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THE DRAMATIC EFFECT OF *DAVIS* ON "LIVING SEPARATE AND APART"

HOW TO GUIDE CLIENTS UNTIL LEGISLATIVE CHANGES ARE MADE

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Introduction

When the California Supreme Court handed down the ruling on *In re Marriage of Davis*[1] on July 20, 2015, experienced family lawyers went into an uproar. Rarely has a case had such immediate impact on the practical family law advice we need to give our clients. Since then, many of us have already been in court with a "*Davis* Issue" and, depending on whether we represent the financially stronger or weaker spouse, have been "ruined," as one well-known Los Angeles litigator phrased it, or triumphant. We have met the law of the land and we are humbled.

The California Supreme Court reversed an appellate decision on the meaning of "living separate and apart" that many thought was new wisdom for our modern age. It also challenged the Legislature, taunted it really, by saying that the warning had been given over a decade ago yet no laws were ever amended to reflect society's changing mindset in all of this time.[2]

Simply put, *Davis* stands for the proposition that if a couple remains in the same home, they cannot be "separate and apart." If they are not physically living separate and apart, even if at least one of them has an *intent* to be permanently separated, the Family Code Section 771 starting line, which indicates when separate property may begin to accumulate, is not crossed. While there are some theoretical exceptions hinted at in Footnote 7 of the case, the Supreme Court did not opine on what those opportunities to litigate might be.[3]

Four of the most obvious implications for those who thought they were officially separated but who are still living in the same home are:

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1. Advance the knowledge of Family Law Specialists;
2. Monitor legislation and proposals affecting the field of family law;
3. Promote and encourage ethical practice among members of the bar and their clients; and
4. Promote the specialty to the public and the family law bar.

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- Deferred benefits, that a member spouse may have felt were growing safely as separate property, are still community.
- Professional and other service businesses that might be measured as gaining separate value, are still gaining community value.[4]
- Debts incurred by either spouse will continue to be community obligations.[5]
- And, in a logical stretch from the case, short-term marriages are becoming long-term marriages so spousal support is growing exponentially.

In these areas and more, the weaker spouse is protected; the financially stronger spouse is exposed.

Why did the Supreme Court take this position? What should we tell our clients? Do we need to prepare separation agreements when parties continue to reside in the same household, when at least one party entertains and communicates to the other party the intent to end the marriage, but for financial or other reasons, does not move into a separate household? What are we to do while respected organizations, including our own ACFLS Legislative Committee, are preparing to advise the Legislature on statutory change? And how does the legal community remain intellectually honest in the quest for revisions given the vast divide between the haves and the have-nots we represent?

This article will touch on all of these conundrums.

The Authorized History of "Living Separate and Apart"

The full legal history of "living separate and apart," first enacted in 1870, will not be found in this article. However, the *Davis* case is our Supreme Court's full-throated rejection of the proposition creeping into law firms everywhere, that "living apart" may be interpreted as a mere mental construct or a state of mind. Therefore, some history is appropriate. The *Davis* ruling explored the meaning of Family Code Section 771, subdivision (a), which states in pertinent part:

"*The earnings and accumulations of a spouse … while living separate and apart from the other spouse, are the separate property of the spouse.*"

In getting to its ruling, *Davis* cited sixteen well-known and less famous cases: *Valli*,[6] *Norviel*[7] (which is the case that was criticized in the now reversed 2013 Sixth District *Davis* case), *Manfer*,[8] *Ceja*,[9] *Bonds*,[10] *People v. Cornett*,[11] *Tobin v Galvin*,[12] *Tagus Ranch Co*,[13] *Makeig*,[14] *Bouquet*,[15] *Baragry*,[16] *Marsden*,[17] *Umphrey*,[18] *von der Nuell*,[19] *Johnson* (now abrogated),[20] and *Hardin*.[21]

Fleshing Out the Davis *Reasoning:*

The *Davis* litigants were five years apart on date of separation. Husband asserted the later date, corresponding to when wife moved out. Wife claimed a separation date corresponding to when she told husband, they were "through."[22] There was no factual dispute as to when wife moved out.

