AB 2684 Implementation

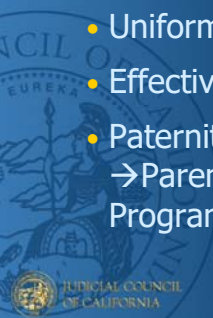23rd Annual AB 1058 Child Support
Training Conference
August 27–30, 2019

AB 2684: Stats 2018

- Uniform Parentage Act of 2017
- Effective dates in 2019-2020
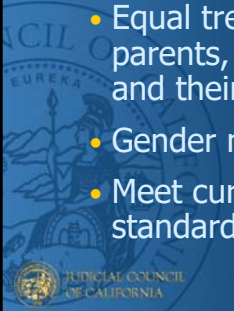- Paternity Opportunity Program →Parentage Opportunity Program

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UPA 2017 Enactment

Legislative Intent

- Equal treatment for same sex parents, transgender parents, and their children
- Gender neutrality
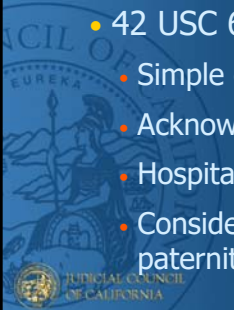- Meet current scientific standards for genetic testing

Federal Law on VDP

- 42 USC 666(a)(5)(C)
  - Simple civil process
  - Acknowledge paternity
  - Hospital-based
  - Considered legal finding of paternity

Parentage Expansion

- UPA 2017 expands VDP to same sex parents
- Federal reporting requirements

CA Birth Certificate Law

- AB 1951 (Stats. 2014)
- H&S Code § 102425
- "Parent" instead of Mother and Father

Marital Presumption

FC § 7540: Marital presumption   1/1/2019

New: **(a)** Except as provided in Section 7541, the child of spouses who cohabited at the time of conception and birth is conclusively presumed to be a child of the marriage.

(b) The conclusive marital presumption in subdivision (a) does not apply if the court determines that the husband of the woman who gave birth was impotent or sterile at the time of conception and that the child was not conceived through assisted reproduction.

Who may sign a POP?

- FC § 7573
- First person:
  - A woman who gave birth to the child

Who may sign a POP?

- Second person:
  - (a)(1) Another person who is a genetic parent
  - (a)(2) Another person who is a parent under FC § 7613 of a child conceived through assisted reproduction
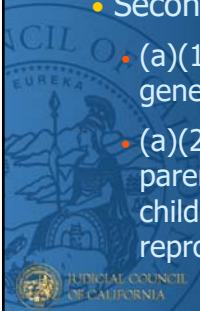
Who may sign a POP?

- (a)(1) Questions
  - Same sex parents, where non-birth parent donated ovum?
  - Birth parent who does not identify as a woman?
    - SB 179: Non-Binary
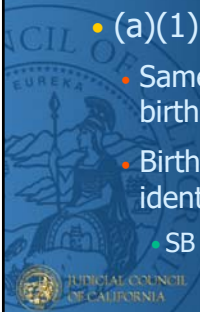
Who may sign a POP?

- (a)(2): *Married* or unmarried woman who gave birth
- **Married** is a brand new option
- Why would a married couple choose to sign a POP?
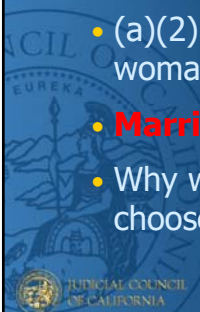
Who may sign a POP?

- (a)(2): Section 7613 parent
  - *Intended* parent treated as natural parent
  - Consent in writing and signed by both
  - Non-written consent   NEW
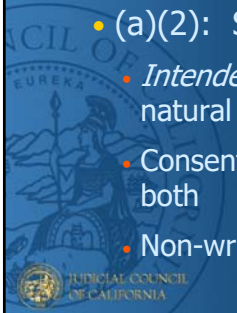
Intended Parents

- How to prove parents' intent?
  - Statutory forms
  - Four versions for different scenarios
  - Notarized
  - Contract signed at fertility office
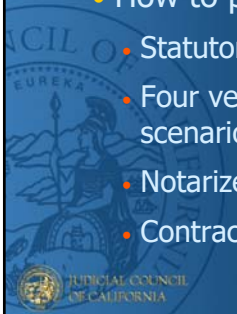
Optional Stat. Forms

- Form 1: Intend to be parent - Married or Unmarried using AR to Conceive
  - Will or has already conceived
- Form 2: Intend to be parent – Unmarried using IP Sperm
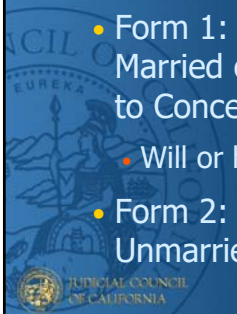
Optional Stat. Forms

- Form 3: Intend to be parent – egg donation from IP to Birth Parent

- Form 4: Known sperm/egg or embryo donor who will NOT be parent
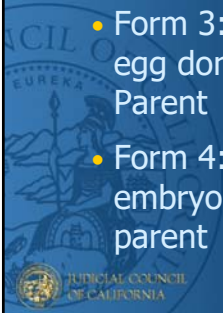
Who may not sign POP?

