



**Case Law Update**

Hon. JoAnn Johnson, Ventura Superior Court  
Hon. Yvette Durant, Nevada/Sierra Superior Court  
Mr. John Henzl, Los Angeles Superior Court

20<sup>th</sup> Annual AB 1058 Child Support  
Training Conference  
August 29-September 1, 2016

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**Hon. JoAnn Johnson**  
Ventura Superior Court  
Presenter

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**In re H. R.**

245 Cal. App. 4<sup>th</sup> 1277 (2-2016)

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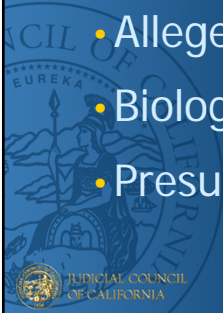
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## Paternity Status

- Alleged Father
- Biological Father
- Presumed Father



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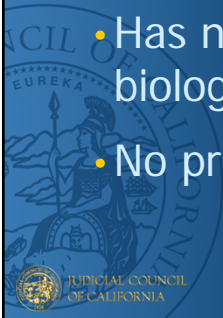
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## Alleged Father

- Has not established biology
- No presumption applies



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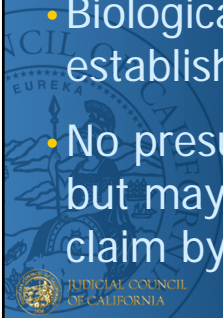
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## Biological Father

- Biological paternity established
- No presumption applies but may be used to rebut claim by other man



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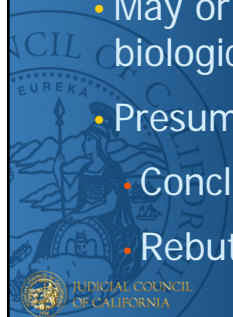
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## Presumed Father

- May or may not be biological father.
- Presumption applies
  - Conclusive (marital)
  - Rebuttable



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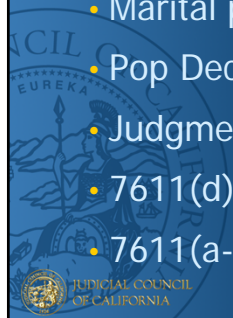
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## Presumptions

- Marital presumption
- Pop Dec
- Judgment
- 7611(d)
- 7611(a-c)



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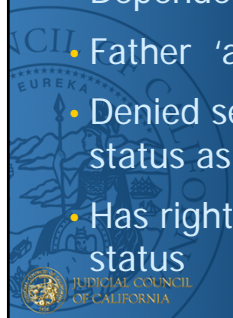
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## Facts

- Dependency Case
- Father 'alleged'
- Denied services because of status as alleged.
- Has right to try to elevate status



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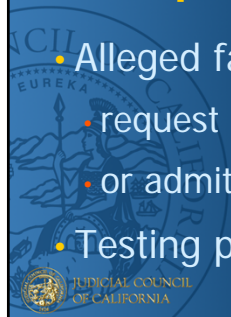
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## Alleged father status in DCSS proceedings

- Alleged father may
  - request genetic testing
  - or admit parentage.
- Testing per FC 7551 et.seq.



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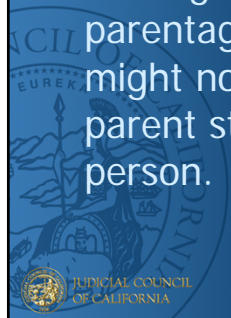
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- Finding of biological parentage of alleged father might not trump presumed parent status of another person.



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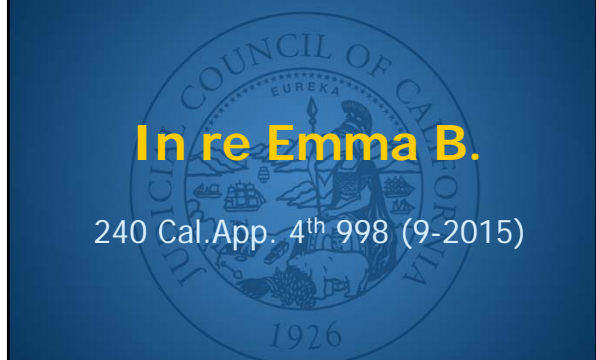
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## In re Emma B.

240 Cal.App. 4th 998 (9-2015)



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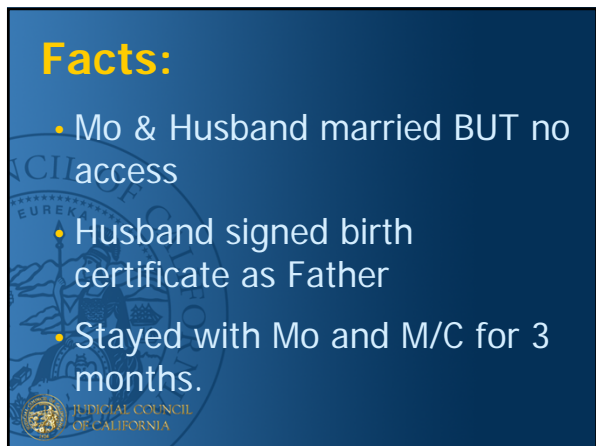
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**Facts:**

- Mo & Husband married BUT no access
- Husband signed birth certificate as Father
- Stayed with Mo and M/C for 3 months.



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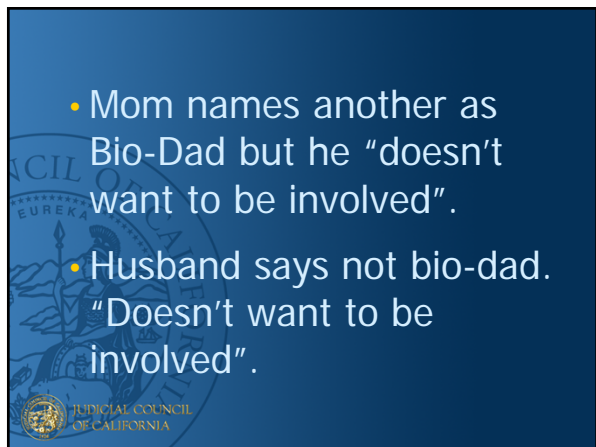
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- Mom names another as Bio-Dad but he "doesn't want to be involved".
- Husband says not bio-dad. "Doesn't want to be involved".



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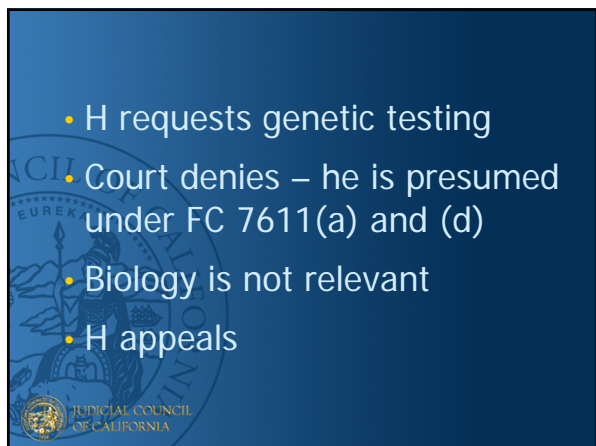
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- H requests genetic testing
- Court denies – he is presumed under FC 7611(a) and (d)
- Biology is not relevant
- H appeals



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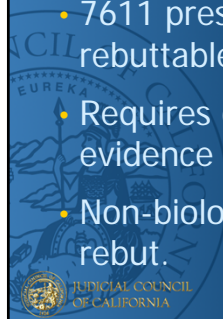
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## Uniform Parentage Act

- 7611 presumptions are rebuttable
- Requires clear and convincing evidence
- Non-biology does not necessarily rebut.