Trial testimony, similar to what has been heard recently throughout California, presented issues such as when the parties stopped sharing a bedroom, when sex stopped, how the parents' attendance at children's activities occurred using separate cars, whether both parties did laundry, when some family vacations were taken, who owned which bank accounts, when the intent to end the marriage was communicated, what contribution sources were used to pay community bills, and whether they were living "separate lives."

At stake were a fledgling business started by husband at approximately the time of wife's proposed separation date, and earnings of wife after she announced she was "through." The trial court and the first district appellate court selected the earlier date and sided with wife, thus creating a conflict with an eleven-year-old Sixth District opinion.

Before diving into the interpretation of "living separate and apart," the Supreme Court reminded us that an essential first step in the division of assets and debts[23] is the trial court's characterization of property as either community or separate.[24] Therefore, the decision on when separate property first begins to accumulate cannot be skirted.[25]

The Supreme Court quickly announced that it disapproved the *Davis* appellate ruling, and before revealing any reasoning, bestowed favor on the 2002 case criticized at the appellate level. *Norviel* is cited for the prospect that physically living apart is "an indispensable threshold requirement" for separation under section 771(a).[26]

Thus, although many in our family law community have grown used to the now-reversed appellate decision in *Davis*, the Supreme Court ruled in favor of a bright line definition of "living separate and apart" —

Date of move-out equals the first date parties may begin "living separate and apart."

To follow their decision, we need to follow the justices' path. We are told that the date of separation is "normally a factual issue,"[27] but because the two appellate districts disagreed as to the meaning of 771(a), the Supreme Court must resolve the controversy.[28] Once we look at statutory construction, we know we will be given a full and delicious historical treatment on the meaning of "separate and apart."

The *Davis* court does not disappoint. It sets out its four-step construction plan to eliminate ambiguities in the statute as follows —

1. Plain Meaning;
2. Examination of the long history of the statute;
3. Prior judicial construction (case precedent); and
4. The Legislature's use of the phrase at other places in the Family Code.

Plain Meaning

In support of this approach, *Davis* referred to *Cornett*, which states, "our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose [citations]."[29] *Davis* quoted from *Cornett*, "[w]e begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, …[Citations.]"[30] "The plain meaning controls if there is no ambiguity in the statutory language. [Citations.]" If there is more than one interpretation, "courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute."[31]

Davis attempted to find an easy definition for "living separate and apart." Several versions of the *Black's Law Dictionary* definition for "living separate and apart" were quoted. Per *Davis*, the 1999 definition was "residing in different places and having no intention of resuming marital relations." However, the 2014 revision was "living away from each other, along with at least one spouse's intent to dissolve the marriage."[32] Even to the *Davis* court, this latest definition did not necessarily indicate living away from each other in *separate homes*.

Davis also tried to force the issue using colloquial speech, stating that ordinary usage of the phrase "living separate and apart" would mean living in separate residences.[33]

Davis finally acknowledged that a "less likely"[34] interpretation of the Webster's Dictionary definition of "separate" as "not shared with another,"[35] might indicate that the parties did not have to be in separate residences. The Court explained that this phrase could be read to mean that the spouses are in effect "living separate lives" with the intent to end the marital relationship. Such an interpretation would not require separate residences for purposes of section 771(a). This interpretation would make physical separation simply one of many factors to consider.

Once the court acknowledges that ambiguities may still exist, legislative and judicial precedents must be explored.