- Child has parent under FC §§ 7613 or 7962 other than signatories

- Sperm or ova donor

- FC § 7613 parent not conceived through AR
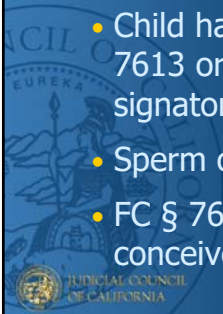
Who may not sign POP?

- Surrogacy: FC §§ 7960, et seq
  - Must be filed with court
  - Protective of birth parent
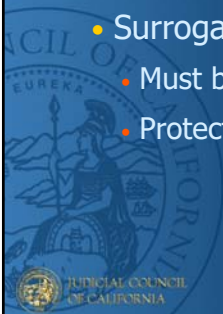
POP Rescission

- FC § 7575 now only rescission; set aside is relocated
- Within 60 days of signing
- Proof of mailing to other signatory
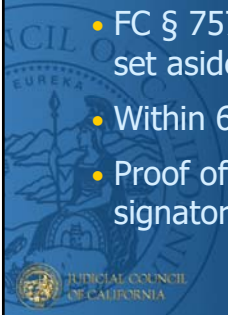
Genetic Testing

- Contemporized testing statutes
- Extensive updates and reordering FC §§ 7550, et seq.

When to Order GT

- Parentage is a relevant fact
- Except NOT to:
  - Challenge FC 7613(a) intended parent unless re: ART
  - Challenge FC 7962 parent unless re: surrogate as genetic parent
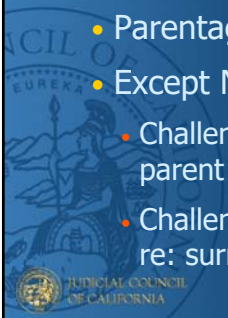
When to Order GT…

- Establish parentage of a donor under FC 7613(b) or (c), unless re: ART

- Not in utero testing, but may order testing of deceased

- Issue sanctions
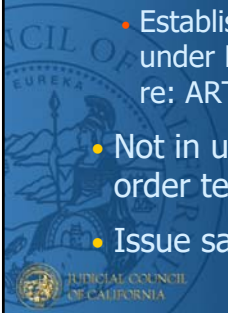
Genetic Test Facilitation

- Hospitals, LCSAs, welfare offices, and family courts <u>shall facilitate</u> genetic tests for purposes of enforcement of this chapter.
  - May include taking samples
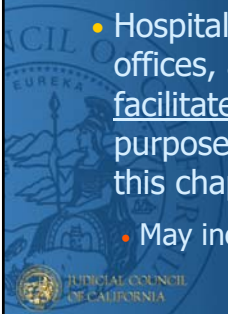
Gamete Banks

- Gamete = Genetic reproductive tissue, e.g., sperm or ovum

- Banks must collect non-identifying medical information

- Document if donor will share identity at child's age of 18
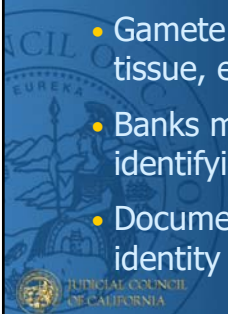
Questions?

- Kristen Erickson-Donadee
- DCSS Chief Counsel

PARENTAGE OPPORTUNITY PROGRAM

WHAT IS POP?

Parentage **O**pportunity **P**rogram

POP provides eligible parents the opportunity to establish legal parentage, **free of charge**, for their child by signing a Voluntary Declaration of Parentage (DCSS 0909).

WHO IS ELIGIBLE?

To be eligible, parents must be either:

- An unmarried birth parent and the only possible genetic father.

OR

- Two people, married or unmarried, who had this child through assisted reproduction using sperm and/or egg donation, except if the donation was from their spouse.

WHO IS <u>NOT</u> ELIGIBLE?

- **Surrogacy**
  - The parents have a surrogacy agreement for this child.
- **Uncertainty Exists about the Parentage of a Child Born Through Assisted Reproduction**
  - One of the parents did not originally intend to be a parent but have changed their mind and now want to be recognized as a parent.
  - The parents agreed for the child to be conceived by sperm or egg donation, but there is uncertainty as to whether the child was conceived by the donation or by sexual intercourse.
- **Assisted Reproduction, Spousal Donation**
  - This child was conceived by sperm or egg donation from your spouse.

- **Another Parent Exists**
  - Someone else has already been declared to be a parent of this child by a court order.
  - The birth parent has already signed a VDOP for this child with someone else.
  - Someone other than the two people signing this form is an intended parent under an agreement for donated sperm or eggs.
  - Someone else was married to and living with the birth parent at the time of conception and birth of this child; or this child was born during that marriage or within 300 days of the end of that marriage.
  - The birth parent married someone after this child was born and that person is obligated (by a writing or court order) to pay support for this child.

A VDOP filed in any of these situations *WILL NOT* be legally valid.

LEGAL REFERENCES

<u>California Family Code</u>
§7570 – §7581

"The Legislature hereby finds and declares as follows:

(1) There is a compelling state interest in establishing parentage for all children. Establishing parentage is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits, including, but not limited to, social security, health insurance, survivors' benefits, military benefits, and inheritance rights.