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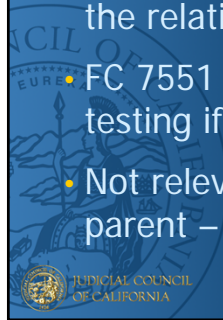
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- Presumptions are based on the relationship
- FC 7551 allows for genetic testing if biology is relevant
- Not relevant if presumed parent – testing denied



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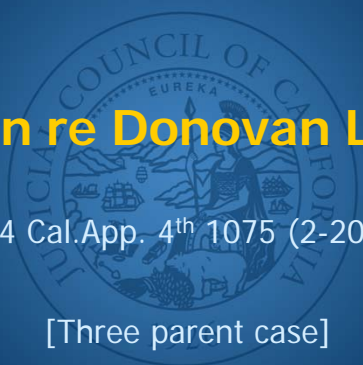
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## In re Donovan L.

244 Cal.App. 4<sup>th</sup> 1075 (2-2016)

[Three parent case]



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### Facts:

- FC 7540 Marital presumption applied to Husband. (had relationship with child)
- Bio-dad requested presumed status per 7611(d). (no relationship)



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- Court found both to be presumed fathers.
- There was no strong relationship between child and 7611(d) father.
- Father had to develop a relationship.



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- Applied FC 7612(c)
- "Found it would be detrimental to the child to have only two parents."
- Mo and H appealed.



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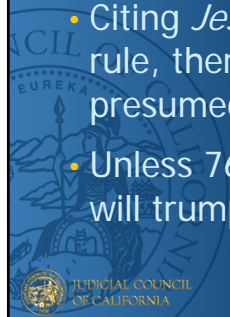
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### C.A. reverses:

- Citing *Jesusa V.* "As a general rule, there can be only one presumed father".
- Unless 7612(c) applies, 7540 will trump 7611(d)



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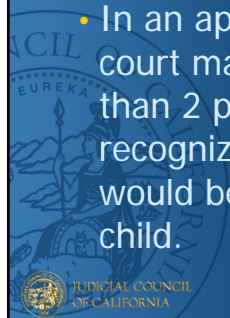
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### 7612(c)

- In an appropriate action a court may find that more than 2 persons are parents if recognizing only 2 parents would be detrimental to the child.



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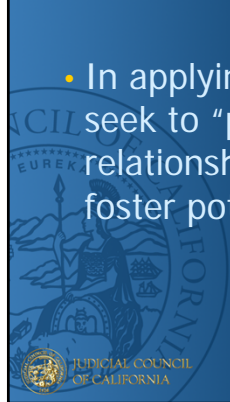
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- In applying the UPA, courts seek to "protect existing relationships rather than foster potential relationships"



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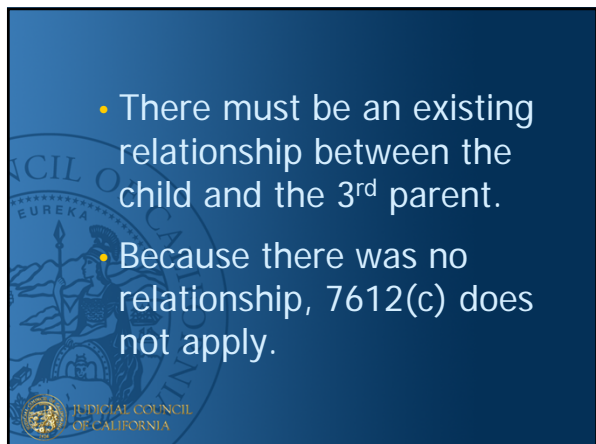
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- There must be an existing relationship between the child and the 3<sup>rd</sup> parent.
- Because there was no relationship, 7612(c) does not apply.

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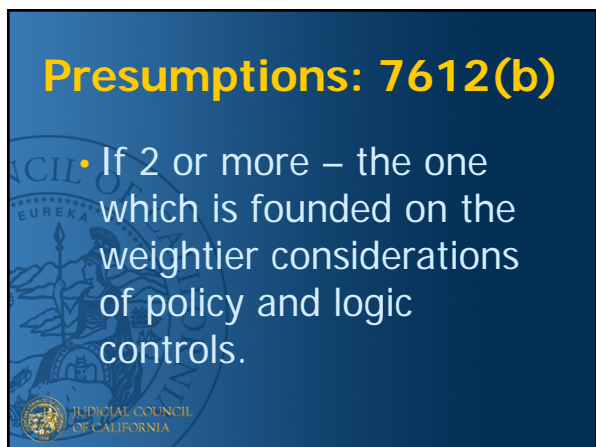
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**Presumptions: 7612(b)**

- If 2 or more – the one which is founded on the weightier considerations of policy and logic controls.

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**Martinez v Vaziri**

246 Cal.App. 4<sup>th</sup> 373 (4-2016)

[Three parent case]

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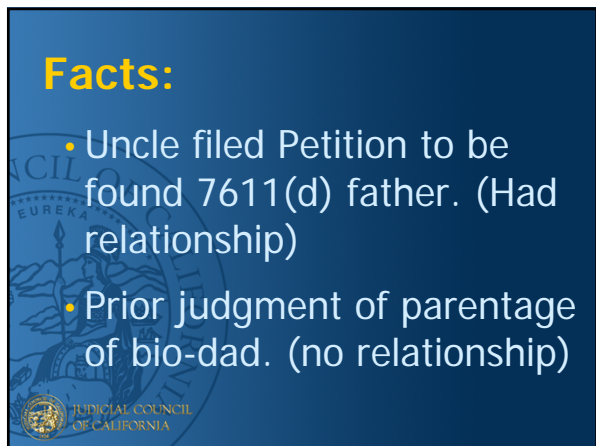
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### Facts:

- Uncle filed Petition to be found 7611(d) father. (Had relationship)
- Prior judgment of parentage of bio-dad. (no relationship)



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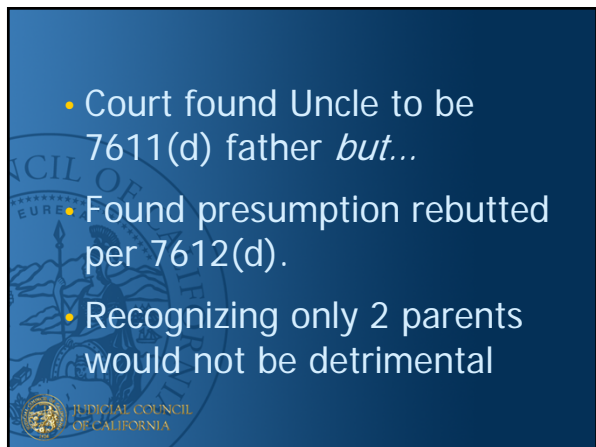
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- Court found Uncle to be 7611(d) father *but...*
- Found presumption rebutted per 7612(d).
- Recognizing only 2 parents would not be detrimental



