing, order a contributing party to invade principal and their own separate property.  
9 It provides in pertinent part:

10 (a) The court may make an award of attorney's fees and costs under Section  
11 2030 or 2031 where the making of the award, and the amount of the award, are  
12 just and reasonable under the relative circumstances of the respective parties.

13 (b) In determining what is just and reasonable under the relative circumstances,  
14 the court shall take into consideration the need for the award to enable each  
15 party, to the extent practical, to have sufficient financial resources to present the  
16 party's case adequately, taking into consideration, to the extent relevant, the  
17 circumstances of the respective parties described in Section 4320. The fact that  
18 the party requesting an award of attorney's fees and costs has resources from  
19 which the party could pay the party's own attorney's fees and costs is not itself a  
20 bar to an order that the other party pay part or all of the fees and costs  
21 requested. Financial resources are only one factor for the court to consider in  
22 determining how to apportion the overall cost of the litigation equitably between  
23 the parties under their relative circumstances.

24 (c) The court may order payment of an award of attorney's fees and costs from  
25 any type of property, whether community or separate, principal or income.

26 d) Either party may, at any time before the hearing of the cause on the merits, on  
27 noticed motion, request the court to make a finding that the case involves  
28 complex or substantial issues of fact or law related to property rights, visitation,  
custody, or support. Upon that finding, the court may in its discretion determine  
the appropriate, equitable allocation of attorney's fees, court costs, expert fees,  
and consultant fees between the parties. The court order may provide for the  
allocation of separate or community assets, security against these assets, and  
for payments from income or anticipated income of either party for the purpose  
described in this subdivision and for the benefit of one or both parties. Payments  
shall be authorized only on agreement of the parties or, in the absence thereof,  
by court order. The court may order that a referee be appointed pursuant to  
Section 639 of the Code of Civil Procedure to oversee the allocation of fees and  
costs. [Emphasis added].

### 25 **B. Case Authorities Re Attorney Fees**

26 1. *In re Marriage of Hatch* (1985) 169 Cal.App.3d 1213, 215 Cal.Rptr. 789.

27 The court is required to exercise discretion in analyzing fee order requests. Here  
28

1 the trial court was reversed in a strongly worded opinion on its stated policy refusing to  
2 make pendente lite fee orders. The DCA1 stated:

3 "The suggestion of the trial court that attorneys handling marital dissolution  
4 cases must be prepared to "carry the client until the time of trial" is not only  
5 demeaning to attorneys handling family law cases, it fails to consider the present  
6 day realities of the economics of the practice of law. Today's high overhead  
7 costs require that payment be received as rapidly as possible after services have  
8 been rendered. A court's position that attorneys not be paid until the end of  
9 litigation, in non-contingent fee cases, would almost certainly result in able  
10 lawyers in such a county refraining from representing clients in family law cases.  
11 Given the complexity of modern day family law litigation and the significance of  
12 this litigation to our society, courts should be doing everything they can to  
13 encourage, not discourage, able attorneys to handle family law cases.

14 It is a fact of life that attorneys representing clients in family law  
15 cases frequently do not receive payment of full and adequate compensation for  
16 the services they perform. The approach suggested by the trial court would make  
17 things even worse. It would compel the attorney to finance the litigation by  
18 deferring receipt of payment for services until months or years after they are  
19 performed, while the attorney would have to personally advance the costs of  
20 overhead attributable to the case. Even worse, it would require attorneys to  
21 advance from their own pockets sizable expenditures required as a matter of  
22 course in such litigation, such as expenses for depositions and experts. Banks  
23 and finance companies are licensed for the purpose of lending money; lawyers  
24 are not." (*Id.* P. 1218, fn. 2)[emphasis added].

25 The Court ruled:

26 "If [Husband] can afford to pay his own attorneys according to the above  
27 agreement, the trial court should be able to fashion a pendente lite award of  
28 attorney fees and costs to assure [Wife] reasonably equal representation,  
including an order for installment payments. The court could retain jurisdiction for  
the trial judge to allocate or charge amounts paid on account of attorney fees  
and costs to the separate property of the parties or the community. [Citations  
omitted].

