



Welcome to Case Law Update

October 12, 2022

Forms Changes



FL-620, *Request to Enter Default Judgment*

- Declaration of Nonmilitary status revised
 - Now has 3 checkboxes
 - Complies with Servicemembers Civil Relief Act (SCRA)
 - New info box
- Similar changes to FL-165 (Family Law)
- Stay tuned for new forms



Effective Jan. 1, 2023:

Declaration of nonmilitary status *(required for a judgment)*.

The respondent/defendant is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that respondent/defendant is not in the U.S. military service because *(specify below)*:

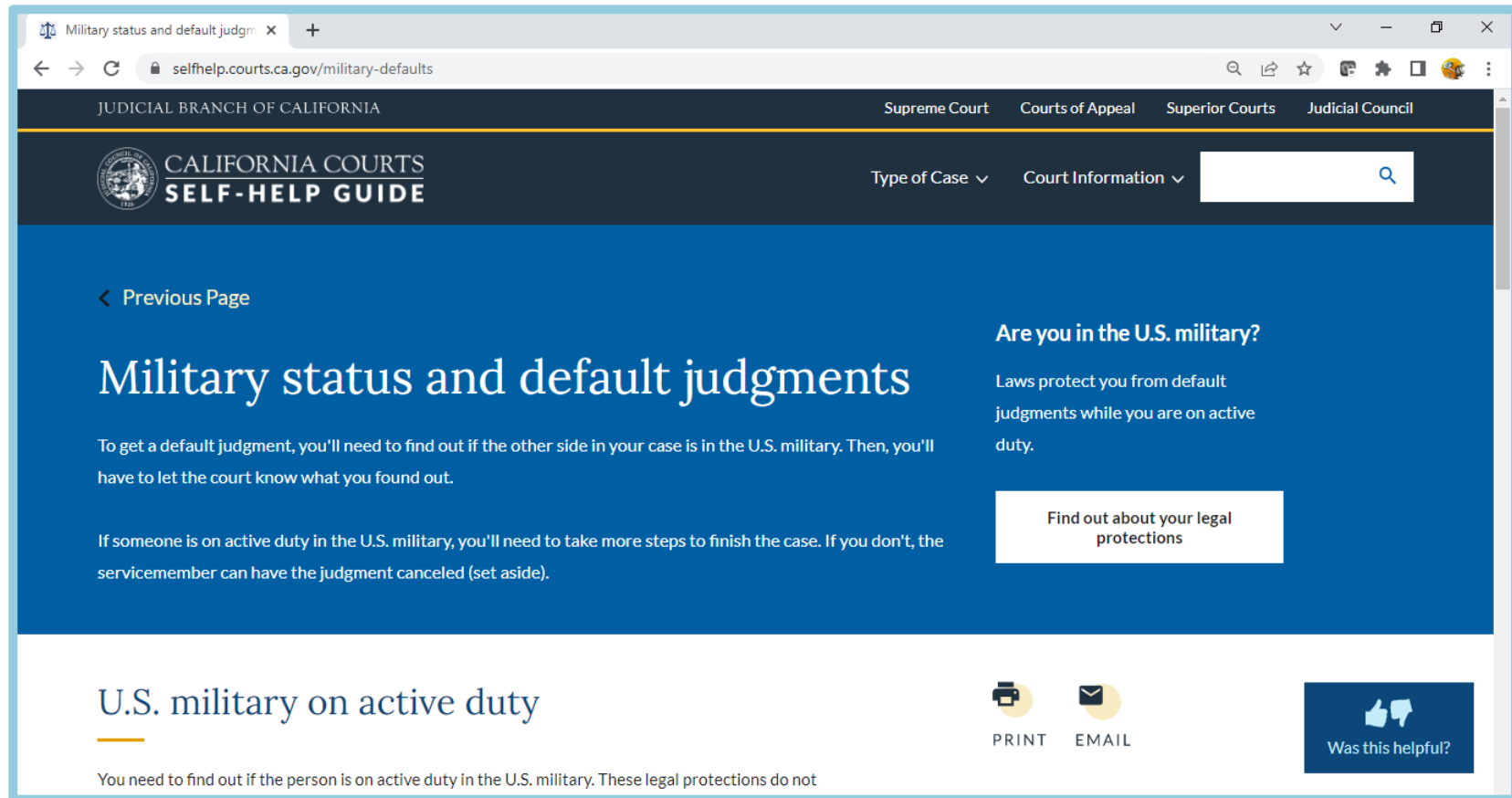
- (a) the military status of the respondent/defendant was checked online at <https://scra.dmdc.osd.mil/>.
- (b) the Child Support Enforcement System has no evidence of active military duty status for the respondent/defendant.
- (c) other *(specify)*: _____

