

## *In re Marriage of Cohen*

This new case is instructive, and perhaps somewhat frightening. Instructive because it provides us with a drafting lesson, which can benefit all family law practitioners. Perhaps frightening, because "Who knows what evil lurks in the..." closed files of all of us? [The Shadow Knows, to paraphrase an old radio show familiar to those of a certain age].

In Cohen, executive-husband earning \$1.9 million per year agreed (after a 16 year marriage and 4 kids) to a stipulated divorce judgment providing for above-guideline child and spousal support. He later sought a downward modification to support at guideline level. The stipulated judgment contained a provision that any future modification would be reviewed not by the usual change of circumstance standard, but on a de novo basis. The Court of Appeal held that clause was invalid and unenforceable.

Parties, or attorneys drafting agreements, cannot contract around the change of circumstance rule. The opinion emphasizes that child support obligations are law-imposed, as distinct from contractual. Allowing drafters to circumvent the change of circumstance rule would reduce family law orders and judgments to mere temporary placeholders, in contravention of the doctrine of res judicata. Footnote 14 of the Cohen opinion reminds us of another drafting tip, explained in *In re Marriage of Bodo* (2011) 198 Cal. App. 4th 373, with respect to the difference between a "material" change of circumstance as distinct from a "substantial" change of circumstance.

Why do we see in this case an amicus brief from the Attorney General? Because two of the Cohen children suffered a significant disability and were receiving some publicly-assisted nursing care; that public assistance was the reason for intervention by the Attorney General regarding the child support issues.

Let's not forget the other instructive segment of the Cohen opinion: our ongoing collective colloquy with our forensics about the proper time period to use for the calculation of support. Cohen gives us an updated judicial view of Riddle and how fluctuating income should be treated for calculation of support. Reviewing Riddle (125 Cal.App.4th 1075 (2005)), Mosley (165 Cal. App 4th 1375 (2008)), and Rosen (105 Cal.App.4th 808 (2002)), as well as text source material, this case "boils down the law" to simply suggest that the exercise of discretion as to time period must be "fair and representative." Here, amortization over two years was held the most reasonable way of treating husband's 2014 signing bonus.

Footnote 12 provides another practice reminder: The Riddle court's point was that statutes, including the Internal Revenue Code, and section 4059, are framed in "whole years" as

distinct from "artificially truncated and therefore unrepresentative slices of time," so it is unfair to take just a few months of abnormal income (high or low) of a payor parent's true income.

Let's also not forget to mention that Justice Bedsworth's opinion is colorfully written, well-crafted, and equally instructive and enjoyable to read.

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