29 The public policy of California strongly favors settlement as the primary  
30 means of resolving legal disputes. This is especially true in marital dissolution  
31 litigation where it is so clearly in the financial and emotional interests of the  
32 parties, especially where they have children, to reach an expeditious and final  
33 resolution of their dispute. This result can most easily and most rapidly be  
34 reached where each spouse has reasonable and able counsel representing  
35 them with some assurance they will be fairly compensated for their services,  
36 consistent with the financial circumstances of the parties.

37 .... If necessary the husband must invade his investments to provide the wife with  
38 the sinews to conduct her litigation with him." [Citations omitted]. Money is the  
mother's milk of more than politics." *Id.*, at 1221. [Emphasis added].

2. *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 18 Cal.Rptr.2d 743

1 The DCA2 upheld a trial order of a \$750,000 attorney fee award, including  
2 \$500,000 for future fees. The trial court recognized that the case was, and had  
3 become, extremely complicated and difficult due to the Husband's manipulating his  
4 assets and that the Wife's burden was thereby increased in locating them and proving  
5 ownership. The DCA2 held that the trial court properly relied on its own experience in  
6 setting a reasonable award to enable Wife to support the litigation.

7 3. *In re Marriage of Kozen* (1986) 185 Cal.App.3d 1258, 230 Cal.Rptr. 304

8 The DCA2 affirmed a trial court award of \$100,000 in attorney and accountant's  
9 fees to the Wife. The parties owned two Burger King franchises. The DCA2 noted that  
10 "Wife's attorney testified that his fees seemed "obscene," given the total amount  
11 of community assets, but extensive preparation had been required in this case....  
12 The court also heard conflicting evidence regarding whether husband had  
"stonewalled" and been difficult during discovery." *Id.*, at 1264. Accordingly, the  
trial court did not abuse its discretion.

13 4. *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 53 Cal.Rptr.2d 179

14 The DCA1, J. Phelan, overruled the trial court's failure to award appropriate fees  
15 to the Wife. It ruled:

16 "It is well established in California that, although the trial court has considerable  
17 discretion in fashioning a need-based fee award [citation omitted], the record  
18 must reflect that the trial court actually exercised that discretion, and considered  
19 the statutory factors in exercising that discretion. [Citations omitted]. The record  
20 presented in this appeal contains overwhelming evidence that, at the time of the  
21 trial court proceedings, Connie had no assets other than her share of the family  
22 home, no income other than child support, and only the most minimal earning  
23 ability. Daniel, on the other hand, had substantial income, few expenses, and a  
24 large amount of separate property. There was no apparent reason for the trial  
25 court's decision to award fees so grossly disproportionate to those actually  
26 charged to the client. Where, as here, there was no showing that the time spent  
27 or fees charged were unreasonable, and the parties' respective financial  
28 circumstances clearly justify a higher fee award, such a drastic reduction in the  
requested amount cannot be sustained." *Id.*, at 828-828. [Emphasis added].

24 5. *In re Marriage of Fransen* (1983) 142 Cal.App.3d 419, 190 Cal.Rptr. 885

25 The DCA2 overturned a trial court failure to issue an attorney fee award to the  
26 Wife, commenting that "[n]o attorney should be paid a fee inconsistent with the work he  
27 has performed." [Emphasis added].

28 6. *In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 97 Cal.Rptr.3d 616

1 The DCA4, J. Fybel, reversed the trial court's failure to award Wife attorney fees  
2 because the lower court felt that the Wife had adequate resources to pay her own fees.  
3 The Court stated "the trial court is required to determine how to apportion the overall  
4 cost of the litigation equitably between the parties under their relative circumstances."

5 **CONCLUSION**

6 Without significant financial resources Respondent will not be able to overcome  
7 the burden that results from the underpowered 'out-spouse' and she will be deprived of  
8 her day in Court. Respondent requests an order for the payment of \$7,500 to her  
9 attorneys of record.

10 Dated: January 14, 2014

**RESPECTFULLY SUBMITTED,**

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12 THURMAN W. ARNOLD, III, CFLS  
13 Attorney for Respondent  
14 JANE DOE