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the respondent/defendant is in the military service, or their military status is unknown, the respondent/defendant is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see <https://selfhelp.courts.ca.gov/military-defaults>.



New content (SRL Portal):



The screenshot shows a web browser window with the URL `selfhelp.courts.ca.gov/military-defaults`. The page header includes the text "JUDICIAL BRANCH OF CALIFORNIA" and navigation links for "Supreme Court", "Courts of Appeal", "Superior Courts", and "Judicial Council". Below this is the "CALIFORNIA COURTS SELF-HELP GUIDE" logo and a search bar with "Type of Case" and "Court Information" dropdown menus. The main content area has a blue background with a "Previous Page" link and a large heading "Military status and default judgments". The text explains that users need to determine if the other party is in the U.S. military to get a default judgment. A white button labeled "Find out about your legal protections" is positioned on the right. At the bottom, there is a section titled "U.S. military on active duty" with a "PRINT" and "EMAIL" button, and a "Was this helpful?" feedback button.

Military status and default judgments

Are you in the U.S. military?

Laws protect you from default judgments while you are on active duty.

Find out about your legal protections

U.S. military on active duty

PRINT EMAIL

Was this helpful?



Case Law Update

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Hon. Lizbet Muñoz

Commissioner
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County of San Diego

October 12, 2022

Spousal Support

- *In re Marriage of Pletcher* (2021) 68 Cal.App.5th 906
- *In re Marriage of Kahan and Diamond* (2021) 75 Cal.App.5th 595
- *In re Marriage of Zucker* (2021) 68 Cal.App.5th 906

In re Marriage of Pletcher (2021) 68 Cal.App.5th 906

- Issue: Temporary spousal support
- Relevant facts:
 - H owned multiple businesses but main income from investment firm
 - Annual salary \$240K plus bonuses
 - H had fluctuating income due to nature of his wealth management business
 - 2014 \$1.1M 2015 \$540K 2016 \$490K 2017 \$505K 2018 \$1M 2019 \$1.6.M
 - Experts at opposite extremes
 - His-Use avg. income since '08 and deduct cost of building out theater
 - Hers-Use 2019 income

In re Marriage of Pletcher (2021) 68 Cal.App.5th 906

- Trial Court
 - Adopted method used by W's expert to calculate temporary SS
 - Not allow business losses to be deducted from his income-Businesses "not related"
 - Dissomaster-\$31K/mo
- H filed motion for reconsideration-*Smith/Ostler* please? Nope!
- H appealed-Trial Court erred in determining his ability to pay by
 - Basing his income on one year only-His best year
 - Disregarding the loss from his theater business

POLL

Your ruling?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera.



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In re Marriage of Pletcher (2021)
68 Cal.App.5th 906

- Appellate Court-Reversed and remanded!
 - H's income improperly calculated = Dissomaster SS amount illusory
 - OK to use historical evidence of income to forecast future income-Representative sample
 - OK to use GL calculators (*Winter, Olson*)-Input must be accurate (*Fini*)

In re Marriage of Pletcher (2021) 68 Cal.App.5th 906

- Appellate Court
 - Fluctuating income case-Abuse of discretion using only one year that was his best year ever
 - Historical evidence = representative income not extraordinary income
 - Predict likely income for immediate future not extraordinary high or low income in the past (*Riddle*)
 - Data set used must be a reasonable basis for determining income (*Rosen*)
 - Here-Experts were at opposite extremes
 - Court's equitable duty to determine the representative time period for calculating income

In re Marriage of Pletcher (2021)
68 Cal.App.5th 906

- Appellate Court holding on issue of income determination
 - Two approaches suggested on remand
 - Expand number of years-Capture volatility in H's income OR
 - Use *Smith/Ostler*-Use H's base salary and run a bonus report

Poll

- Appellate Court holding on issue of considering theater losses

Would you have allowed the deduction?