History of the Statute and Early Case Precedent

Quoting *Bonds,*[36] the Court reached back to our legal birth, stating that Family Code section 771 is "part of California's statutory community property scheme … and became California law through the treaty of 1848."[37] The Court stated that community property is a "creature of statute,"[38] and cited *Ceja* to explain that we must "ascertain the intent of the lawmakers."[39]

The language of section 771(a) "living separate and apart" originated in an 1870 statute. The *Davis* court explained that the Legislature's understanding that the phrase required separate residences was discerned from the statute itself. *Davis* further stated that from the earliest cases on, with respect to section 771(a) language, the issue presented regarding the interpretation of the statute was not whether separate places of residence were a prerequisite for application of the law, but rather whether separate residences "sufficed."[40] That question was answered in the negative. Per *Davis*, a few years after enactment of the statute in 1874, the Supreme Court held in *Tobin* that a temporary physical separation was insufficient for the accumulation of separate property by a woman unless abandonment could be shown.[41] In a 1931 case, *Tagus Ranch*, a woman proved that her husband had disappeared, never been heard from, was searched for, and she had never been able to find him through the date of trial: "Abandonment" without using the word. The court found that she was a married woman "living separate and apart," so was able to wrest her newly-received sawmill money from the bank that had taken her deposit to apply to her missing husband's debts.[42]

The *Davis* decision reported that early courts struggled with when even a lengthy separation was sufficient to cause the start of separate property accumulation in circumstances where the parties had moved into separate homes. The 1931 *Makeig* court explained, "…under *modern conditions* there is many a man living and working in one place and his wife living and working in another, seeing one another only on weekends, sometimes not for months at a time…"[43] Living in separate homes was not enough to trigger the beginning of "living separate and apart."

Rulings from Cases Without a Physical Leaving

In 1976, *Bouquet* acknowledged that Family Code section 771, then Civil Code section 5118, was revised to make the law equally apply to both men and women, and ruled that the new version of the law could be applied retroactively, based on the "probable constitutional infirmity"[44] of unequal treatment

of men and women in the prior law. The law retained the language, "living separate and apart."

The post-1976 cases continued to refine the definition of what was necessary for the application of former Civil Code section 5118. Per *Davis*, none of these later cases before *Norviel* entertained the question of whether a threshold requirement was living in separate residences because, in each case, one party had already moved out.[45]

However, most of us in the legal community were lulled to sleep on the threshold issue by these cases because the holdings seemed to be largely about subjective intent. In the writers' opinion, our torpor was reasonable based on the language of the courts. For example, *Davis* summarized *Baragry*, "the appellate court reversed a trial court's determination that the parties had separated on the date that the husband moved out of the marital home. [Citation.] The reviewing court observed that the fact that husband and wife lived in separate residences was not determinative of whether they were 'living separate and apart' for purposes of former section 5118. The court stated: **'The question is whether the parties' conduct evidences a complete and final break in the marital relationship.'**"[46]

In 1982, *Marsden* held that despite the fact the parties were living separately, they were continuing to have sex and were seeing a marriage counselor,[47] and so did not have the requisite intent to permanently separate. In 1990, the *Umphrey* litigants were already physically in separate homes, so that element was not given weight. The parties' conduct was emphasized, and not found to evidence a complete and final breakup of the marriage. The *Umphrey* court concluded that the parties' stipulation to a separation date after they physically moved apart was not conclusive.[48]

In 1992 the Family Code was enacted. Civil Code section 5118 became Family Code section 771. The new numbering became operative in 1994.

In that same year, 1994, the evolution of the test became apparent. As *Davis* reported it, the *von der Nuell* court essentially combined the requirements of *Makeig* and *Baragry*:[49] "The *von der Nuell* court recognized that when a party leaves the family residence it is not enough, but appears to ignore the physical leaving element in holding that 'legal separation requires not only a parting of the ways with no present intention of resuming marital relations, but also, more importantly, conduct evidencing a complete and final break in the marital relationship.'"[50] *Davis* stated that von der Nuell required "both subjective intent and demonstrated conduct."[51] *Davis* ignored the fact that litigators could interpret "parting of the ways" as not requiring "living in separate homes."

