

Legally Separated Requires Living Separately

The “date of separation” for purposes of divorce, custody and legal separation cases now will not begin until the couple is living under separate roofs.

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/EINPresswire.com/ -- Anybody who has divorced in California knows the importance of the date when a couple is “legally separated.” This applies to all divorces, legal separations and child custody cases where monthly or yearly income, or property division, is at issue.

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In cases like this, an experienced private investigator’s day-to-day surveillance skills, video documentation, thorough investigation, and witness interviews are crucial.

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On Monday, July 20th, the California Supreme Court changed the rule from a “combination of factors” test, to a new bright line. The “date of separation” for purposes of divorce, custody and legal separation cases now will not begin until the couple is living under separate roofs.

California, a community property state, splits marital property at the date of separation. See, [Family Code § 771](#), which provides “[t]he earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.”

Under the new rule, a couple living under the same roof, however “separately,” cannot qualify under California divorce and separation law as having two “sole and separate” incomes. Under previous court rulings, the “date of separation” could be shown by a variety of factors, including sleeping arrangements, sexual behavior, and who paid which household expenses.

The new ruling resulted in [Marriage of Davis](#), No. S215050 (2015), a case where Keith Xavier Davis and Sheryl Davis had been living in the Castro Valley same house for five years before Sheryl moved out and filed a petition for divorce. During the five-year “separation,” Sheryl made more money than Keith, who was self-employed. Keith claimed there was no “separation,” thus entitling him to spousal support based on Sheryl’s income during the “separation” period from 2006 to 2008. Sheryl claimed the “date of separation” was in 2006, when the couple initiated their “separate” behavior, living under one roof but keeping separate credit card accounts, separate budgets, separate bank accounts, and having no sexual relationship. Sheryl took a job in Los Angeles in 2008, filed for divorce, and thereafter returned only on weekends until 2011. In July 2011, Sheryl moved out completely.

“Living in separate residences is an indispensable threshold requirement for a finding that spouses are living ‘separate and apart’ for purposes” of dividing property, the court ruled. Thus, the Supreme Court held, Keith Davis was entitled to spousal support, and a split of the community property, based on the 2011 date when Sheryl moved out. The case was remanded to Superior Court, for further proceedings to determine back spousal support and the property split.

“In cases like this, an experienced private investigator’s day-to-day surveillance skills, video documentation, thorough investigation of the married parties’ behavior, and witness interviews are crucial,” says John A. DeMarr, P.I., a licensed California private investigator since 1985.

“Without a [licensed private investigator](#), you have no access to public record information, court-admissible videography and witness interview expertise needed to establish whether either husband or wife is actually living at the former family residence. We have handled hundreds of divorce cases over our 30 years’ experience makes all the difference, in the service levels and innovative approaches we can offer our clients. Many times our expertise results in a successful outcome.”

John A. DeMarr, a licensed private investigator in Huntington Beach, California, has provided consistently innovative process service and private investigation services over thirty years. Always reasonably priced, his services are conducted aggressively, and always within the bounds of the law.

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