

## **In re Marriage of Olson (14 Cal.App.4<sup>th</sup> 1)**

On 4/12/91, Husband filed a motion to reduce spousal support. Husband was 66 at the time, and his employment income was steadily decreasing, which constituted a change of circumstance. Because of Husband's fluctuating monthly income, the trial court appointed a Special Master to determine Husband's monthly income available for support and to calculate the amount of spousal support to be paid to spouse.

The trial court included the following specific provisions for the Special Master to consider in determining income available for support:

1. All interest earned on savings accounts
2. Only withdrawals from retirement accounts (whether income or principal) are to be considered in income available for support
3. Business expenses are to be deducted from income
4. All other taxable income

The trial court further stated that once the Special Master determined income available for support, he was to utilize the Dissomaster computer program with default settings to determine spousal payment.

The appeals Court issued the following rulings:

1. It is an improper delegation of judicial authority for the trial court to delegate to a Special Master the authority to make factual findings as to the income of the parties. The court may use the Special Master to gather information and make recommendations, but only the court can make findings of fact as to income.
2. It is normally an abuse of discretion to use the Dissomaster default program in determining permanent support or for modification of permanent support (as opposed to temporary support) unless the court considered all the factors for determining permanent support prescribed in Civil Code Section 4801.
3. The trial court possesses broad discretion when setting or modifying permanent spousal support, about whether to consider as income available for support non-mandatory contributions to a retirement account and/or whether to include income accrued on those retirement accounts, if not withdrawn, as income available for support. In making its determination, the trial court should do so weighing public policy of encouraging savings and earnings on those savings for the

4. It would be an abuse of discretion in most instances for the court to impute income (or income actually accruing on those accounts) on retirement accounts for determining income available for support if it would subject the payer of spousal support to a tax penalty if the withdrawal were made (i.e., before age 59 1/2).
5. The trial court possesses discretion to consider as income available for support an amount greater than the statutory withdrawals required once the participants reaches age 70 1/2.