(2) A simple administrative system allowing for establishment of voluntary parentage will result in a significant increase in the ease of establishing parentage, a significant increase in parentage establishment, an increase in the number of children who have greater access to child support and other benefits, and a significant decrease in the time and money required to establish parentage due to the removal of the need for a lengthy and expensive court process to determine and establish parentage and is in the public interest."

[Family Code §7570(a)]

PRIOR TO BIRTH

"On and after January 1, 1995, **upon the event of a live birth**, prior to an unmarried mother or a mother who gave birth to a child conceived through assisted reproduction leaving a hospital, the person responsible for registering live births under Section 102405 of the Health and Safety Code shall provide to the woman giving birth and shall attempt to provide, at the place of birth, to the person identified by the woman giving birth as either the only possible genetic parent other than the woman who gave birth or the intended parent of a child conceived through assisted reproduction, a voluntary declaration of parentage together with the written materials described in Section 7572…"
[Family Code §7571(a)]

No statutory authority exists allowing **anyone** to complete the Voluntary Declaration of Parentage prior to the birth of a child.

PARENTAGE LAWS

- When the birth parent is married, completing a Voluntary Declaration of Parentage is only authorized in cases of assisted reproduction.
  [Family Code §7573(a)(2)]

- When the parents are married and they cohabitated at the time of conception and birth, the child is presumed to be a child of the marriage.
  [Family Code §7540(a)]

- When the child's birth parent and their spouse are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated, the birth parent's spouse is presumed to be the child's parent.
  [Family Code §7611(a)]

- For many families in California, there are **only** two ways to establish parentage:

  1. File a Voluntary Declaration of Parentage
  2. Obtain a Court Order

BIRTH CERTIFICATE

California Health and Safety Code 102425(a)(C) states the following:

"If the parents are not married to each other, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of paternity at the hospital before the birth certificate is submitted for registration. The birth certificate may be amended to add the father's name at a later date only if paternity for the child has been established by a judgment of a court of competent jurisdiction or by the filing of a voluntary declaration of paternity."

AVAILABILITY OF POP

Declarations shall be made available without charge at all local child support agency offices, offices of local registrars of births and deaths, courts, and county welfare departments within the state.
[Family Code §7571(f)]

These agencies are eligible to become Authorized Witnessing Agencies.

California currently has *over* **750** authorized witnessing agencies!

AUTHORIZED WITNESSING AGENCIES

[Family Code §7571(c)&(g)] & [45 CFR §302.70(a)(5)(iii)]

- Agencies who have received POP training
- Issued a unique 3-digit identifier
- Qualified to answer parents' questions regarding the declaration and the process of establishing parentage
- Understand the legal requirement to provide parents with oral and written notice of their rights and responsibilities as well as parent's alternatives and consequences
- Are eligible to receive a $10 payment for each completed Voluntary Declaration of Parentage filed with the Department of Child Support Services

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WHY POP?

- Less costly than obtaining a court order
- Legal parentage can be established in a shorter period of time
- A filed Voluntary Declaration of Parentage has the same legal force and effect as a judgment of parentage entered by a court.

BENEFITS

- Social security benefits
- Military benefits
- Inheritance rights
- Health insurance
- Survivor's benefits

RIGHTS AND RESPONSIBILITIES

The state must provide that, before parents can sign a Voluntary Declaration of Parentage, the parents must be given notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity, and ensure that due process safeguards are afforded.
[Family Code §7572 (b)&(c)] & [45 CFR §302.70(a)(5)(iii)]

Written:
- Backside of the declaration

Verbal:
- POP phone tree (866) 249-0773 (option 3, option 1)

IS ID REQUIRED?

- There are no Federal or State requirements for identification
- The parents are signing under penalty of perjury
- Follow Agency Policy

- "A health care provider shall not be subject to civil, criminal, or administrative liability for a negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies."
[FC §7571(b)]

COMPLETING THE VOLUNTARY DECLARATION OF PARENTAGE

Use **black** or **blue** ink – No pencil

Cannot be signed prior to child's birth

Complete a separate form for each child

Forms must be submitted to the Department of Child Support Services within 20 days of

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DCSS 0909: REQUIRED FIELDS

Birth Parent's Signature   1/1/2020   Other Parent's Signature   1/1/2020

1/1/2020   Witness Signature   Printed Name

Agency Name

Agency Address   City   State   Zip

DCSS 0909: REQUIRED FIELDS

VOLUNTARY DECLARATION OF PARENTAGE (VDOP)

WE WISH TO LEGALLY ESTABLISH OUR CHILD'S PARENTAGE

SECTION A:

The witness **must** ask both parents the questions in Section A and check the correct box based on the responses. *Any* form received missing checked boxes for either or both questions will be **invalidated** and **returned** to the submitter.