POLL

Would you have allowed the deduction?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera.



In re Marriage of Pletcher (2021)
68 Cal.App.5th 906

- Appellate Court holding on issue of considering theater losses
 - Harmless error here but need to correct Trial Court's analysis
 - Rejected "related to" as a legal standard
 - Correct standard of review (*Deluca*): Court has discretion to exclude or include
 - Were the expenditures reasonable?
 - Would including or excluding them from income work a hardship on either party?

In re Marriage of Pletcher (2021)
68 Cal.App.5th 906

Your thoughts?

In re Marriage of Kahan and Diamond (2021)
75 Cal.App.5th 595

- Issue post-judgment modification of SS
- Relevant facts
 - 17-year marriage and stipulated judgment in '14
 - 2019-H filed motion to modify or terminate permanent spousal support
 - H-Income decreased; our second child has aged out of CS; W is not making reasonable efforts to become self sufficient
 - W-His I&E shows income increased; requested 271 sanctions due to multiple frivolous filings
 - H filed amended I&E one week prior to hearing showing decrease

In re Marriage of Kahan and Diamond (2021) 75
Cal.App.5th 595

- Trial Court holding
 - Amended I&E-Disregard as “untimely”
 - Second child aged out-Material change in circumstances triggering §4320 analysis
 - §4320(c)-No reduction in SS since his income had increased
 - §4320(i)-W had made efforts to become self sufficient
 - §271 sanctions against H-Rehashed/assert same issues

In re Marriage of Kahan and Diamond (2021) 75
Cal.App.5th 595

- H appealed-Trial court erred
 - Failed to consider each of the §4320 factors
 - Denied H's request to cross-examine W on her §271 sanctions request
 - Granting §271 sanctions violated H's due process rights-W did not file a noticed motion

POLL

How would you rule on appeal as to SS?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera.



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POLL

How would you rule as to sanctions?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera



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In re Marriage of Kahan and Diamond (2021)
75 Cal.App.5th 595

- Appellate court affirmed as to all three!
 - SS-§4320 does not require that court expressly consider and ID each factor
 - Case law
 - Statutory construction-No language mandating express findings
 - Here-Court considered the only two applicable factors §4320 (c) & (i)
 - Best practice for courts-Make a more complete record

In re Marriage of Kahan and Diamond (2021)
75 Cal.App.5th 595

- Cases

- To accomplish substantial justice for the parties, the court has broad discretion to fairly exercise the weighing process of applicable factors (*Cheriton, Kerr*)
- Trial court has discretion to determine appropriate weight to assign to each factor (*Baker*)
- Court cannot be arbitrary and must consider applicable circumstances of the parties (*Prietsch & Calhoun, Watt*)

In re Marriage of Kahan and Diamond (2021)
75 Cal.App.5th 595

- Live testimony
 - FC §217 governs this issue and directs trial court to receive live testimony unless good cause to refuse
 - Good cause is explicated in CRC 5.113
 - Here, proffered evidence was not relevant and within scope of hearing
- §271 sanctions
 - Award only after notice and opportunity to be heard
 - Here, W's request in her opposition papers gave H sufficient notice and opportunity

In re Marriage of Kahan and Diamond (2021)
75 Cal.App.5th 595

Your thoughts?

