


PARALEGAL ROUNDTABLE
Gabriela Hoffmann
Self-Help/Facilitator Paralegal
22nd Annual AB 1058 Child Support
Training Conference
November 13-16, 2018



Child Support: Myths and Realities

- What can we expect to accomplish in our roundtable?
 - To outline some of the litigants' common beliefs regarding child support.
 - To provide additional tools to better assist litigants to understand and clarify their beliefs.
 - To exchange experiences and best practices.

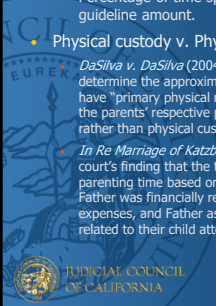


"If we have joint physical custody, that means nobody must pay child support."

Myth
 Reality

Myth

- Fam. Code § 4055 (a)(b)(1)(D).
 - Percentage of time spent with the child(ren) is a factor in determining the guideline amount.
- Physical custody v. Physical responsibility
 - *DaSilva v. DaSilva* (2004) 119 Cal.App.4th 1034 –Trial courts are required to determine the approximate percentage of time the non custodial parent has or will have "primary physical responsibility" for the children. This calculation is based on the parents' respective periods of primary "physical responsibility" for the children rather than physical custody.
 - *In Re Marriage of Katzberg* (2001) 88 Cal.App.4th 976, 982 –Court affirmed trial court's finding that the time the child was at boarding-school amounted to Father's parenting time based on the fact that Father was the primary custodial parent, Father was financially responsible for the boarding school and its incidental expenses, and Father assumed the responsibility of responding to any emergency related to their child attending board school.



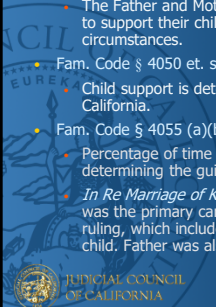
"If I have primary physical custody, then I don't have to pay child support."

- Myth
- Reality




Myth

- Fam. Code § 3900.
 - The Father and Mother of a minor child have an equal responsibility to support their child in the manner suitable to the child's circumstances.
- Fam. Code § 4050 et. seq.
 - Child support is determined using the guidelines of the State of California.
- Fam. Code § 4055 (a)(b)(1)(D).
 - Percentage of time spent with the child(ren) is a factor in determining the guideline amount.
- *In Re Marriage of Katzberg* (2001) 88 Cal.App.4th 976, 982 – Father was the primary caretaker of the child. Court affirmed trial court's ruling, which included Father being the primary caretaker of the child. Father was also ordered to pay child support.



"A Guideline Child Support amount is always appropriate, regardless of one parent's high income."

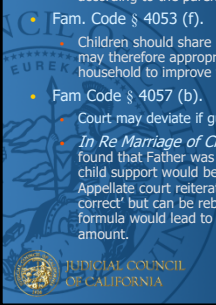
Myth
 Reality



JUDICIAL COUNCIL OF CALIFORNIA

Myth

- Fam. Code § 4053 (a).
 - A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.
- Fam. Code § 4053 (f).
 - Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.
- Fam. Code § 4057 (b).
 - Court may deviate if guideline support amount is unjust or inappropriate.
 - *In Re Marriage of Cryer* (2001) 198 Cal.App.4th 1039 – Trial court found that Father was an "extraordinarily high earner, and that guideline child support would be unjust and inappropriate given the circumstances. Appellate court reiterated that the guideline amount is 'presumptively correct' but can be rebutted by admissible evidence demonstrating that formula would lead to an unjust amount and upheld above guideline amount.



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"The only way to modify any child support order is if there has been a change in circumstances."

Myth
 Reality



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Myth

- Fam. Code §4065 (d)
 - In any case with a stipulated below-guideline order, no change of circumstances need be shown to bring an upward modification motion.
- A change of circumstances is required if the modification requests an increase/decrease of a guideline order or a party seeks a reduction in the stipulated amount to the guideline amount or lower.
- *In Re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015 – Trial court granted the reduction of an above-guideline stipulated order without a showing a change of circumstances. Appellate Court reversed and reaffirmed that a request to reduce an above-guideline stipulated order requires a finding of changed circumstances.



"Once my child turns 18, I don't have to pay child support anymore."

Myth

Reality



Myth

- Fam. Code § 3901 (a)
 - Child support continues until an unmarried child is 18 years old, and up to the child's 19th birthday, if the child is still a full-time high school student and not self-supporting.
- *In Re Marriage of Hubner* (2001) 94 Cal.App.4th 175 – The court concluded that the trial court erred in suspending the father's obligation to pay child support during the period in which his 18-year-old child was participating in a high school foreign exchange program in Japan.
- Fam. Code § 3910 (a)
 - The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means.
- *In Re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1154 – The court held that under Family Code Section 3910(a), an adult from whom support is authorized, is one who is incapacitated from earning a living and without sufficient means. Moreover, the issue of sufficient means should be resolved around the likelihood that the child will become a public charge.



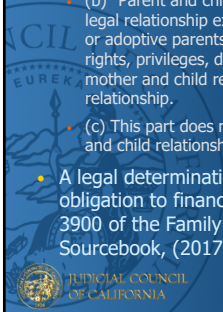
"If I'm not the biological parent, then I don't have to pay child support."

- Myth
- Reality



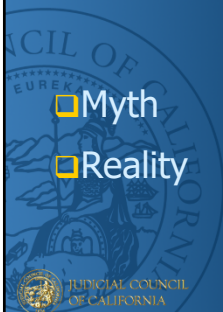
Myth

- Fam. Code § 7601
 - (b) "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.
 - (c) This part does not preclude a finding that a child has a parent and child relationship with more than two parents.
- A legal determination of parentage creates a legal obligation to financially support a child under Section 3900 of the Family Code. Child Support Attorney Sourcebook, (2017) Parentage, page 26.