In fact, *von der Nuell* implies that a physical leaving was not expressly part of the test it applied: "Therefore, even assuming on the date husband vacated the family home the parties had no 'present intention of resuming marital relations' [Citation] their legal separation did not commence at that time. The parties attempted to reconcile, and it was not until some years later that their conduct evidenced a complete and final break in the marital relationship."[52]

By 1995, the *Hardin* case failed to consider physical leaving in its holding at all:[53] "Simply stated, the date of separation occurs when either of the parties does not intend to resume the marriage and his or her actions bespeak the finality of the marital relationship. … The court declared that "[a]ll factors bearing on either party's intentions 'to return or not to return to the other spouse' are to be considered," but "[n]o particular facts are per se determinative."[54]

Davis tells us that to the extent it can be argued that the *Johnson* court determined that living separate lives was sufficient for purposes of former section 5118, it is contrary to the evidence of legislative intent as discussed in *Davis*, thus the *Johnson* ruling is abrogated.[55]

Finally, a Pre-Move-Out Date Considered

Finally, in the 2002 *Norviel* case, the court did tackle a request for a date of separation to be set before the parties had physically separated.

Inevitably, *Norviel* applied the *Baragry/von der Nuell/Hardin* tests but arrived at the traditional conclusion that at minimum, physical separation must have occurred before a date of separation could be set. Essentially, per *Norviel*, one could not prove sufficient "conduct" without a move out.[56]

There were "substantial"[57] financial transactions between husband's proposed "subjective intent" date of separation and wife's proposed "conduct furthering intent" date of physical move-out. *Norviel,* as the first cited case since *Makeig* to deal head on with the physical separation issue, reversed the trial court for dealing only with subjective intent, and found that a physical leaving is an essential threshold fact before a date of separation can be found. The now-reversed appellate decision in *Davis* found this hearkening back to the old days to be a misstatement of modern law.

The *Davis* Supreme Court decision ended its case precedent probe into ambiguities that may exist in the phrase "living separate and apart" by accepting the traditional holding of *Norviel* in its interpretation of Family Code 771.[58]

"Living Separate and Apart" Found Elsewhere in the Family Code

The *Davis* court also briefly discussed a fourth tool to test for ambiguities in the phrase "living separate and apart." *Davis* analyzed only one other statute, Family Code section 6922, to say, "[t]his statute further supports our view that the Legislature likely intends the common meaning of the language when it uses this statutory phrase."[59]

To the writers of this article, a more complete search for the phrase in the Family Code markedly strengthens the *Davis* position, definitely elevates the phrase to a term of art, and should send a cautionary flag to all who are considering the re-drafting of Family Code section 771.

The phrase "living separate and apart" is used in six other Family Code statutes, and for each of the other statutes beyond 771, most practitioners would agree the common interpretation of the phrase is that the parties are actually physically living separately from one another. The complete list of those statutes includes:

- Family Code section 771 -- currently being discussed;
- Family Code section 910 -- liability of marital property;

- Family Code section 3104 -- the right of grandparents to file for visitation;
- Family Code section 3203 – availability of supervised visitation and counseling even if the parties are not "living separate and apart;"
- Family Code section 4336(b) – in considering support, the court may consider periods of separation during the marriage;
- Family Code section 4338 -- enforcement of spousal support will come from a list of sources, first from what was community before the parties were "living separate and apart;" and
- Family Code section 6922 -- consent by a minor for his or her own medical care exists under certain conditions, including, "living separate and apart."

Any amendments to Family Code section 771 that change the meaning of "living separate and apart" without complete removal of the phrase, risk potentially catastrophic effects on many sections of the Family Code.

Davis *Statutory Construction Conclusion*

In concluding its four-step analysis, the Court reinstated the usefulness of *Norviel*, and found for the husband. *Davis* stated "a bright-line rule … promotes fairness by providing a measure of predictability to the parties and their attorneys, as well as clear guidance to judges."[60] The *Davis* court concluded its statutory construction by finding that a physical leaving is not sufficient but is a necessary component in determining Family Code section 771(a) "living separate and apart."[61]

As a legal community, we must be cautious as we move toward revision of the statute, that we do not replace this bright-line rule with something that is only a boon to lawyers with high asset clients.