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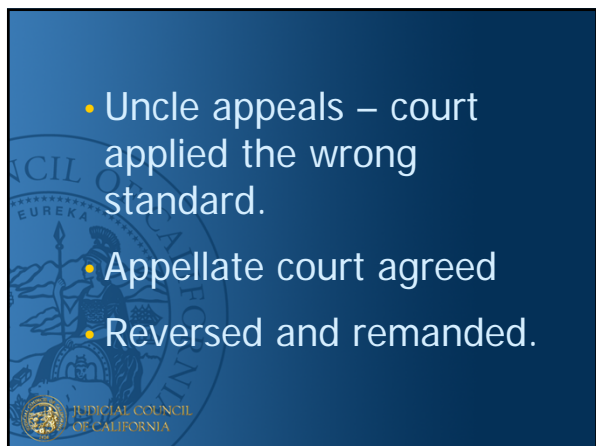
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- Uncle appeals – court applied the wrong standard.
- Appellate court agreed
- Reversed and remanded.



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## 7612(c)

- In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.



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- In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement...



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- with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time.



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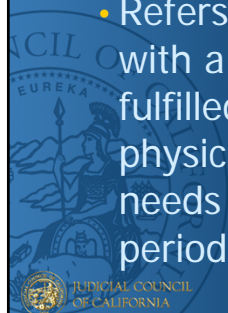
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## "Stable Placement"

- Refers to the *relationship* with a person who has fulfilled the child's physical and emotional needs for a substantial period of time.



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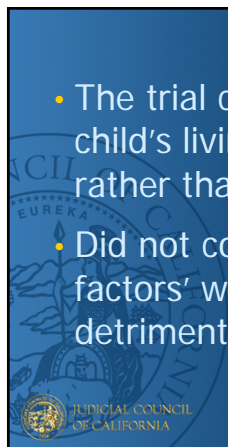
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- The trial court focused on the child's living arrangement rather than the relationships.
- Did not consider 'all relevant factors' when determining detriment to the child.



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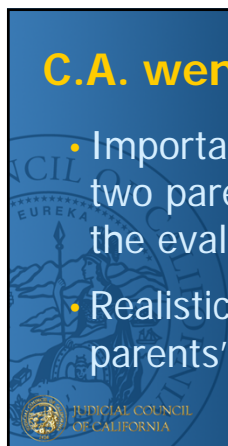
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## C.A. went further:

- Important children have two parents. Germane to the evaluation of detriment.
- Realistic assessment of the parents' roles.



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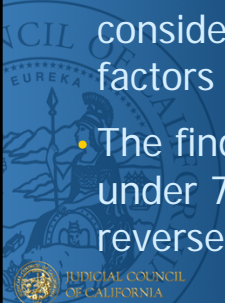
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- The court failed to consider all the relevant factors in 7612(c).
- The finding of rebuttal under 7612(d) must be reversed.

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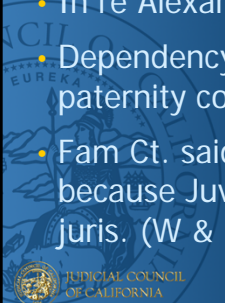
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### Family Ct v. Juvenile Ct



- In re Alexander P. (8/16)
- Dependency case opened while paternity contest in Fam. Ct.
- Fam Ct. said 2 dads but order void because Juvenile Ct had exclusive juris. (W & I §316.2)

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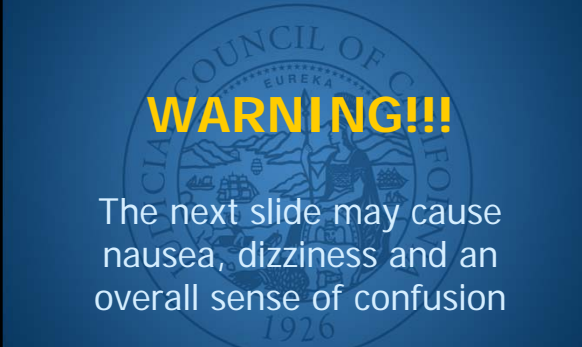
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**WARNING!!!**

The next slide may cause nausea, dizziness and an overall sense of confusion

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# UIFSA 2008

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- FC §5700.101 et. seq.
- Applies to other State or Foreign Country through Convention on International Recovery of Child Support (Hague 2007)

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## Contest registration or enforcement:

- Lack of personal jurisdiction
- Order obtained by fraud
- Order vacated, suspended, modified by later order
- Stayed by issuing tribunal

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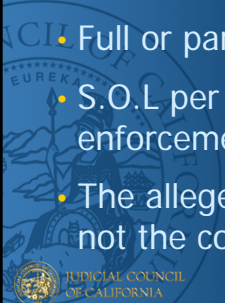
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- There is a defense in this state to the remedy sought
- Full or partial payment made
- S.O.L per 5700.604 precludes enforcement of arrears
- The alleged controlling order is not the controlling order\*



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**If defense established:**

- Court may stay enforcement
- Allow time to present additional evidence
- Enforce undisputed part



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**If no defense:**

- Order is valid
- Court must issue order confirming the registered order and enforce



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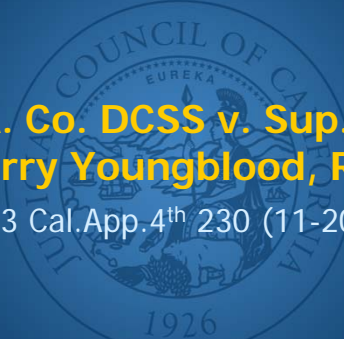
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**L. A. Co. DCSS v. Sup. Ct.;**  
**Barry Youngblood, R.P.**  
243 Cal.App.4<sup>th</sup> 230 (11-2015)

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- Swiss judgment registered in CA for enforcement.
- Mo and child live in Switz.
- Father challenged – no personal jurisdiction.

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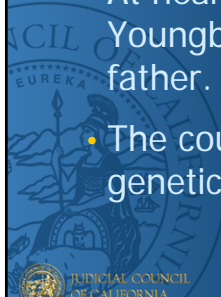
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- At hearing, court asked if Youngblood agreed he was father. He did not.
- The court then suggested genetic testing.

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- DCSS objected.
- Paternity already adjudicated in Switz.
- Father would have to attack judgment there.

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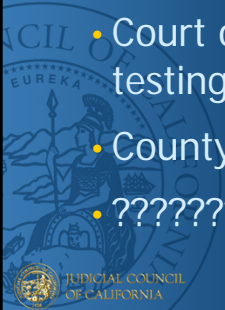
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- Court ordered genetic testing anyway.
- County files a writ.
- ????????