In re Marriage of Zucker (2021)
68 Cal.App.5th 906

- Issue-Enforceability of SS provision in 1994 PMA
- Relevant facts
 - 1994 PMA governed by 1986 CPAA
 - SS provision need only be voluntary and conscionable at execution
 - At execution, H worth \$5M and W \$242K; both had lawyers
 - At divorce, H worth \$32M and made \$5M/yr. but W had no income and had stayed at home during marriage to raise 6 kids
 - Per terms of PMA, W only entitled to \$6K/mo. SS and one time \$10K payout

In re Marriage of Zucker (2021) 68 Cal.App.5th 906

-
- California Premarital Agreement Act-FC §§1600-1617
 - 1986-Original version did not specifically mention SS as allowable subject matter in §1612
 - *Pendleton*-SS provisions may be enforceable on a case-by-case basis if
 - Voluntary and conscionable at execution per §1615
 - Not against public policy per §1612(a)(7)
 - 2002-Amended to add SS (§1612(c)-conscionable at execution and enforcement) and explicate voluntariness (§1615(c))
 - 2020-Amendments re voluntariness
 - Amendments not applied retroactively by most courts

In re Marriage of Zucker (2021)
68 Cal.App.5th 906

- Trial Court held PMA valid but for the SS provision because unconscionable at enforcement
- H appealed-1994 PMA and correct standard is unconscionability at execution
- Appellate Court affirmed (*Pendleton*)
 - Under 1986 version, discretion to hold SS provision against public policy per 1612(a)(7)
 - **1612.** (a) Parties to a premarital agreement may contract with respect to all of the following: (7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

Haley v. Antunovich (2022)
76 Cal. App. 5th 923

- Issue - Seek Work Orders
- Relevant Facts:
 - Dad's RFO for mod \$1525 c/s and seek work order for Mom. T/S also now 42%
 - Prior order based on mom's 5k in monthly gift income
 - At Trial, Mom opposed SW arguing lack of skills & working detrimental to child.
 - Mom continues to have gift income-now \$7500 month.
 - Trial court reduced c/s to \$891 and ordered Mom to seek work. Mom appealed.

What did the Court of Appeal say?

SORRY! YOU
GOT TO GO
LOOK FOR
WORK!



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Haley v. Antunovich (2022)
76 Cal. App. 5th 923

- **AFFIRMED** – The policy of the State of California is that both parents are mutually responsible for the financial support of the children. FC 4053(b) And should pay support according to their ability. FC4053(d)
- There was substantial evidence. Mom had BA. & expenses of \$10k mo.
- Even w/gift income Mom had ability/opportunity to earn more. Had a BA/worked before/no longer had daycare duties.

POLL

What if Mother was 60 years old? Would you rule differently?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



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Take away

A seek work order can be made even if the parent has sufficient private resources.

Marriage of Cunningham (2022)
2022 WL 1819316 - **Unpublished**

- Relevant Facts

- Mother files RFO mod c/s based on more \$ dad and 0% timeshare. Prior order used 5k imputation to mom.
- At trial, Ct used 0% timeshare, Dads increased \$ and reduced Mother's imputed income to ~\$3,300.
- Father appeals contends court lacked authority to reduce & violated his due process b/c no notice of reduction of imputed income.

WHAT DID COURT
OF APPEAL SAY?



Marriage of Cunningham (2022)
2022 WL 1819316 - **Unpublished**

AFFIRMED - H had notice.

- All Judgment of disso contained FL-192-Notice of rights and responsibilities
- Credible testimony of mom that she had reduced earning ability was sufficient. A single witness satisfies substantial evidence standard (*Marriage of Mix*).

Take away

A motion puts all factors at issue,
regardless of what factors are argued

County of Santa Cruz DCSS v. Mendez (2022)
2022 WL 5241761- **Unpublished**

- Relevant Facts:

- In 2015, Mendez & mom reach stip for \$527mo.
- In 2021 Motion by DCSS mod c/s due to Dad's ↑ income.
- GL was \$917, court deviates down to \$300.
- Court had Dad's current IED with paystubs
- Court questioned him about his expenses
- Except for one payment, Dad current on support for last year.