Practical Applications Now

The High Earners Are Moaning and the Low Earners Are Rejoicing

The *Davis* case is a clear signal to both the financially stronger and the financially weaker spouse. Right now, unless the law is changed, the weaker spouse is enjoying growth in spousal support years, in deferred benefits, and in personal service businesses that will later be awarded to the other spouse. The stronger spouse who chooses to live with his or her weaker spouse beyond the intent to divorce is risking turning a short-term marriage into a lifetime support package, is giving away deferred benefits, and is incapable of making real changes to personal service or professional businesses that would normally become separate property as of the date of separation.

Previously, after the now-reversed *Davis* appellate decision and prior to the Supreme Court *Davis* decision, the weaker spouse was often unknowingly harmed in that he or she was home washing the dishes while the intent-to-separate stronger spouse was already accumulating separate property in his or her retirement accounts and in his or her personal services business. The weaker spouse did not have the same opportunity for new growth during any extended separation periods because she was no longer sharing in the growth of some of the largest community assets yet her separate property was not yet confirmed to her by final judgment. Most harshly, during her extended stay with the stronger spouse, her spousal support years were not growing yet she was getting older and less capable of becoming financially independent while she thought she was preserving her security in the family home. Any statutory changes must account for both sides in the financial equation.

After analyzing the case carefully, we come away realizing that the weaker earner, whether stay-at-home or not, is well served by the *Davis* court's end to the concept of having a mere mental separation. Living in the pre-*Davis* lower-earner's shoes, and often female, she may still feel supported while doing the chores she usually handles, watching the children as before, and living life in the same home to which she has grown accustomed. During this time of her false sense of security, she is growing closer to retirement age yet she is no longer gaining in the retirement benefits except by interest alone. She is not able to invest her half of the community property in ways that support her new single status but must trust that the investments, even if poorly managed, are going to stay the way they have always been while living together. Finally, she is not able to contemplate a "deal" for housing on the outside because she is still wedded, in a very real sense, to the home that comforts her today.

In the meantime, the pre-*Davis* higher earner would simply be living mentally apart, free to have the comforts of home while knowing that his deferred benefits and service business are growing for him alone, and no longer for the community.

Lawyers representing either the stronger or weaker spouse while the parties are living in the same residence may find it prudent to draft agreements wherein the parties stipulate to a date of separation prior to physical leaving, expressly listing the reasons for remaining in the same residence, and both the positives and negatives in their arrangement.

The roughly 67%[62] of family law litigants (higher in larger counties) who are self-represented may be living together out of financial necessity, but will most assuredly be under-informed about their rights and obligations during the separation period should no bright line date of separation exist.

"Contributing Special Services" Test Left Behind

As *Baragry* states, "so long as a spouse …is contributing [his or] her special services to the marital community [he or] she is entitled to share in its growth and prosperity."[63] While the bright line test of *Davis*, *that the parties are not separated until one moves out,* would support the *Baragry* special contribution test, the reasoning in *Davis* is in no way dependent on this idea. Instead, the court dodges the question by stating that the later cases are not addressing the move out question.

Why Bother with Future Legislation?

Davis tries very hard to present a palatable reason for keeping a traditional approach: "Admittedly, the statute, as so construed, may work hardship in some specific situations, but we cannot say it is absurd….[64]

Per *Davis*, "[t]he requirement of separate residences for purposes of section 771(a) promotes reasonable public policy interests, but if there are other policy concerns that now advise

the adoption of a different rule, it is up to the Legislature to craft around other policy concerns one."[65]

Because the legal community largely wants to scrap the bright line "move out" as the date of separation threshold, what do we really want in a revised code to handle the modern, "we are separated in our minds, just not in our residences" concept? Bright thinkers throughout the state are wrestling with keeping both the objective evidence and subjective intent requirements discussed in Davis.