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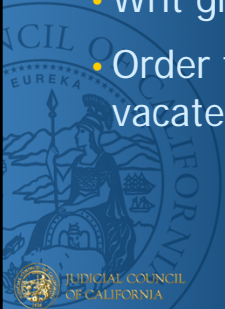
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- Writ granted
- Order for genetic testing vacated.

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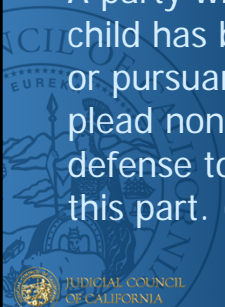
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- A party whose parentage of a child has been determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this part. (5700.314)



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- The non-registering party must return to the issuing state to prosecute such a contest.



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- Case remanded for further proceedings on father's other issues.



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**Hon. Yvette Durant**  
Nevada/Sierra Superior Court  
Presenter

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**ADULT CHILD SUPPORT**





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**IRMO DRAKE**  
**(2015) 241 Cal.App.4th 934**

**A PARENT'S OBLIGATION TO SUPPORT AN ADULT CHILD RUNS TO THE CHILD - NOT OTHER PARENT**

- Parties married 1993 – 2006 – 2 minor Cs
- Disso Judgment in 2008
- F ordered to pay M \$2,214/mo CS - \$1,404/mo allocated for youngest C, Dallas
- Dallas emancipates at age 19 yrs.
- DCSS Orange County files motion for ongoing CS for indeterminate time – “Adult CS”




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### IRMO Drake (cont.)

- Dallas living in a residential tx facility w/IEP including tx for: ADHD, cannabis abuse, psychotic & oppositional defiance disorders
- School District pays: room, board, tuition, IEPs and some of M's travel for visits and will cont. to do so until graduation or 22 yrs. old
- Dallas has expenses beyond those reimbursed by State – M says she paid @ \$11K for his expenses in prior year and \$1,750/mo now (medical, clothing, recreation, snacks, etc.)




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### IRMO Drake (cont.)

- Dallas has not lived w/ M for past 5 years
- \*\*\*stipulated CS order entered into when Dallas living in residential facility
- M earns \$420/mo SS
- F earns \$189K/yr
- Parties & DCSS agree Dallas is incapacitated and cannot earn a living even after he graduates
- F has no problem paying support, but doesn't want it paid to M
- M says she spend @ 20 hours/week on caring for Dallas and managing his IEP, etc.




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### IRMO Drake (cont.)

- TCt finds it is in best interests of Dallas that support continues and is paid to M
- Otherwise, M cannot participate in Dallas' care, treatment or provide his essentials
- TCt orders same amount of CS - \$1,404/mo – be paid to M
- TCt finds relevant:
  - Parties stip'd to CS amount when in facility
  - F continued to pay same amount to M for five years without seeking any modification
- F appeals




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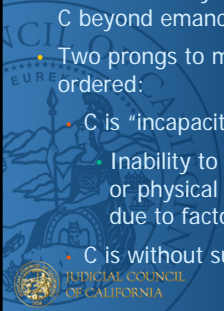
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### IRMO Drake (cont.)

AFFIRMED/REVERSED!

- FC 3910 – duty of parent to provide support for C beyond emancipation
- Two prongs to meet for adult child support to be ordered:
  - C is "incapacitated from earning a living"
    - Inability to be self-supporting b/c of mental or physical disability or inability to find work due to factors beyond C's control
  - C is without sufficient means




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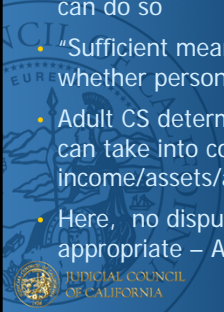
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### IRMO Drake (cont.)

- Purpose of adult CS is to protect public from supporting a person who has a parent who can do so
- "Sufficient means" test viewed in relation to whether person will become a public charge
- Adult CS determined via guideline, then Court can take into consideration C's income/assets/access to funds
- Here, no dispute adult child support appropriate – AFFIRMED




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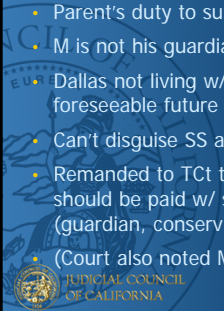
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### IRMO Drake (cont.)

- However, adult child support should NOT be paid to M - REVERSED
- Parent's duty to support C runs w/ C
- M is not his guardian/conservator/legal rep.
- Dallas not living w/ M, hasn't been and won't be in foreseeable future
- Can't disguise SS as adult CS and vice versa
- Remanded to TCt to determine how/to whom CS should be paid w/ suggestions on how to structure (guardian, conservator, etc.)
- (Court also noted M hadn't worked for several years)




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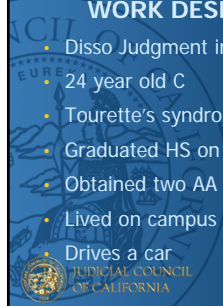
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**IRMO CECELIA and DAVID W.  
(2015) 241 Cal.App.4th1277**

**ADULT CHILD NOT INCAPACITATED IF CAN  
WORK DESPITE HAVING DISORDER**

- Disso Judgment in 2008
- 24 year old C
- Tourette's syndrome & ADHD
- Graduated HS on time
- Obtained two AA degrees w/ 3.3 GPA
- Lived on campus at UCSD
- Drives a car



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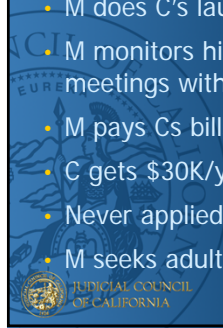
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**IRMO Cecilia and David W. (cont.)**

- C lives at M's on weekends
- M does C's laundry
- M monitors his emails, schedule, attends meetings with him
- M pays Cs bills
- C gets \$30K/year financial aid from UCSD
- Never applied for SS disability benefits
- M seeks adult CS



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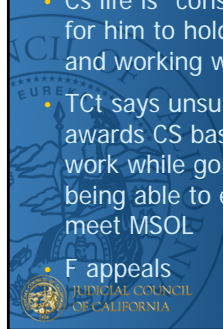
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**IRMO Cecilia and David W. (cont.)**

- Cs therapist says:
- Cs life is "constant struggle", will be hard for him to hold a job but believes he can and working w/ him on job skills
- Tct says unsure if C "incapacitated", but awards CS based on C not being able to work while going to school full-time and not being able to ever find a job that would meet MSOL



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### IRMO Cecilia and David W. (cont.)

REVERSED!

- C not required to be living w/ a parent
- CA finds C is disabled, but this is insufficient for adult CS
- Attending college is irrelevant – no CS obligation b/c C attending college
- Need to focus on whether C could be self-supporting vs. become a public charge



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### IRMO Cecilia and David W. (cont.)

- MSOL is irrelevant (Whew!)
- Financial aid being received is irrelevant unless/until get to issue of calculating CS
- CA noted lack of evidence at TCt and remanded so TCt could apply the proper FC 3910 two prong test (see Drake above)
  - 1 – Incapacitated from working
    - Can't work due to disability
    - Can't find work due to factors outside one's control
  - 2 – Lacks sufficient means of support.