VOLUNTARY DECLARATION OF PARENTAGE (VDOP)
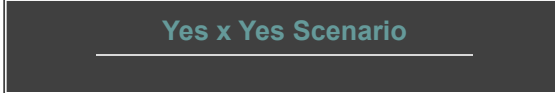
SEND ORIGINAL TO: DCSS – DCSS Parentage Opportunity Program
PO Box 419070 MS 241
Rancho Cordova, CA 95741-9070

CHANGES CANNOT BE MADE TO THIS FORM ONCE IT HAS BEEN SUBMITTED TO DCSS
PARENT SIGNATURES MUST BE COMPLETED IN THE PRESENCE OF AN AUTHORIZED WITNESS OR NOTARY PUBLIC

WE WISH TO LEGALLY ESTABLISH OUR CHILD'S PARENTAGE

SECTION A:

IS THE BIRTH PARENT UNMARRIED?	☒ YES	☐ NO
IS THE OTHER PARENT THE GENETIC FATHER OF THE CHILD?	☒ YES	☐ NO

Yes x Yes Scenario

SECTION B — BOTH PARENTS MUST SIGN AND DATE

Birth Parent's Signature	1/1/2020	Other Parent's Signature	
1/1/2020	Witness Signature	Printed Name	
Agency Name			
Agency Address		City	State	Zip

One Witness: Same Date

SECTION B — BOTH PARENTS MUST SIGN AND DATE

Birth Parent's Signature	1/1/2020	Other Parent's Signature	1/2/2020
1/1/2020	Witness Signature	Printed Name	
Agency Name			
Agency Address		City	State	Zip
1/2/2020			

One Witness: Different Dates

Two Witnesses: Different Dates

SECTION B — BOTH PARENTS MUST SIGN AND DATE

1. Each party declares under penalty of perjury under the laws of the State of California that they have been informed of and understand the *Alternatives, Rights, Responsibilities, and Consequences*, as written on the back of this form, and that the information they have provided is true and correct. Each party affirms that no other individual can legally claim parentage of the child and accepts the responsibilities to provide child support as determined by applicable law. Each party wishes to be named on the child's birth certificate and agrees that the other parent will be named on the birth certificate. Each party affirms that they are signing this form voluntarily, without being subject to force, threat or coercion.
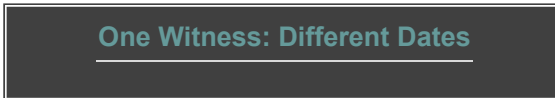
2. If this child was born by use of assisted reproduction, each party affirms the sperm/egg used in assisted reproduction for this birth was not from the birth parent's spouse. The person who donated the egg/sperm is neither the birth parent nor other parent. The donor does not intend to be a parent of this child. Both the birth parent and other parent intend to be the parents of this child.

BIRTH PARENT'S SIGNATURE	DATE SIGNED	OTHER PARENT'S SIGNATURE	DATE SIGNED
Birth Parent's Signature	1/1/2020	Other Parent's Signature	1/2/2020

SECTION C – PARENT SIGNATURES MUST BE COMPLETED IN THE PRESENCE OF AN AUTHORIZED WITNESS

DATE SIGNED	WITNESS SIGNATURE	WITNESS PRINTED FIRST AND LAST NAME		
1/1/2020	Witness Signature	Printed Name		
NAME OF AUTHORIZED AGENCY (HOSPITAL, AGENCY, CLINIC, OR OTHER)				
Agency Name				
AGENCY COMPLETE ADDRESS NUMBER AND STREET		CITY	STATE	ZIP CODE
Agency Address		City	State	Zip
DATE SIGNED	WITNESS SIGNATURE	WITNESS PRINTED FIRST AND LAST NAME		
1/2/2020	Witness Signature	Printed Name		
NAME OF AUTHORIZED AGENCY (HOSPITAL, AGENCY, CLINIC, OR OTHER)				
Agency Name				
AGENCY COMPLETE ADDRESS NUMBER AND STREET		CITY	STATE	ZIP CODE
Agency Address		City	State	Zip

DOUBLE CHECK

01 ALL required fields are complete and accurate

02 BOTH parents & witness signed

03 ALL sign dates match

04 COMPLETE agency information is provided

OBTAINING *FREE* CERTIFIED COPIES

DCSS 0918 – Parents/Child
DCSS 0919 – Authorized Agencies

Website: www.childsupport.ca.gov
Call: (866) 249-0773 (option 3, option 5)
Email: askpop@dcss.ca.gov

RESCISSIONS: CS 915

- Postmarked on or before the 60th day from the date the original Voluntary Declaration of Parentage was signed
- Minor parents:
  - Deadline is 60 days after 18th birthday
- Either parent has the right to rescind
- The rescission form must be notarized
- Proof of mailing required
- Form available on DCSS' Public Website

SET ASIDES

Required Documents and Information:

- Form FL 290 (minute orders accepted)
- Child's Full Name
- Child's Date of Birth
- Court Clerk filed stamp
- Cancellation language

ORDERING DCSS 0909 FORMS

Free of charge

DCSS Publication Order Form DCSS 0596

FAX to DCSS Fulfillment Services (916) 464-5620

FLYERS AND HANDOUTS

All handouts are available in English and Spanish

Order by sending an e-mail to askpop@dcss.ca.gov

Legal parentage is easy to establish without going to court – and it's free!
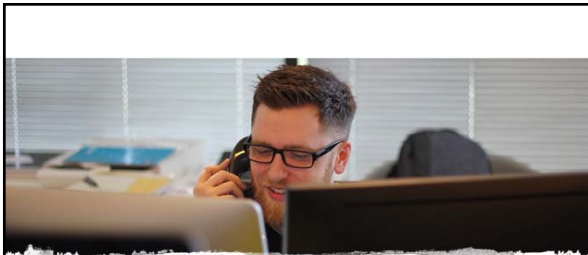
HOW TO CONTACT POP