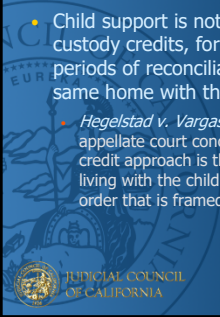
"If I reconcile with the other parent, then my child support is automatically cancelled."

- Myth
- Reality



Myth

- Child support is not automatically canceled. Equitable custody credits, for arrears, can be available during periods of reconciliation when both parties live in the same home with the child(ren).
 - *Hegelstad v. Vargas* (2014) 231 Cal.App.4th 719 – The appellate court concluded that the essence of the equitable credit approach is that in-the-home support during a period of living with the children can count against an ongoing support order that is framed only in monetary terms.



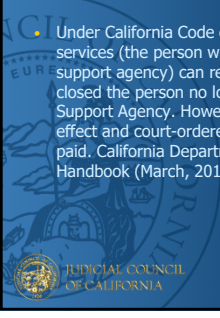
"If DCSS closes my case, that means I don't have to pay child support anymore."

- Myth
- Reality



Myth

- Under California Code of Regulations § 118203(a)(8) the recipient of services (the person who requested services from the local child support agency) can request to close the case. When the case is closed the person no longer receives services from the Local Child Support Agency. However the child support order will remain in effect and court-ordered child support payments will still have to be paid. California Department of Child Support Services, Child Support Handbook (March, 2014) Closing a child support case, page 30.



"Child support that I pay or that my ex receives for his/her other children is considered income for the other party."

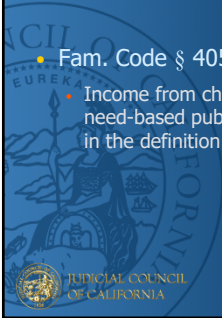
Myth

Reality



Myth

- Fam. Code § 4058 (c)
- Income from child support payments and income from need-based public assistance programs is not included in the definition of income for child support purposes.



"If I don't have a job, then I don't have to pay child support."

Myth

Reality



Myth

Fam. Code § 4058 (b)

- The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.
- *In Re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1246-1247– The court reiterated that as long as a party has the ability and opportunity to earn an income, the court has discretion to consider earning capacity when it would be consistent with the child or the child's best interest. Moreover, the party seeking to impute income must show that the other party has the ability or qualifications to perform a job paying the income to be imputed and the opportunity to obtain that job.



Myth (Cont.)

- *In Re Marriage of Simpson* (1992) 4 Cal.4th 225,234-235 – The court concluded that earning capacity generally should not be based upon an extraordinary work regimen, but instead upon an objectively reasonable work regimen as it would exist at the time the determination of support is made.



"My ex and I can agree to whatever child support amount we want."

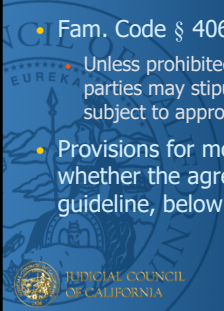
Myth

Reality



Reality but...

- Fam. Code § 4065 (a)
- Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court.
- Provisions for modification apply depending on whether the agreed amount is based on guideline, below guideline or above guideline.



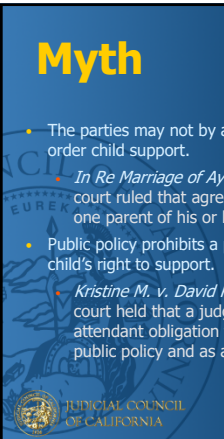
"My ex and I can agree to waive child support altogether."

- Myth
- Reality



Myth

- The parties may not by agreement divest the court of jurisdiction to order child support.
- *In Re Marriage of Ayo* (1987) 190 Cal.App.3d 442, 451-452. - The court ruled that agreements between parents seeking to relieve one parent of his or her obligation of child support are void.
- Public policy prohibits a parent from agreeing to waive or limit a child's right to support.
- *Kristine M. v. David P.* (2006) 135 Cal.App.4th 783, 789. - The court held that a judgment so terminating parental rights and the attendant obligation to support the child is void as a breach of public policy and as an act in excess of the court's jurisdiction.



"My ex and I can agree to a permanent child support order that neither one of us can change in the future."

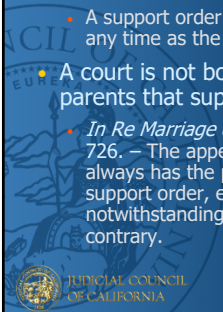
Myth

Reality



Myth

- Fam. Code § 3651
 - A support order may be modified or terminated at any time as the court determine to be necessary.
 - A court is not bound by an agreement between parents that support is not modifiable.
 - *In Re Marriage of Alter* (2009) 171 Cal.App.4th 718, 726. – The appellate court held that the trial court always has the power to modify an existing child support order, either upward or downward, notwithstanding the parties' agreement to the contrary.



"If my ex doesn't pay child support, then he/she does not have the right to see my child."

Myth

Reality



Myth

- "Parent visitation rights must be adjudicated independently of other issues before the court. Notably a visitation order may not be tied to or conditioned upon the payment of child support... which has no bearing on whether contact would be detrimental to the child." Hogoboom and King, California Practice Guide: Family Law (The Rutter Group 2017) Paragraph 7:487, page 7-223.



"If my ex is not letting me see my child, then I don't have to pay child support"

Myth

Reality



Myth

- Fam. Code, § 3556
- The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child is not affected by a failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court to the noncustodial parent.
- Interference with visitation is not a defense to payment of support.
- *Cooper v. O'Rourke* (1995) 32 Cal.App.4th 243 – The court indicated that mere interference is not a defense to payment of support.