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## SOCIAL SECURITY BENEFITS



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### IRMO Hall and Frencher (2016) 247 Cal.App.4<sup>th</sup> 23

SS DERIVATIVE BENEFITS ARE A CREDIT AGAINST CURRENT, ARREARS & INTEREST

- 1 minor C - F payor of CS
- 7/2003 –\$507/mo CS
- 11/2006 –\$561/mo CS
- 2/2011 – \$276/mo retro to 9/2010
- 3/2011 - \$82/mo
- 8/2011 - \$8.50/mo & arrears = \$16,421.84



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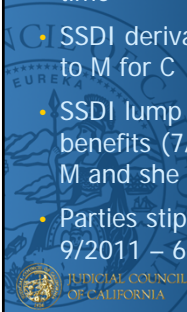
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### IRMO Hall and Frencher (cont.)

- F becomes disabled at "some point in time"
- SSDI derivative benefits of \$960/mo paid to M for C
- SSDI lump sum of \$20,824 derivative benefits (7/2012 – 4/2014 period) paid to M and she splits it w/ F
- Parties stip F paid \$5,151 in arrears from 9/2011 – 6/2014



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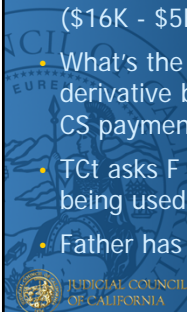
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### IRMO Hall and Frencher (cont.)

- So...Tct finds arrears balance is now (\$16K - \$5K - \$187) = \$11,270.84
- What's the \$187? – the \$960/mo derivative benefit satisfying F's \$8.50/mo CS payment for 22 months
- Tct asks F for legal authority re excess being used towards arrears
- Father has a whole lotta' nothin'



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### IRMO Hall and Frencher (cont.)

- TCt finds the only credit is against the current order
- F ordered to continue to pay \$150/mo towards arrears
- TCt says it will reconsider its order if F provides some legal authority showing excess can act as a credit towards arrears
- Sounds of silence...until...
- F appeals – (F is pro per and M no shows)



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### IRMO Hall and Frencher (cont.)

REVERSED!

- FC 4504(b) - Social Security derivative benefits of payor parent shall be credited against CS obligation in the order set forth in CCP 695.221:
  - (1) "against the current month's support";
  - (2) "against the principal amount of the judgment remaining unsatisfied"; and then
  - (3) "against the accrued interest that remains unsatisfied."



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### IRMO Hall and Frencher (cont.)

- IRMO Robinson (1998) 65 Cal.App.4<sup>th</sup> 93 held otherwise. Robinson decision was based on prior language of FC 4504 which stated Soc. Security Derivative payments could be credited only against the amount of CS ordered "to be paid for that month"
- CCP 695.221 now expressly incorporated into FC 4504



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## 529 SAVINGS PLANS



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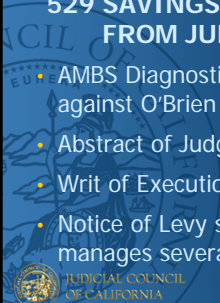
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### O'Brien v. AMBS Diagnostics (2016) 246 Cal.App.4th 942

**529 SAVINGS PLANS ARE NOT EXEMPT FROM JUDGMENT CREDITORS**

- AMBS Diagnostics gets \$700K judgment against O'Brien
- Abstract of Judgment filed
- Writ of Execution issued
- Notice of Levy served on Fidelity which manages several accounts for O'Brien



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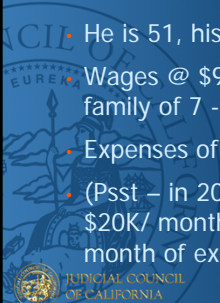
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### O'Brien v. AMBS Diagnostics (cont.)

- O'Brien files Claim of Exemption on 7 accounts – 529's and IRA's
- He is 51, his wife is 41
- Wages @ \$9K/month and supporting family of 7 - 3 kids plus 2 relatives
- Expenses of \$17K – 20K/ month
- (Psst – in 2014 depo he said earning \$20K/ month and relative paying \$1,000/ month of expenses)



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**O'Brien v. AMBS Diagnostics (cont.)**

- TCt agrees with O'Brien – i.e. public policy re 529s is the same as other retirement accounts –maybe even more so b/c of kids
- TCt refuses to consider wage earnings of O'Brien b/c he is self-employed
- i.e. on retirement, he will only have his retirement account funds to live on
- AMBS Diagnostics appeals



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**O'Brien v. AMBS Diagnostics (cont.)**

- California's Enforcement of Judgments – CCP 680.010 – 724.260 – Creditor can enforce a judgment (i.e. levy) against all property of debtor, except...
- State Constitution requires "certain portion" of the homestead of all heads of families be protected
- Exemptions: CCP 704.010 – 704.210
- CCP 704.115: retirement acct. exemption



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**O'Brien v. AMBS Diagnostics (cont.)**

- 529 account – a savings account allowing a person to make after tax deposits and pay no federal tax on earnings of a "qualified tuition program" if the money is used for higher education of a relative
- No levy exemption specifies exemption for 529 accounts
- Case of first impression!



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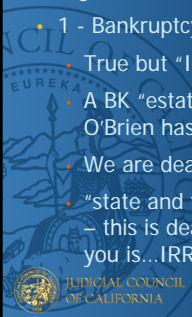
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**O'Brien v. AMBS Diagnostics (cont.)**

- O'Brien asserts 529's are protected – Three arguments:
  - 1 - Bankruptcy law protects 529's!
    - True but "IRRELEVANT"
    - A BK "estate" is only created after filing, and O'Brien hasn't filed for BK
    - We are dealing with State collection laws
    - "state and federal laws should be harmonized" – this is dealing w/ preemption which we told you is...IRRELEVANT




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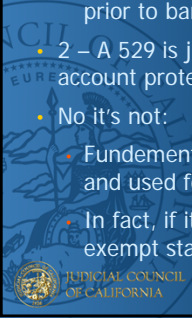
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**O'Brien v. AMBS Diagnostics (cont.)**

- Federal BK law preemption does not extend to state laws related to "conduct that occurred prior to bankruptcy"
- 2 – A 529 is just like a private retirement account protected under CCP 704.115
  - No it's not:
    - Fundamental inquiry: Is account "designed and used for retirement purposes" – NO
    - In fact, if it were, it would lose it's 529 tax exempt status




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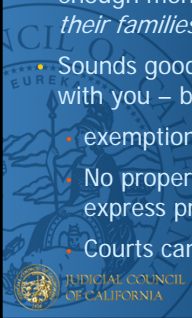
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**O'Brien v. AMBS Diagnostics (cont.)**

- 3 – Public Policy of wanting people to have enough money to support themselves *and their families* after retirement
  - Sounds good/feels good and 27 States agree with you – but not California!
    - exemptions are creatures of statutes
    - No property exempt unless made so by express provision of law (1889)
    - Courts cannot enlarge list (1990)