Call: (866) 249-0773 (option 3, option 5)
Email: askpop@dcss.ca.gov
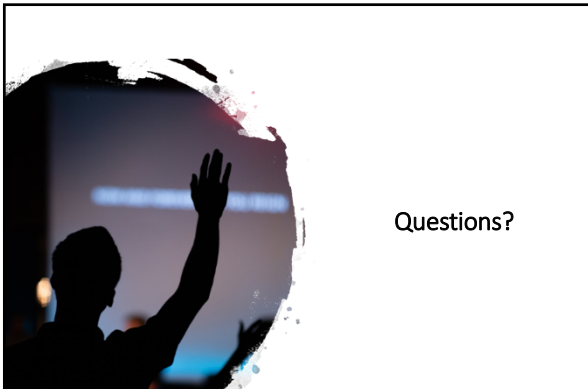
Questions?

THANK YOU!

PARENTAGE OPPORTUNITY PROGRAM
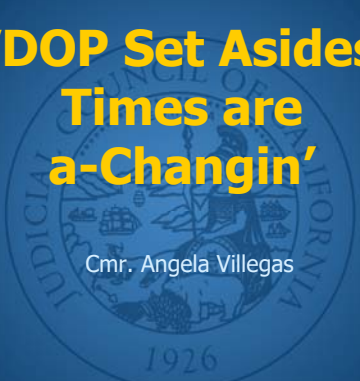
VDOP Set Asides: Times are a-Changin'

Cmr. Angela Villegas

1926

IN THE HOSPITAL: HAVIN' MY BABY

JUDICIAL COUNCIL OF CALIFORNIA

WHEN THE CHILD SUPPORT CORRESPONDENCE ARRIVES

WHEN YOUR DNA COMES BACK NEGATIVE AND FEEL CERTAIN YOUR VOLUNTARY DECLARATION OF PARENTAGE (VDOP) WILL BE SET ASIDE

VDOP Set-Asides

- Not ALL set-asides
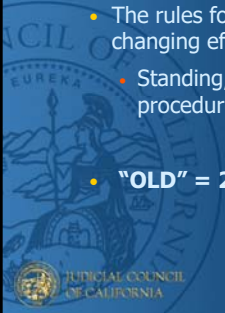
- Not even all PARENTAGE set-asides

- Set-asides of VDOPs

VDOP Set-Asides

- The rules for setting aside VDOPs are changing effective 1/1/2020
  - Standing, time limits, grounds, and procedure

- "OLD" = 2019 vs "NEW" = 2020

JUDICIAL COUNCIL
OF CALIFORNIA
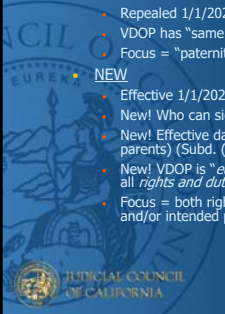
Legal Effect of VDOP—Section 7373

- OLD
  - Repealed 1/1/2020
  - VDOP has "same force and effect" as judgment of "paternity"
  - Focus = "paternity" and *obligations* flowing therefrom
- NEW
  - Effective 1/1/2020
  - New! Who can sign a VDOP.
  - New! Effective date of VDOP: upon filing with DCSS (exception for minor parents) (Subd. (d))
  - New! VDOP is "*equivalent* to a judgment of parentage" AND "confers . . . all *rights and duties* of a parent." (Subd. (d).)
  - Focus = both rights and obligations; aimed at protecting signatory and/or intended parent from later efforts to sideline him or her.

JUDICIAL COUNCIL
OF CALIFORNIA
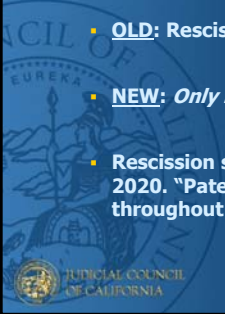
Old vs. New Section 7575

- **OLD: Rescission *or set-aside* of VDOP**

- **NEW: *Only rescission* of VDOP**

- **Rescission substantively unchanged for 2020. "Paternity" is now "Parentage," as throughout AB 2684.**

JUDICIAL COUNCIL
OF CALIFORNIA

Old Vs. New Section 7576

- **Pre-1997 VDOPs**: Sections renumbered without substantive change

- **OLD = 7576; NEW = 7581**

- **NOTE: New 7576** = Set-aside VDOP by SIGNATORY (more later)

JUDICIAL COUNCIL
OF CALIFORNIA
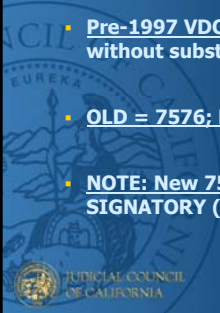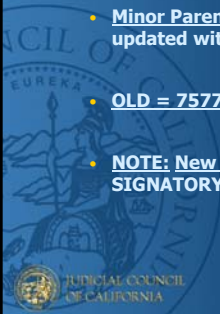
Old Vs. New Section 7577

