

**BARRISTER'S CORNER**



**ATTY. KENNETH URSUA REYES**

# Factors considered in an award of spousal support

support for that period of time required for the supported spouse to obtain or complete an education, to allow the supported spouse to take care of the children until they reach an age where a return to employment would be more feasible, or to become self-supporting within a reasonable time.

Although the use of standard guidelines based on income is encouraged in the award of temporary support, such guidelines cannot be used in awarding permanent spousal support. As indicated hereinabove, the award of support is in large part based on the facts and circumstances of the particular case. In determining spousal support, the court considers numerous factors, set forth in Family Code Sec. 4320. They include: 1) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, 2) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party, 3) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard

of living, 4) The needs of each party based on the standard of living established during the marriage, 5) The obligations and assets, including the separate property, of each party, 6) The duration of the marriage, 7) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party, and 8) The age and health of the parties.

The factors set forth hereinabove are only several of the many factors the court will consider in deciding the issue of spousal support. In that the amount and duration of an award is largely based on the facts and circumstances of the case, it is advised that one who is requesting support, or is opposing a request for support, obtain experienced counsel, who will be able to present the facts and circumstances in the best light possible.

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Atty. Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family law section and Immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. LAW OFFICES OF KENNETH REYES, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Visit website Kenreyeslaw.com. (Advertising Supplement)

**DEBT RELIEF**



**ATTY. LAWRENCE YANG**

# Is severance package benefits exempt in BK?

**A** SEVERANCE package is money that will be paid to an individual who agrees to terminate employment as compensation for the loss of future earnings. This can be in the form of lump sum money paid coupled with payment of educational expenses to train the individual to obtain skills for another job. Severance pay can be a significant amount. What happens to a severance package when the individual files for bankruptcy relief? This question is relevant in these times when many people lose their jobs because of the recession and are forced into bankruptcy. This question was answered in the matter of "Lewis" but is currently on appeal. H. Robert Pierce, debtor's counsel in that case shares the unpublished bench opinion to help other debtors in a similar situation.

In the "Lewis" case, debtor accepted a voluntary buyout offer from Ford Motor Company. She opted to participate in the Ford Educational Opportunity Program (referred to by the court as "EDOPP"). That program entitled her to receive tuition reimbursement of up to \$15,000 per year for four continuous years of schooling. So, that portion of the severance package is worth at least \$45,000. It also provided for her to receive an annual living expense stipend, continuation of health care benefits, and continuation of life insurance for the next four years. This portion of the severance package could be worth an-

other \$2,500 a month for four years, or \$120,000. In addition, debtor was given the right to terminate her participation in the EDOPP and receive a lump sum payment in lieu of unused benefits. The payment was equal to \$100,000, minus amounts already paid under the program. In exchange for receiving this benefit, debtor agreed to be voluntarily separated from her employment. Hence, her severance package was equal to \$265,000 of cash and other benefits.

Debtor sought bankruptcy relief to discharge accumulated debt and relied on Section 522(d)(11)(E) to exempt her severance package valued at

the benefits obtained by debtor under EDOPP were "compensation for loss of future earnings" within the meaning of Section 522(d)(11)(E). "This is so because those benefits were benefits given to compensate for an event that adversely affected the debtor's future earnings in some way," the court said.

"The debtor being terminated from her employment with Ford Motor Company obviously was suffering and suffering an event that would, while not impair her ability to work for other employers elsewhere on some other job in the future, it did adversely affect her future earnings in a way sufficient in my view to bring this benefit

*“ Section 522(d)(11)(E) is not limited to income interruptions cause by physical injury or impairment, but includes benefits paid to debtors as part of a severance package from their employers. ”*

\$265,000. That provision exempts "a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." The bankruptcy trustee objected to this claim of objection and argued that the \$265,000 should become property of the bankruptcy estate. If the court agreed with the trustee, debtor would have to forfeit the \$265,000 to the trustee. However, Judge Tucker said that Section 522(d)(11)(E) is not limited to income interruptions cause by physical injury or impairment, but includes benefits paid to debtors as part of a severance package from their employers. Judge Tucker concluded that

within the meaning of the Section 522(d)(11)(E) phrase, compensation for loss of future earnings." Obviously, the trustee did not agree with this ruling and the ruling is currently on appeal. If the appeal confirms the court's ruling, then it can be used as a precedent for claiming this exemption in California. But this is not a California bankruptcy court ruling and the appeal is not to the 9th circuit and will not have a binding effect on California cases. But it does have some persuasive value for California. Debtors are forewarned that nothing on this issue is final in California.