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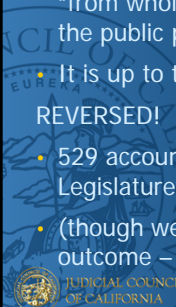
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**O'Brien v. AMBS Diagnostics (cont.)**

- We cannot create a brand new exception "from whole cloth" no matter how persuasive the public policy
- It is up to the Legislature

**REVERSED!**

- 529 accounts can be levied unless/until Legislature says otherwise
- (though we realize it isn't necessarily the best outcome – hint, hint)



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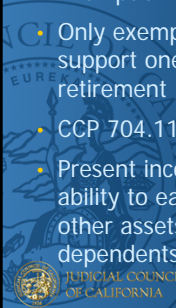
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**O'Brien v. AMBS Diagnostics (cont.)**

- Soooooo, what about the IRA's???
- Exemption is not all/nothing
- Only exempt to degree need the money to support oneself, spouse and dependents after retirement
- CCP 704.115: Must take into account –
- Present income and expenses, age, health, ability to earn, training, job skills, education, other assets, special needs of debtor or dependents, ability to save



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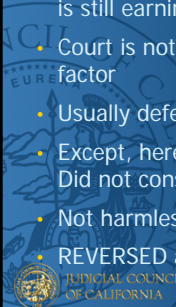
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**O'Brien v. AMBS Diagnostics (cont.)**

- i.e. assess the potential disruption in earning capacity and capacity to still save (Here, O'Brien is still earning @ \$20K/mo)
- Court is not required to make findings on each factor
- Usually defer to Court's findings
- Except, here, Court applied wrong standard - Did not consider wages at all
- Not harmless error
- **REVERSED and REMANDED!**



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## SUPPORT JUDGMENT LIENS



JUDICIAL COUNCIL OF CALIFORNIA

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### Guess v. Bernhardson (2015) 242 Cal.App.4th 820 Pet. for Reh'g Denied 10/10/15

**DON'T RECORD A LIEN UNTIL SOMETHING IS ACTUALLY OWED**

- 1999 - The Guess couple divorces
- H is to pay \$12K /mo SS to W
- H is to maintain \$2M life insurance policy "as additional non-taxable SS"
- W records Judgment w/ County Recorder

JUDICIAL COUNCIL OF CALIFORNIA

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### Guess v. Bernhardson (cont.)

- 2001 – H buys property
- 2005 – \$2.1M loan on property
- 2009 – Property foreclosed
- 2010 – Property sold to Bernhardsons
- 2011 – W sues Bernhardsons
- W asserts her Judgment lien is senior to the bank's b/c recorded first, thus, W can still enforce against property

JUDICIAL COUNCIL OF CALIFORNIA

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### Guess v. Bernhardson (cont.)

- Berns seek summary judgment – DENIED
- Parties stip to summary adjudication w/ stipulated facts
- As of 2005 (when loan taken out) - SS arrears are ZERO
- As of 2010 (when property sold) – SS arrears are \$375K
- Life insurance policy about to be cancelled b/c premiums not being paid



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### Guess v. Bernhardson (cont.)

- TCt grants summary adjudication on issue of life insurance – NO judgment lien
- It is NOT a money judgment
- It is NOT a support obligation
- After trial with stipulated facts :
  - W loses – amount of lien was zero
  - CCP 697.350(c) and CCP 697.390(b)
  - W appeals



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### Guess v. Bernhardson (cont.)

AFFIRMED!

- CCP 697.320 – recording installment support order creates lien on real property
- CCP 697.350(c) – lien related to an installment judgment is valued at the amount matured (owing) at the time of recording – not on amounts not yet due
- CCP 697.390(b) – property remains subject to a support judgment lien in the amount of the lien at the time of encumbrance or transfer



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### Guess v. Bernhardson (cont.)

- CCP 697.390(b) – if property is transferred/encumbered, it remains subject to support lien ***“in the amount of the lien at the time of transfer or encumbrance”*** plus interest
- Plain meaning rule - Unmatured installments coming due AFTER encumbrance do not get added on
- Can't ignore statute's use of word "encumbrance"



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### Guess v. Bernhardson (cont.)

- CCP 697.310 – for a lien to be created, there must be a "money judgment" that is "payable in installments"
- H's obligation to maintain life insurance is not a "money judgment" since it does not require the payment of any set amount to W
- Fact H may have had to pay insurance premiums does not make it a support installment obligation



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### Guess v. Bernhardson (cont.)

- Concurring and Dissenting opinion by Acting PJ Haller:
- Agrees with result on these facts
- Disagrees with holding the first encumbrance on a debtor's property extinguishes lien for later maturing installments in all situations – not necessary here, so should be "left for another day"



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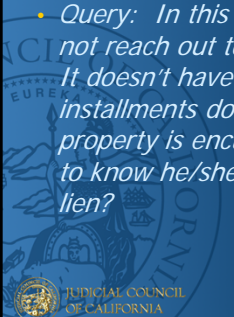
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**Guess v. Bernhardson (cont.)**

- Query: In this case, H's lender bank did not reach out to W to ask about her lien. It doesn't have to. So, if later maturing installments don't get added on once property is encumbered, how is a creditor to know he/she needs to re-record the lien?*



JUDICIAL COUNCIL OF CALIFORNIA

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**THE END**



JUDICIAL COUNCIL OF CALIFORNIA

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**Mr. John Henzl**  
Los Angeles Superior court  
Presenter

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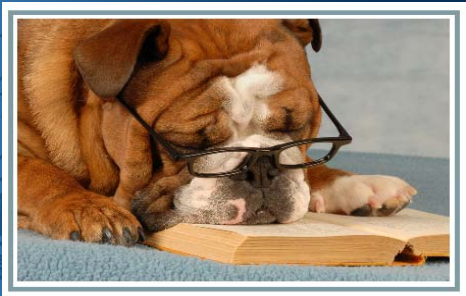
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## Procedure



JUDICIAL COUNCIL OF CALIFORNIA

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### In re Mariage of Obrecht (2016) 245 Cal.App.4th 1

- 1978 – Parties married in Santa Cruz & had 2 kids
- 1993 – Family moved to Chile (W's country of birth)
- 1995 – Parties separated (Disso 1 never finalized)
- 2010 – H moves to NY; limited contact w/ W or CA

JUDICIAL COUNCIL OF CALIFORNIA

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### In re Mariage of Obrecht (con't)

- Nov 2012 – W files Disso 2 in Santa Cruz Co.
- Dec 2012 – H mail served & signs NAR (local NY Sheriff also sub-serves)
- Jan 2013 – T/C orders SS & Atty Fees at RFO hearing
- Apr 2013 – H personally appears at subsequent RFO hearing re SS arrears

JUDICIAL COUNCIL OF CALIFORNIA

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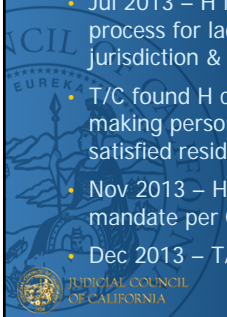
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### In re Mariage of Obrecht (con't)

