



## Divorce Digest

May 2011

The Reape-Rickett Law Firm  
25152 Springfield Court, Suite 100  
Valencia, California 91355  
661-288-1000  
<http://divorcedigest.com>



Greetings! In this month's newsletter, we have included articles written by attorneys David E. Rickett and Lovette T. Mioni regarding common law marriage in California and support modification in today's economy. Mr. Rickett's article provides information regarding the modification of spousal and child support orders due to job loss and other foreseeable and unforeseeable circumstances in today's economic times, while Ms. Mioni's article discusses the prohibition of common law marriage in California. Further, we have also included an article authored by Mr. Ron Anfuso, CPA, ABV, CFF, CDFA, FABFA regarding the retention of a forensic accountant in a dissolution. We hope you find these articles informative and we encourage you to visit our website, [www.divorcedigest.com](http://www.divorcedigest.com) to review other articles written by attorneys at The Reape - Rickett Law Firm. You can also find our articles in The Magazine of Santa Clarita and periodically in The Signal's "It's the Law" section.

Sincerely,  
James Reape and David Rickett  
The Reape-Rickett Law Firm

## Support Modifications in Today's Economic Times



by David E. Rickett, Esq.

In these troubling economic times where job loss is unfortunately all too common, I have received numerous requests regarding modifying support orders, both spousal and child support as well as inquiries regarding how to defend against such requests when the payor parent has lost a job and is now receiving unemployment, if that. It is the policy of the State of California that parents are mutually responsible for the support of their children and that guideline (basically a computer generated dollar amount) child support seeks to place the interests of the children as the state's top priority. Further, under the Family Law Code, parents should pay for the support of their children according to his or her ability.

However, what happens when there is a job loss, particularly in today's job market where the ability to earn is somewhat more difficult due to market conditions and the competition to secure another job. These type of cases usually come down to who has the burden of proof. The case, *Marriage of Bardzik*, brings this point home. Under this case Mom had retired from a \$7,300 a month job as a deputy sheriff at the age of 42 and collected \$2,500 per month retirement benefits. Father had asked that Mom be imputed income that she earned as a deputy sheriff. Mom and Dad both asked for child support since they both had custody of a child. A prior order awarded the parties 50-50 custody and a "zero" child support order. The Trial Court denied Father's request to impute Mother's former income to her and ordered that Father pay child support to Mom. On appeal the case was affirmed. The appellate court stated that the problem was that Father had the burden to show that if you want to impute money to a person you must show that person has the ability to work. It is not sufficient to say, as Father tried, that Mother used to earn \$7,300 per month and voluntarily gave it up (more on this in a moment). As I said earlier, these case sometimes come down to who has the burden of proof.

### Staff Spotlight



**Sarah Aguilar**, caseworker, has worked for The Reape - Rickett Law Firm since January 2008. Ms. Aguilar graduated from Canyon High School in 2006 with awards in academic achievement. She is currently attending College of the Canyons with plans to obtain an associate's degree and then transfer to a four year university.

### Hot Topics on the Interactive Forum

View the hot topics, ask a question, or voice your opinion on The Reape-Rickett Law Firm's [Divorce Digest Message Forum](#).

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support order. There was no guideline child support order. Once a guideline support order is established there is a burden to show a change of circumstances in order to change the guideline amount. Since there was a zero support order, no guideline amount, instead of Mother having to come in and show she has suffered a reduction in income and a lack of ability to earn and opportunity to earn, it was Father who had the burden to show that Mother had the ability and opportunity to earn. So what did Father need to meet his burden? Certainly more than a statement saying she could work. A resume, want ads for persons with similar qualities, witnesses such as job counselors or vocational evaluators would have helped his case.

## Common Law Marriage in California

By Lovette T. Mioni, Esq.



A common misconception for Californians is that common law marriages are valid. Living together and holding yourselves out to be husband and wife, *even for 50 years*, is not enough to create a marriage in California. This means no matter how long you've lived together neither party is entitled to spousal support or property inheritance. What's his is his and what's hers is hers. Unless you have been lawfully wed, you're not married.

One "sort of" exception to this rule is common law marriage in another state. There are 16 states that still allow common law marriage. California recognizes the validity of common law marriages if they are valid under the law of the jurisdiction where it was contracted. This means if you have a common law marriage in another state and you move to California, then you have a legally recognized marriage in California as well.

Another "sort of" exception to this rule is contracting to receive some type of support or property. The general rule is

### **\*Testimonial of the Month Comment from a Former Client:**

"First of all, I would like to thank you for the outstanding service that your firm has provided over the last year and a half. It looks like everything has been completed and I am quite relieved."

*\*This testimonial does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.*

cohabitators are enforceable as long as they do not rely upon "meretricious" sexual services as consideration for the contract. "Meretricious" is a fancy term for "prostitution". In the case *Marvin v. Marvin*, Michelle Marvin had an oral agreement with Lee Marvin in which parties would hold themselves out as husband and wife and Michelle would give up her lucrative career as a singer to be a homemaker and devote her time to Lee. In return, Lee would support her and share any financial advantage he gained. They cohabited from 1964 until 1970. During the period of cohabitation they gained property in excess of \$1 million, in Lee's name. *Marvin v. Marvin*, (1976) 18 Cal.3d 660.

The court ruled that Michelle was indeed entitled to half of the property. The court based its ruling on their opinion that "adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights." *Id.* at 674.

## When to Retain the Services of a Forensic Accountant

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

Not all marital dissolution cases require the services of a Forensic Accountant. However, many of the more complicated cases in this ever complex and changing area of law do. Some of the reasons to retain a Forensic Accountant are as follows:

- When unreported or underreported income is an issue
- When one or both of the spouses is self-employed
- When one of the spouses has separate property claims
- When temporary and permanent spousal and child support are an issue
- When a determination of the marital lifestyle is required
- When accounting for reimbursements, tracing, allocation, apportionment and characterization of assets is needed
- When a valuation of a business interest is required
- When determination of business, executive or professional goodwill is needed
- When there has been a commingling of funds  
(See v. See

post-separation maintenance of community assets (Epstein)

- When the community has made payments on a separate property residence (Moore/Marsden)
- When an apportionment of community business is necessary (Pereira/Van Camp).

**Ron J. Anfuso, CPA/ABV, An Accountancy Corporation**, is a Los Angeles area Forensic Accounting firm, which provides litigation support services including analysis of financial, accounting and tax aspects of marital dissolution matters, expert witness testimony and business valuation. For more information regarding forensic accounting, please contact Ron J. Anfuso at (310) 378-6606 or [rja@anfusocpa.com](mailto:rja@anfusocpa.com)

## The Reape-Rickett Law Firm

Our mission is to provide Family Law legal services that are second to none. We conduct ourselves in accordance with the highest ethical standards and are committed to providing quality services.

Each firm member takes special care to understand the unique and individual concerns of our clients. Our team approach to each case ensures efficient and timely responses to simple or complex issues. We empower our clients with knowledge and information, enabling them to make reasoned and results-oriented decisions. The Reape-Rickett Law Firm is the firm of choice when results matter.