- **Minor Parents**: Sections renumbered & language updated without substantive change

- **OLD = 7577; NEW = 7580**

- **NOTE: New 7577** = Set-aside VDOP by NON-SIGNATORY (more later)

JUDICIAL COUNCIL
OF CALIFORNIA
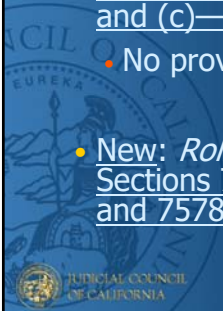
Back to Set-Asides
(the old way is rapidly fadin')

Statutes Governing Set-Asides

- OLD: section 7575, subds. (b) and (c)—set-aside
  - No provision for "void" VDOP

- New: *Roll up your sleeves!* Sections 7373.5, 7576, 7577, and 7578

All New: Void VDOPs

- New section 7373.5
- VDOP = VOID if at time of signing:
  - Parentage judgment already exists (subd. (a)(2))
  - Another person has signed a valid VDOP (subd. (a)(3)) (COMPARE: old section 7575(b)(3)(B))
  - Other scenarios spelled out in detail in section 7373.5 (non-aligned interests among signatories and intended parents)
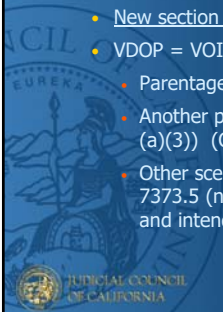
Void VDOPs (cont.)

- In general: (1) parentage *judgments* slightly favored over VDOPs and (2) desire to protect rights of *intended parents*, regardless of biological relationship to child.

- Unanswered: Void as of when? If money already collected, then what?

Void VDOPs (cont.)

To summarize:

- Old: Set-aside under old 7575 did not cover void VDOPs; a couple of old set-aside provisions found their way into new "void VDOP" framework.

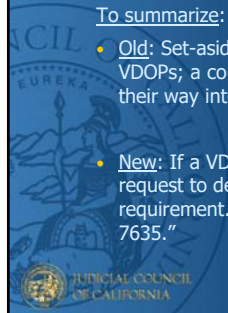- New: If a VDOP is "void," then "a party" can bring request to determine that; no specific standing requirement. Must give notice "pursuant to Section 7635."

Standing to Request Set-Aside

- OLD Set-Aside Standing
  - Mother
  - "Father" signatory
  - LCSA: limited standing for conflicting VDOP(s) or conflicting judgment (old subd. (b)(3)(A))
  - NOTICE: no *express* "non-signatory" standing except LCSA! Focus = signatory "father" wants out.
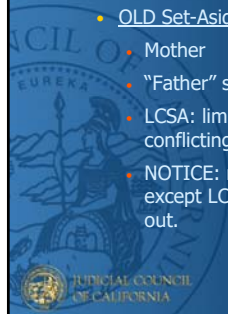
Standing to Request Set-Aside (cont.)

- NEW set-aside standing
  - Void VDOP (New 7573.5)—"a party" has standing
  - Signatories (New 7576)—"Let Me Out!"
  - Non-signatories (New 7577(a))—"Let Me In!" aka the "Step Aside Set-Aside"

Standing to Request Set-Aside (cont.)

- *NON-SIGNATORY* STANDING IS FOR:
  - Alleged genetic parent who is not a "mere" donor
  - Anyone with UPA standing (7630) (includes all statutory "presumed" parents)
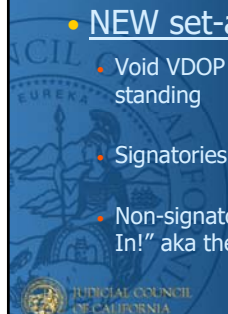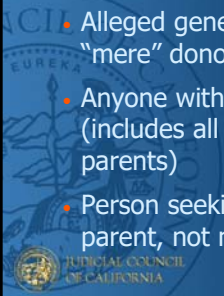 - Person seeking to be adjudicated a parent, not merely a donor (7613)

Standing to Request Set-Aside (cont.)

- If hearing needed to determine standing, then must be "expedited" (new 7577, subd. (c))
- NOTICE: focus = individuals who WANT to be the parents, but are sidelined by someone else's VDOP.
- No more LSCA standing, except as "a party" to set aside void VDOP under 7373.5.
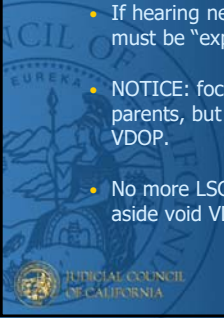
Set-Aside Motion Time Limits

- OLD time limits
  7575(b)(3)(A), (c)(1), and (c)(4):
  - Within 2 yrs of child's birth (old subd. (b)(3)(A))
  - Within 6 mos of initial order, if on CCP 473 grounds (Subd. (c)(1))
  - Other time limit in "equity" (Subd. (c)(4))

Set-Aside Motion Time Limits (cont.)