- Jul 2013 – H files motion to quash service of process for lack of personal & in rem jurisdiction & to set aside
- T/C found H consented to jurisdiction by making personal appearance & W had satisfied residency requirements
- Nov 2013 – H files petition for writ of mandate per CCP 418.10(c)
- Dec 2013 – T/C enters DFLT & Judgment




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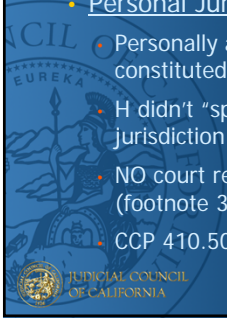
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### In re Mariage of Obrecht (con't)

- Personal Jurisdiction (AFFIRMED):
  - Personally appearing at RFO hearing constituted general appearance
  - H didn't "specially appear" or challenge jurisdiction until motion to quash
  - NO court reporter = NO transcript (footnote 3) & T/C assumed to be correct
  - CCP 410.50 is N/A (not retroactive)




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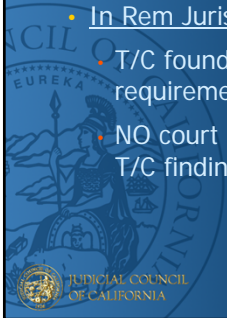
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### In re Mariage of Obrecht (2016) 245 Cal.App.4th 1

- In Rem Jurisdiction (AFFIRMED):
  - T/C found W met residency requirement based on her testimony
  - NO court reporter = NO transcript & T/C finding assumed to be correct




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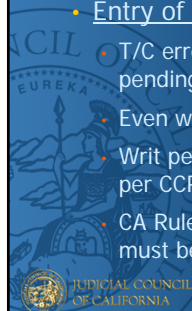
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### In re Marriage of Obrecht (con't)

- Entry of Default (REVERSED):
  - T/C erred by taking DFLT w/ writ petition pending
  - Even without stay
  - Writ petition extended H's time to respond per CCP 418.10(c)
  - CA Rule: objection to personal jurisdiction must be "finally determined"



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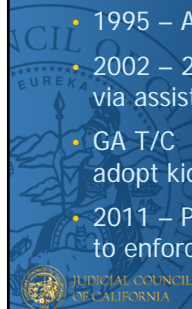
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### V.L. v. E.L. (2016) 136 S.Ct. 1017

- 1995 – AL Same sex couple
- 2002 – 2004 E.L. gives birth to 3 kids via assisted reproduction
- GA T/C enters judgment for V.L. to adopt kids w/o terminating E.L.'s rights
- 2011 – Parties break up; V.L. files in AL to enforce adoption & for C/V



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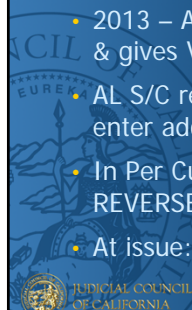
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### V.L. v. E.L. (con't)

- 2013 – AL T/C acknowledges adoption & gives V.L. visitation w/ kids
- AL S/C reversed: GA T/C lacked SMJ to enter adoption *and* keep E.L. as parent
- In Per Curiam opinion U.S. S/C REVERSED & REMANDED
- At issue: Full Faith & Credit clause



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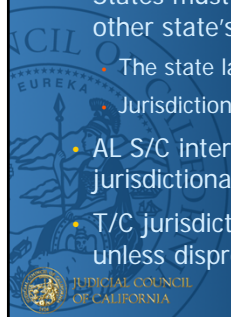
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### V.L. v. E.L. (con't)

- States must give full faith and credit to other state's judgment, *unless*:
  - The state lacked SMJ or PJ over parties
  - Jurisdictional inquiry should be limited
- AL S/C interpretation of GA statute as jurisdictional was incorrect
- T/C jurisdiction "is to be presumed unless disproved"



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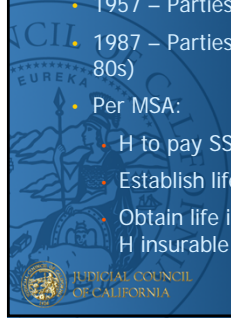
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### In re Marriage of Siegel (2015) 239 Cal.App.4th 944

- 1957 – Parties married
- 1987 – Parties divorced (now in their early 80s)
- Per MSA:
  - H to pay SS \$2,220/mo
  - Establish life insurance trust for W
  - Obtain life insurance of \$250 K, as long as H insurable at reasonable cost



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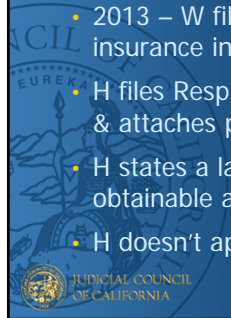
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### In re Marriage of Siegel (con't)

- 2013 – W files RFO for H to disclose insurance info & provide "proof"
- H files Resp Dec consenting to disclose & attaches proof of \$123 K policy
- H states a larger insurance policy not obtainable at "reasonable cost"
- H doesn't appear at hearing



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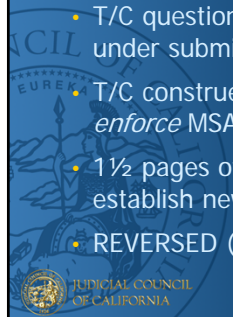
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### In re Marriage of Siegel (con't)

- T/C questions W and takes matter under submission
- T/C construes RFO as motion to enforce MSA
- 1½ pages of orders, including H must establish new trust of \$127 K
- REVERSED (de novo review)




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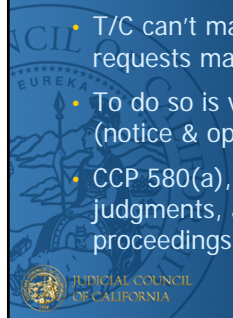
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### In re Marriage of Siegel (con't)

- T/C can't make orders that exceed requests made in RFO
- To do so is violation of H's due process (notice & opportunity to be heard)
- CCP 580(a), which pertains to DFLT judgments, also applies to Family Law proceedings in general




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### In re Marriage of Oliverez (2015) 238 Cal.App.4th 1242

- 1993 – Parties married
- Jan 2007 – Parties separated & W files for divorce
- Apr 2008 – Parties sign MSA, but judgment never entered
- Mar 2009 – H files RFO to enter judgment per MSA (CCP 664.6)




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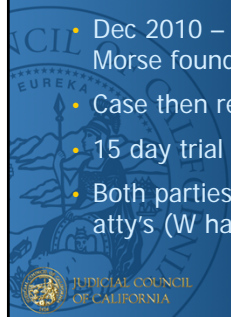
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### In re Marriage of Oliverez (con't)

- Dec 2010 – Motion denied, Judge Morse found no “meeting of the minds”
- Case then reassigned to Judge Siegel
- 15 day trial over 9 months
- Both parties SRL at times and had atty's (W had 2; H had 6)