County of Santa Cruz DCSS v. Mendez (2022)
2022 WL 5241761- **Unpublished**

- Court makes the findings GL would be unjust/inappropriate b/c:
 - Ct finds if order GL dad left w/\$1354 if GL ordered-Found BLE of \$2527
 - States expenses, such as rent, are modest
 - Finds deviation in BIC

POLL

Were these findings sufficient?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



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County of Santa Cruz DCSS v. Mendez (2022)
2022 WL 5241761- **Unpublished**

- NO → REVERSED AND REMANDED.
- The court did not articulate *why* it reduced c/s to an amount Dad was already paying.
- The deviated amount was more than 60% less than GL
- Dad was earning now more than he did in 2015

Take away

Court needs to articulate its reasoning

Adoption E.B (2022)
76 Cal. App. 5th 359

- Issue – Applicability of FC 7612(c) to adoptions
- Relevant Facts:
 - A petition was filed to permit adoption of 2-year-old by appellant- long-time partner of the child's Bio parents, JO and MB.
 - The trial court denied the petition on grounds the adoptive parent, appellant, did not meet the elements of FC 7612 (c) Adoptive parent appeals.

Adoption E.B (2022)
76 Cal. App. 5th 359

- REVERSED AND REMANDED.
 - Error to rely on 7612(c). This section does not apply to adoptions.
- Court of Appeal found:
 - Section 7612 (c) is not an adoption statute.
 - Section 7612 (c) is part of Uniform Parentage Act
 - Section 7612 (c) applies to claims of disputed parentage.
 - It is in this context, not adoption, a court may find more than two persons with a claim to parentage under this division.

Adoption E.B (2022)
76 Cal. App. 5th 359

- Refresher-FC7612(c)-Multiple parent statute
 - Recognizing only two parents would be Detrimental to Child.
 - Confirming a parent/child relationship/Not creating one.

Take away

FC 7612(c) does not apply to adoptions

Unpublished Cases of Interest



IRMO Thomas (2021)
2021 WL 4539751 - **Unpublished**

- Trial court considered new spouse's income in setting arrears payback amount of obligor/spouse.

Your ruling on appeal?

POLL

Your ruling on appeal?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



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IRMO Thomas (2021)
2021 WL 4539751 - **Unpublished**

AFFIRMED

- Such income can be considered in discharging CS obligation

CH v. R.H. (2022)
2022 WL 497533 - **Unpublished**

- Trial Court vacated default parentage judgment establishing parent child relationship between 7611(d) parents and child because bio parents were not noticed.

Your ruling on appeal?

POLL

Your ruling on appeal?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



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CH v. R.H. (2022)
2022 WL 497533 - **Unpublished**

AFFIRMED

- FC 7635 requires notice of a parentage action commenced per 7630 to all “presumed parents”; service per 7666

County of Santa Cruz DCSS v. Clark (2022)
2022 WL 3971604- **Unpublished**

- Trial court denied respondent's request to set aside default judgment based on faulty service of S&C because he had made several appearances without objecting to personal jurisdiction.

Your ruling on appeal?

POLL

Your ruling on appeal?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



County of Santa Cruz DCSS v. Clark (2022)
2022 WL 3971604- **Unpublished**

AFFIRMED

- General appearance is equivalent to waiving objections to service. Must make a special appearance to preserve such claim.

In re Marriage of Nicole M. & Christopher Mitchell (2021)
2021 WL 4945475 - **Unpublished**

- Trial Court denied the Mother's motion to set aside a child support order on the grounds of perjury and fraud, finding that, assuming Father did not disclose he was offered a job, there was no basis to alter the c/s amount that was ordered on the income established.
 - There was no evidence Father had accepted job prior to hearing, and no intent for perjury or fraud.

Your ruling on appeal?

POLL

Your ruling on appeal?

- Click the link in the chat, or
- Scan the QR code below with your phone's camera, or



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In re Marriage of Nicole M. & Christopher Mitchell (2021)
2021 WL 4945475 - **Unpublished**

AFFIRMED

- Perjury requires specific intent to make a false statement under oath. There was no evidence that Father had accepted the offer on or before the hearing date.
- Fraud: No intent to deceive Mother. Father's nondisclosure of prospective employment was irrelevant to the calculation of child support as of the hearing date.



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