Supporting the Organizations Who Will Advise the Legislature

How our Legislative Advisory Committee Handles such a Request

Various statewide and local working groups, including our ACFLS Legislative committee, representatives from FLEXCOM, AFCC, AAML, and the Family Law Sections of the Beverly Hills and the Los Angeles County Bar Associations, have been discussing proposed legislation to "cure" the *Davis* decision in favor of fact specific standards. The primary focus is to do away with the "separate residence" requirement in appropriate circumstances.

At the time of this writing, two proposals have been circulating to amend Family Code Section 771 as follows:

Version 1

(a) The 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. Except as set forth in Sections 3104 and 6922 of the Family Code, "living separate and apart" requires:

(1) that either spouse express his or her intent to end the marriage to the other spouse, and

(2) objective evidence of conduct consistent with that spouse's intent to end the marriage. It is not essential that the spouses live in separate households, although their physical separation is a factor to be considered in determining whether the parties are living separate and apart.

(b) Notwithstanding subdivision (a), the earnings and accumulations of an unemancipated minor child related to the contract of a type described in Section 6750 shall remain the sole legal property of the minor child.

Version 2

(a) The earnings and accumulations of a spouse and the minor children living with, or in the custody of the spouse, who is living separate from the other spouse, are the separate property of the spouse. To be living separately requires:

(1) that either spouse express his or her intent to end the marriage to the other, and

(2) objective evidence of conduct consistent with that spouse's intent to end the marriage, considering the totality of the circumstances which indicate that a complete and final breakdown of the marriage has occurred. It is not required that the spouses live in separate households, although their physical separation is a factor to be considered in determining whether the parties are living separately.

(b) Notwithstanding subdivision (a), the earnings and accumulations of an unemancipated minor child related to the contract of a type described in Section 6750 shall remain the sole legal property of the minor child.

It has also been suggested that the legislative history/comments state that the intention is to overturn Norviel and Davis and that physically living separate and apart as a bright line requirement for separation is no longer the law under Family Code Section 771.

Others have suggested language to the effect that being served with the petition for dissolution of marriage or legal separation shall create a rebuttable presumption under subdivision (a) that the spouses are living separate and apart, regardless of whether they are living in separate residences. Then look to the totality of the circumstances, ie. expressed intent to end the marriage and objective evidence of such intent. This presumption may be rebutted only by clear and convincing proof.

Some of the proposals also seek retroactive application, but the writers of this article are cautious on this point because it would deprive parties of their vested property rights. These dramatic swings in the interpretation of "living separate and apart" are already wreaking havoc on the lives of current litigants and family law judges. As other statutes have rolled out in the past, we may need to enact a temporary statute to cover those filings that occurred after the Supreme Court decision but before the enactment of the new law.

The Particular Problems Presented by Davis

Making a bright line rule that holds spouses occupying separate households to be living separate and apart for the purposes of determining the community or separate character of earnings creates disparate treatment based on a family's economic status. Many spouses cannot afford separate housing and remain in the family residence, but believe they are separated. Others remain in the residence with the children to minimize the disruption. The decision fails to take into account the diversity of families.

Presenting to Legislature

At the time of this writing, the ACFLS Legislative Advisory Committee has not finalized its recommendation for legislation. Once the committee has finalized the proposed language and it has been approved by the ACFLS Board, efforts will be made to find a legislator to author the bill. FLEXCOM has reportedly deferred any action until the next legislative session.

Conclusion

Until the Legislature speaks, experienced practitioners must proactively a) advise current litigants how to establish

a favorable date of separation; b) guide new clients to make decisions today that may not be necessary in the near future, and c) plan how to advise future clients, perhaps even at the prenuptial stage, regarding how to handle date of separation issues as they affect deferred benefits, personal service businesses, length of marriage, and debt survival.