Contact my office if you need debt relief. I will analyze your case personally.

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Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 5B, Alhambra, CA 91803. (Advertising Supplement)

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## Log off and enjoy your hot...

**PAGE B2** ◀  
the last US election played out over the internet and how the new rules for power, money, media and political gamesmanship are all being rewritten right before our very eyes. God forbid a chilling scenario for one megalomaniac individual with a lust for power and omnipotence, to muster enough resources and harness the power of the web to shape minds, move people to action and rule the world by BlackBerry or iPhone. China foresees this and similar to its effort to stave off the incursion of enemies in its domain during its long history by building the Great Wall, it is doing all it can to firewall, censor, block or neutralize this unstoppable force, particularly youtube, with a cadre of internet police. The threat is real.  
Until that purely imaginary fateful day and just for the moment, I am picking and choosing from the constant flow of messages in my inbox, only this one below. We receive forwarded jokes, prayers, stories, photos, news, slideshows, petitions and everything else that goes round and round unregulated on the internet loops. Some are for laughs, others inform while some can make you think harder or even take action. Pet peeves are those that are pure drivell and chain emails with a punitive clause, like a curse of bad luck, if you fail to forward. For malevolent messages and all the rest of the junk from scammers promising riches, simplify your cyberlife and hit DELETE. Do not engage.  
Sometimes a golden nugget comes through that deserves to be amplified. So simple, it hits you right between the eyes. I searched for the author's name but like many other pieces flung by anonymous, creative beings in Cyberville, authorship is largely unknown and unclaimed. To the originator of this metaphor then, whoever you are and wherever you may be, please accept a profound thank you, from the rest of us. Here it is.  
**The Hot Chocolate story**  
A group of graduates, well established in their careers, were

talking at a reunion and decided to go visit their old university professor, now retired. During their visit, the conversation turned to complaints about stress in their work and lives. Offering his guests hot chocolate, the professor went into the kitchen and returned with a large pot of hot chocolate and an assortment of cups-porcelain, glass, crystal, some plain looking, some expensive, some exquisite - telling them to help themselves to the hot chocolate.  
When they all had a cup of hot chocolate in hand, the professor said: 'Notice that all the nice looking; expensive cups were taken, leaving behind the plain and cheap ones. While it is normal for you to want only the best for yourselves, that is the source of your problems and stress. The cup that you're drinking from adds nothing to the quality of the hot chocolate. In most cases it is just more expensive and in some cases even hides what we drink. What all of you really wanted was hot chocolate, not the cup; but you consciously went for the best cups... And then you began eyeing each other's cups.  
Now consider this: Life is the hot chocolate; your job, money and position in society are the cups. They are just tools to hold and contain life. The cup you have does not define, nor change the quality of life you have. Sometimes, by concentrating only on the cup, we fail to enjoy the hot chocolate we have. The happiest people don't have the best of everything... They just make the best of everything that they have.  
Live simply. Love generously. Care deeply. Speak kindly. And enjoy your hot chocolate! But first, LOG OFF.  
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## Bankruptcy...

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lives can be shattered and marriages destroyed. I have seen the emotional toll that this takes on people- the shock, confusion and uncertainty about the future that this situation creates. Most people need time to recover emotionally even after the financial crisis is over. Remember, however, that if you do decide to file bankruptcy, you can be taking the first step to financial recovery if you have no other choice. Stop over-analyzing your situation and stop wasting your time worrying and feeling sorry for yourself. As someone said: "Worrying is like sitting in a rocking chair. It gives you something to do but it doesn't get you anywhere."  
The first thing you need to do is to find out what your legal options are and to find out whether bankruptcy is the right solution for your situation. In spite of all the negative things that most people have heard about bankruptcy, once they make the decision to file, they realize that the process can actually be positive and ultimately rewarding if it is their last chance for financial recovery. By knowing your options, you don't need to wait for things to change because in most cases, they don't- unless you take action now. This is not a time to be complacent and bury your head in the sand pretending that your debt problems don't exist. Be realistic and develop your own financial recovery plan.  
Call my office for a free consultation at Toll-Free 1-866-477-7772 and we can help you decide what option is best for your situation. We have offices in Glendale, Cerritos and West Covina.  
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None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772. (Advertising Supplement)

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Tel. No. 818.291.0088  
www.joesayaslaw.com  
700 N. Central Avenue, Suite 235  
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Our attorneys' accomplishments have been recognized by The Los Angeles Daily Journal, Million Dollar Advocates Forum, and various community organizations.

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