- NEW time limits
  - *Void* VDOP: no time limit (new 7373.5; 7576, subd. (b); 7577, subd. (d))

- Set-aside by SIGNATORY ("Let Me Out!")
  - Within two years of VDOP's "effective date" (new 7576, subd. (a)).
  - Effective date = date of filing with DCSS (new 7573, subd. (d))
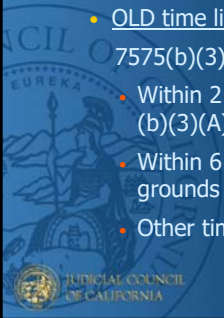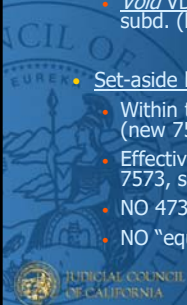 - NO 473 carve-out
  - NO "equity" carve-out.

Set-Aside Motion Time Limits (cont.)

- Set-aside by NON-SIGNATORY ("Step Aside, Let Me In!"):
  - Within two years of VDOP's "effective date" (new 7577, subd. (d))
  - 473 carve-out PRESERVED! (new 7577, subd. (k))
  - "Equity" carve-out PRESERVED! (new 7577, subd. (*l*))
  - NOTICE: Signatory wants out = strict time limit, no squishy exceptions. People clamoring to be the child's parent = flexibility preserved.
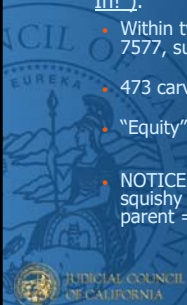
Set-Aside Moving Papers Requirements

- OLD
  - Declaration stating factual basis for "putting the issue of paternity before the court" (old 7575, subd. (b)(4))

- NEW
  - Signatories must be parties to proceeding (new 7578, subd. (a))
  - For void VDOP RFO, notice to signatories and as under 7635
  - For NON-SIGNATORY RFO, additional requirement: declaration stating "specific facts to support standing" (new 7577, subd. (b))
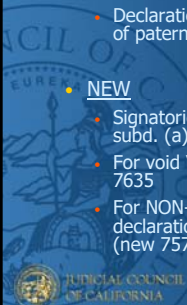
Set-Aside Motion Substance and Procedure

- GROUNDS: OLD

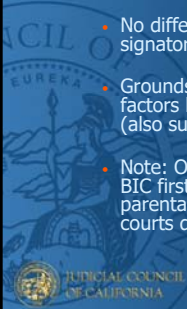 - No differentiation between signatory and non-signatory (except LCSA)

  - Grounds focused on best interests of child (BIC) factors listed in subd. (b)(1) AND negative DNA (also subd. (b)(1))

  - Note: Old 7575, subds. (b) and (c)(5), envisioned BIC first, then set aside, and THEN DNA so parentage could be decided independently. Some courts did DNA first.

Set-Aside Motion Substance and Procedure (cont.)

- GROUNDS: NEW

  - It depends! Is VDOP void? Is movant signatory ("Let Me Out!")? Or non-signatory ("Step Aside! Let Me In!")?

  - Voidness—already covered (new 7573.5)

  - SIGNATORIES--three possible grounds (new 7576, subd. (a)):

    - Fraud, Duress, Material Mistake of Fact (more about these later)

    - NO MENTION of negative DNA, or of DNA at all!
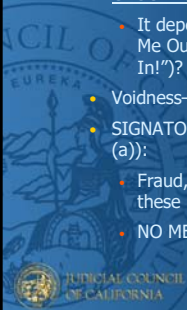
Set-Aside Motion Substance and Procedure—Grounds (cont.)

- NON-SIGNATORIES--grounds (new 7577, subds. (c), (g), and (h)):

  - DNA, if movant = alleged genetic parent (testing to be "expedited," no actual time limit given) [NOTICE: DNA testing comes *first*.]

  - BIC factors virtually identical to old 7575, subd. (b), reorganized and re-categorized depending on movant's standing. (New 7577, subds. (g) and (h).)

Set-Aside Motion Substance and Procedure (cont.)
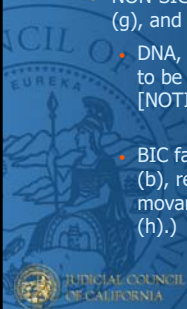
Burden and Jurisdiction

- OLD
  - Movant has burden of proof. (old 7575, subd. (c)(2))
  - No *standard* of proof specified.
  - No provisions about jurisdiction.

- NEW
  - Movant still has burden of proof. (New 7578, subd. (d); new 7577, subd. (f).)
  - Standard of proof = POE. (New 7578, subd. (d); new 7577, subd. (f).)
  - *Signatory* deemed to consent to CA personal jx for set-aside proceeding. (New 7578, subd. (b).)

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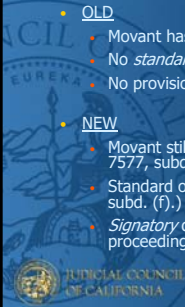
Set-Aside Motion Substance and Procedure (cont.)

Status of Existing Orders While Set Aside RFO Pending

- OLD
  - Old 7575, subd. (c)(3): Custody, visitation, and support orders remain in effect
- NEW
  - New 7578, subd. (c): Court "shall not suspend the legal responsibilities arising from" VDOP, UNLESS movant "shows good cause."
  - NOTE: responsibilities, not "rights."
  - NOTE: "good cause" not statutorily defined.
  - NOTE: no procedure specified for suspension.
  - NOTE: NON-SIGNATORY motion: prior orders remain in effect. (New 7577, subd. (j).)