We must make our financially stronger clients aware of the pitfalls of living together while already mentally separated, and for the financially weaker spouses, we must inform them of the volatility in the law and the fact that it may change in 2016. ■

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1 61 Cal. 4th 846 (2015).
2 *Id.* at 863.
3 *Id.* at 864.
4 *In re the Marriage of Duncan*, 90 Cal. App. 4th 617, 633 (2001).
5 CAL. F.C. CODE § 2623.
6 *In re Marriage of Valli*, 58 Cal. 4th 1396 (2014).
7 *In re Marriage of Norviel*, 102 Cal. App. 4th 1152 (2002).
8 *In re Marriage of Manfer*, 144 Cal. App. 4th 925 (2006).
9 *Ceja v. Rudolph & Sletten, Inc.,* 56 Cal. 4th 1113 (2013).
10 *In re Marriage of Bonds*, 24 Cal. 4th 1 (2000).
11 53 Cal. 4th 1261 (2012).
12 49 Cal. 34 (1874).
13 *Tagus Ranch Co. v. First Nat. Bk.*, 7 Cal. App. 2d 457 (1935).
14 *Makeig v. United Security Bk. & T. Co.*, 112 Cal. App. 138 (1931).
15 *In re Marriage of Bouquet*, 16 Cal. 3d 583 (1976).
16 *In re Marriage of Baragry,* 73 Cal. App. 3d 444 (1977).
17 *In re Marriage of Marsden,* 130 Cal. App. 3d 426 (1982).
18 *In re Marriage of Umphrey*, 218 Cal. App. 3d 647 (1990).
19 *In re Marriage of von der Nuell*, 23 Cal. App. 4th 730 (1994).
20 *In re Marriage of Johnson*, 134 Cal. App. 3d 148 (1982), *abrogated by Davis*, 61 Cal. 4th at 863.
21 *In re Marriage of Hardin*, 38 Cal. App. 4th 448 (1995).
22 *Davis*, 61 Cal. 4th at 850.
23 *Id.* at 849 (citing *Valli*, 58 Cal. 4th at 1399).
24 *Id.* (citing CAL. F.C. CODE § 760).
25 *Id.*
26 *Norviel*, 102 Cal. App. 4th at 1162.
27 *Manfer,* 144 Cal. App. 4th at 930.
28 *Davis*, 61 Cal. 4th at 850.
29 *Cornett,* 53 Cal. 4th at 1263.
30 *Davis*, 61 Cal. 4th at 851.
31 *Cornett*, 53 Cal. 4th at 1265.
32 *Davis*, 61 Cal. 4th at 852.
33 *Id.*
34 *Id.* at 853.
35 *Id.* (citing WEBSTER'S 3D NEW INT'L DICTIONARY 2069).
36 24 Cal. 4th at 12.
37 *Davis*, 61 Cal. 4th at 851.
38 *Id.*
39 *Ceja,* 56 Cal. 4th at 1119.
40 *Davis*, 61 Cal. 4th at 856.
41 *Id.* at 856 (citing *Tobin*, 49 Cal. at 36-37).
42 *Tagus Ranch*, 7 Cal. App. 2d at 462.
43 *Makeig,* 112 Cal. App. at 143.
44 *Bouquet*, 16 Cal. 3d at 587.
45 *Davis*, 61 Cal. 4th at 861.
46 *Baragry*, 73 Cal. App. 3d at 448 (emphasis added).
47 130 Cal. App. 3d at 433.
48 218 Cal. App. 3d at 657.
49 *Davis*, 61 Cal. 4th at 860.
50 *von der Nuell*, 23 Cal. App. 4th at 732.
51 *Davis*, 61 Cal. 4th at 860.
52 *von der Nuell*, 23 Cal. App. 4th at 732.
53 38 Cal. App. 4th at 451.
54 *Davis*, 61 Cal. 4th at 861 (citation omitted).
55 *Id.* at 862.
56 102 Cal. App. 4th at 1162.
57 *Id.* at 1158.
58 *Davis*, 61 Cal. 4th at 865.
59 *Id.* at 858.
60 61 Cal. 4th at 865.
61 *Id.*
62 Judicial Council of California, Task Force on Self-Represented Litigants, *Statewide Action Plan for Serving Self-Represented Litigants* (2004), at 2.
63 73 Cal. App. 3d at 448.
64 *Davis*, 61 Cal. 4th at 865.
65 *Id.* (citations omitted).

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