

In re Marriage of Rosen (12/24/02 - 105 Cal App4th 808, 130Cal Rptr 2d 1)

Spousal support should not be \$2,500 per month and child support \$830 per month as these orders were based on an erroneous finding of H's cash flow and ability to pay.

H was a self employed attorney working almost exclusively for the State of California preparing criminal appeals for \$65 per hour. H's 12/31/96 income was \$13,361 per month for the period 10/01/95 to 09/30/96 and marital expenses were \$10,513 per month.

At 5/16/97 H I&E states \$11,233 per month income. At 10/7/98 \$8,772 per month. At 1/7/99 I&E = \$7,695 per month for the preceding 12 months.

The evidence did not support the finding of \$13,500 per month cash flow. H did not offer records of his income and expenses other than his I&E declarations. Those I&E declarations were accepted by the appellate court as truth. The Appeals remanded to calculate spousal and child support based upon the information in the I& E declarations of \$7,945 per month for certain periods and to ascertain the amount of H monthly income/ability to pay for two other periods. The fact that it appears likely that the marital standard of living exceeds the present ability of H to pay means that it is not taken into account by Appeal.

There may be a reimbursement of over paid spousal and/or child support from W to H. If so, trial court must calculate and determine in what fashion it is to be reimbursed.