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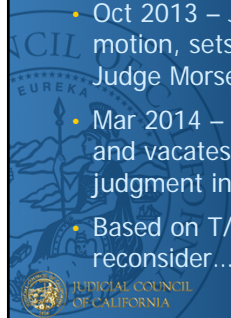
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### In re Marriage of Oliverez (con't)

- Oct 2013 – Judge Siegel, on his own motion, sets hearing to reconsider Judge Morse's prior ruling re MSA
- Mar 2014 – Judge Siegel reconsiders and vacates prior order & issues judgment incorporating MSA
- Based on T/C's “inherent power to reconsider...clearly erroneous ruling”



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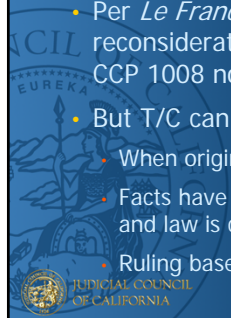
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### In re Marriage of Oliverez (con't)

- Per *Le Francois*, T/C can set motion for reconsideration (when conditions of CCP 1008 not met)
- But T/C can only reconsider *other* JO:
  - When original judge is unavailable; or
  - Facts have changed or further evidence and law is considered; or
  - Ruling based on inadvert., mistake, fraud



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### In re Marriage of Oliverez (con't)

- Judge Siegel found that ruling “clearly erroneous” & “no evidence” to support
- But “mere disagreement” is not enough to overturn initial ruling
- Additionally W clearly prejudiced by ruling issued 3 years later & after 15 day trial
- REVERSED



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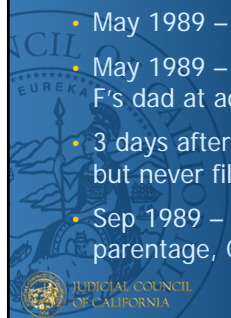
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### Yolo Co. DCSS v. Myers (2016) 2016 WL 2893845

- May 1989 – S&C filed by DCSS
- May 1989 – Sub service effectuated on F's dad at address confirmed by USPS
- 3 days after service, F meets w/ atty, but never files answer
- Sep 1989 – DFLT judgment entered for parentage, CS and retro CS



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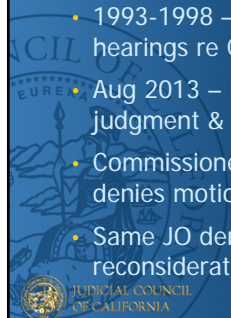
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### Yolo Co. DCSS v. Myers (con't)

- 1993-1998 – F appears at multiple hearings re CS, C/V, etc.
- Aug 2013 – F files RFO to vacate DFLT judgment & all related orders
- Commissioner (sitting as pro tem) denies motion
- Same JO denies motion for reconsideration & 2 motions to DQ



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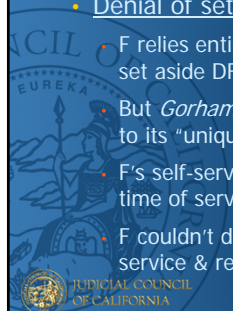
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### Yolo Co. DCSS v. Myers (con't)

- Denial of set aside (AFFIRMED):
  - F relies entirely on T/C's equitable power to set aside DFLT's per *Gorham*
  - But *Gorham* is distinguishable and is limited to its "unique facts"
  - F's self-serving testimony re his address at time of service contradicted by USPS
  - F couldn't demonstrate extrinsic fraud in service & received actual notice




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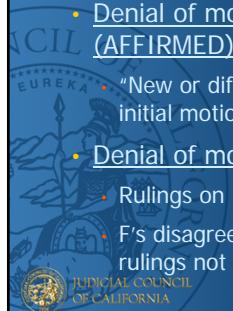
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### Yolo Co. DCSS v. Myers (con't)

- Denial of motion for reconsideration (AFFIRMED):
  - "New or different facts" existed at time of initial motion
- Denial of motions to DQ (AFFIRMED):
  - Rulings on motions to DQ not appealable
  - F's disagreement w/ commissioner's rulings not enough




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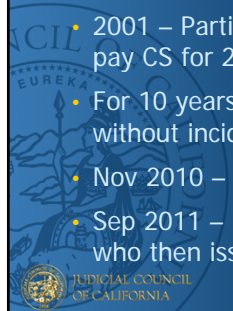
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### People v. Gallardo (2015) 239 Cal.App.4th 1333

- 2001 – Parties divorced & F ordered to pay CS for 2 kids
- For 10 years F pays M CS directly without incident
- Nov 2010 – F stops paying CS
- Sep 2011 – M opens case w/ DCSS, who then issues IWO




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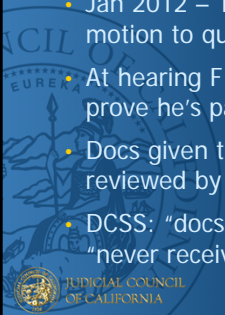
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**People v. Gallardo (con't)**

- Jan 2012 – T/C conducts hearing on F's motion to quash IWO
- At hearing F holds up docs alleging to prove he's paid all CS
- Docs given to DCSS atty & M, but not reviewed by JO
- DCSS: "docs don't appear to be legit" M: "never received checks"



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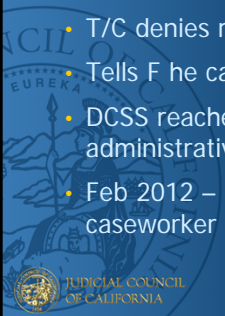
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**People v. Gallardo (con't)**

- T/C denies request to set aside IWO
- Tells F he can take up w/ DCSS
- DCSS reaches out to F re conducting administrative review (FC 17526)
- Feb 2012 – F goes to DCSS and gives caseworker same docs



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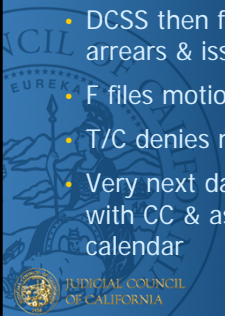
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**People v. Gallardo (con't)**

- DCSS then files motion to determine arrears & issues subpoena to F's bank
- F files motion to quash subpoena
- T/C denies motion to quash
- Very next day F pays off all CS arrears with CC & asks DCSS to take RFO off calendar



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### People v. Gallardo (con't)

- DCSS receives banks records, which confirm cancelled checks fraudulent
- May 2012 – T/C establishes CS arrears per DCSS audit
- F charged w/ 2 counts of offering into evidence fraudulent docs (PC 132) & 1 count of forgery (PC 470(b))
- F convicted on all 3 counts



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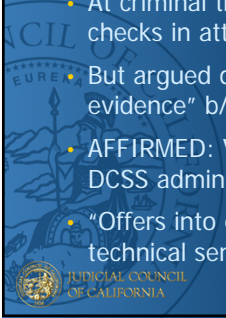
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### People v. Gallardo (con't)

- At criminal trial F admitted to forging checks in attempt to "stall" DCSS
- But argued docs never "offered into evidence" b/c JO didn't receive them
- AFFIRMED: Violation of PC 132 at T/C & DCSS administrative review
- "Offers into evidence" isn't "used in a technical sense or as a term of art"



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