

# Family Courts Reward Domestic Violence With Spousal Support

By Fred Silberberg

We have all seen the bumper stickers on sheriff's patrol cars that read: "There is no excuse for domestic violence." Seems logical, seems straightforward. There should be no excuse for domestic violence. And if that is the case, then certainly there should be no reward for domestic violence. Yet, in family-law court, that does not always seem to be the case.

Domestic violence is a sad fact of life. It traumatizes people physically and emotionally. It can have long-lasting effects, especially on children. There is no question that the behavior is part of a cycle that repeats itself from generation

to generation unless confronted. One must question, then, why our Legislature would not take a hard stance against domestic violence in the context of family-law proceedings. You also must wonder why our judges don't take a harder line when it occurs.

One method of cracking down is to ensure that the perpetrators of domestic violence receive no financial reward. That is not the case. In California, you can abuse your spouse, then get a court order requiring the spouse whom you abused to pay you spousal support.

Take the following hypothetical: Bob and Sue were married for several years. Sue earned the lion's share of the income when they were together. Bob was never

able to get himself together. He had numerous personal problems, which included the fact that he could not control his anger and was violent with Sue. Sue filed for divorce and obtained restraining orders removing him from the family residence because of the abuse he had committed against her. Bob then asked the court for spousal support. He got it.

The scenario may sound unbelievable, but it happens. Sometimes, the wife is the abuser and receives support; sometimes, the husband is. Yet the law is not geared toward addressing this inequity. Bob's receipt of support in the example does not send him a message that his conduct was wrong. It does not do anything to curtail the conduct, nor to make him address the problem. If anything, Bob is rewarded for his conduct. Apparently, there is an excuse for domestic violence.

Family Code Section 4325 provides that there is a rebuttable presumption that neither a temporary nor a permanent spousal-support order shall be made where a conviction of domestic violence against the same spouse has occurred within five years. The statute, while attempting to address the situation, is ineffectual.

Family courts are equipped to address support requests relatively quickly. A temporary order for support can be granted within weeks of filing a case. Criminal proceedings can take a few years to reach the point of conviction, if the legal authorities even decide to undertake that action. In the meantime, the perpetrator of domestic violence continues to benefit from a support order being paid by the victim! If there is no prosecution, the support order can even be made long term.

Family Code Section 4320 addresses the factors that a court is to consider in making an order for support. Subsection (i) states that "[d]ocumented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party and consideration of any history of violence against the supporting party by the supported

party" is to be considered in fashioning a support award.

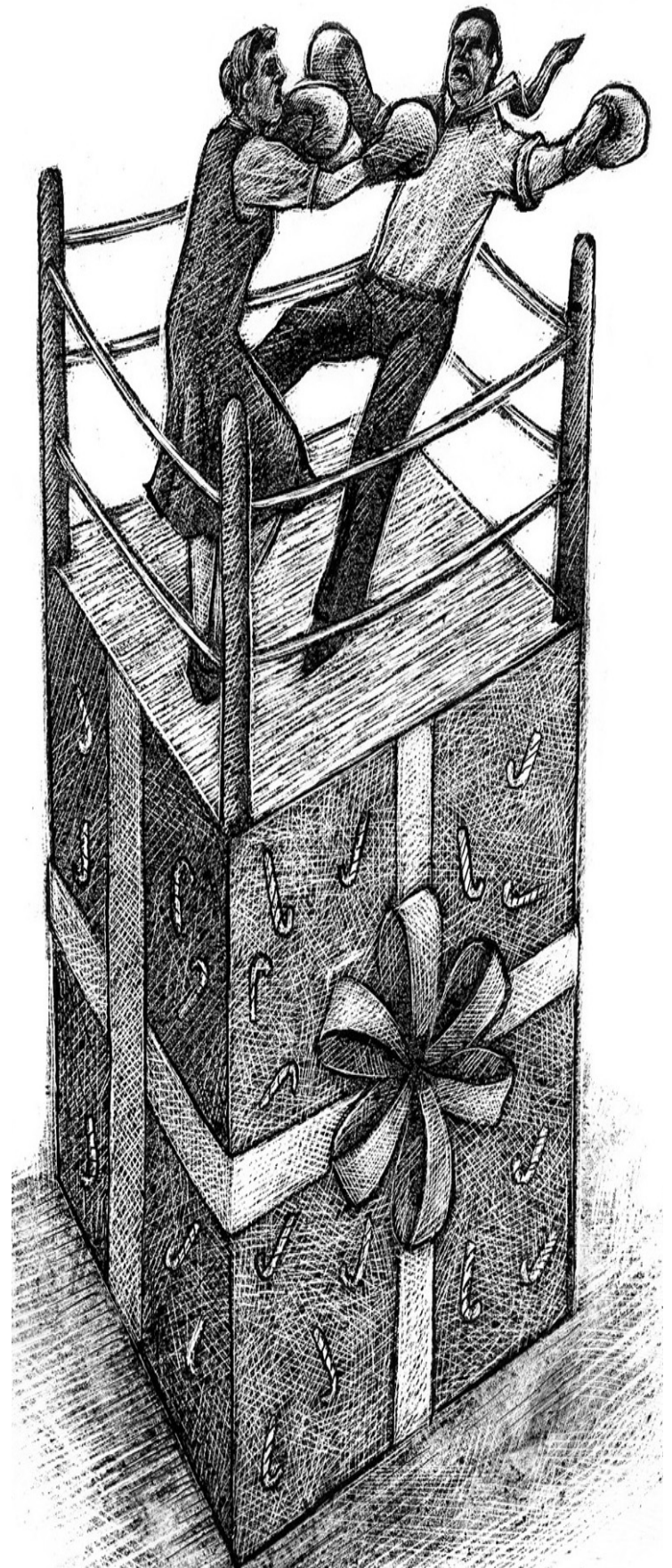
Family Code 6211 defines domestic violence as abuse against a spouse or co-habitant. However, the statute does not address how the domestic violence is to be considered when fashioning a support order; nor does it state unequivocally that domestic violence is a bar toward awarding the perpetrator spousal support.

Moreover, the factors set forth in Section 4320 normally are not applied in the context of temporary support orders. Although temporary support orders are intended to last from the time a case was filed to the time of the trial, our overburdened court system often allows these orders to remain in effect for a year or longer. Without any clear prohibition against awarding support to an abuser, a permanent support order can be granted in favor of the batterer.

Family law judges are called on to determine whether domestic violence has occurred regularly and routinely. Nearly every day, litigants come before the court saying that violence, in various forms, has occurred. Judges exclude people from their homes, keep them away from the other parties' place of employment and enter orders prohibiting contact. Clearly, the Legislature has determined that judges are capable of ordering these restrictions. Why hasn't the Legislature authorized judges to deny support requests when abuse has occurred?

A zero-tolerance policy doesn't seem to exist for spousal abuse. In the absence of clear statutory prohibition, judges are usually at a loss to deny a support request. Perhaps the Legislature thinks that only spouses who would pay support would perpetrate abuse. Perhaps the Legislature has no clear understanding of the factors that go into the psyche of a batterer. Perhaps we should give members of the Legislature their own bumper stickers. They could read "There is no excuse for domestic violence, but there are financial rewards for it."

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