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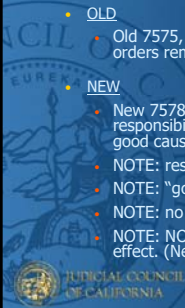
Set-Aside Motion Substance and Procedure (cont.)

Sequelae of Ruling

- OLD
  - If set-aside DENIED, then court must state reasons on record. (Old 7575, subd. (b)(2).)
  - If movant is found to be the father, then prior order remains in effect. (Old 7575, subd. (c)(5).)

- NEW
  - If court's findings differ from birth certificate, then "court shall order that a new birth certificate be issued" (new 7578, subd. (e)). [Note: see HSC 102725.]

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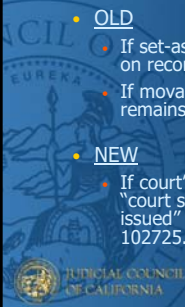
Set-Aside Motion Substance and Procedure (cont.)

Sequelae of Ruling (cont.)

- SIGNATORY Motion (new 7576):
  - No requirement that Court "state reasons" or take further steps.
  - Set-aside likely leaves door open to independent parentage finding (positive DNA etc.). But no express provisions for this and no procedure specified.

- NON-SIGNATORY Motion (new 7577, subds. (i) and (j)):
  - If set-aside DENIED, then court must state reasons on record.
  - If set-aside GRANTED, then court must adjudicate parentage under 7612.

Set-Aside Changes Recap

- New concept: void VDOP.
  - Replaces a couple of old set-aside provisions; protects intended parents.
  - Expands set-aside grounds.

- For NON-SIGNATORIES:
  - Set-aside = "Step Aside" -- "Let Me In!" motion.
  - Standing greatly expanded. Procedures, standards firmly in family law territory.

- For SIGNATORIES:
  - "Let Me Out!" motion.
  - Time limits stricter; grounds more like contract rescission. Arguably expands grounds.

Deeper Dive Into New Standards For SIGNATORY ("Let Me Out!") Set-Asides

Again:

- New 7576: *no reference* to DNA testing; negative DNA is NOT AN ELEMENT

- New 7576: *no reference* to BIC; we don't evaluate BIC anymore for a signatory who wants out

Only three possible grounds for set-aside: fraud, duress, and/or material mistake of fact

Fraud

- Actual fraud "always a question of fact" (Civ. Code, §1574)
- Still OK to determine *as a matter of law* that no fraud occurred
- "Question of fact" language distinguishes *actual* from *constructive* fraud, which arises by operation of law (e.g., in a fiduciary relationship)

Fraud (cont.)

Ordinary (actual) fraud:

(1) misrepresentation

(2) of past or existing

(3) material fact

(4) *known* to be false when stated [NOT negligent misrep: lacking reasonable grounds to believe]

(5) intended to induce

(6) and actually inducing

(7) justifiable and

(8) actual reliance

(9) causing

(10) damages (can = change in legal position)

Duress

- Civil Code § 1569 defines duress.
- Duress consists in any of the following:
  - (a) Unlawful confinement of the person of the party, or of the spouse of such party, or of an ancestor, descendant, or adopted child of such party or spouse.
  - (b) Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Mistake of Fact

- Civil Code, § 1577:
  - Mistake of fact = mistake, not caused by the neglect of a legal duty on the part of the mistaken person, consisting in:
    - (1) An unconscious ignorance or forgetfulness of a fact past or present, material to the [VDOP]; or,
    - (2) Belief in the present existence of a thing material to the [VDOP], which does not exist, or in the past existence of such a thing, which has not existed.
- NOT mistake of law! Movant can't prevail just because he or she didn't understand the legal effect of the VDOP. Even mutual mistake of law not sufficient.
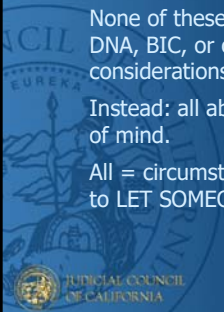
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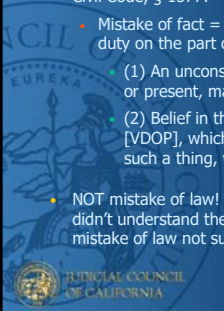
NOTICE!

None of these grounds has anything to do with DNA, BIC, or other traditional family-law considerations.

Instead: all about signatories' conduct and states of mind.

All = circumstances where civil law says it's OK to LET SOMEONE OUT of an agreement.

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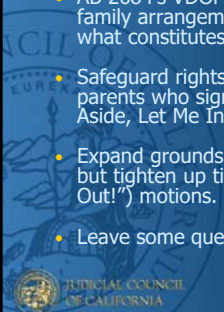
Wrap-Up:

- AB 2684's VDOP set-aside rules protect intended family arrangements. Expansive, inclusive view of what constitutes a family.
- Safeguard rights of intended parents against bio-parents who sign a VDOP, and vice-versa. ("Step Aside, Let Me In!")
- Expand grounds and standing for set-asides overall, but tighten up time limits for signatory ("Let Me Out!") motions.
- Leave some questions open.

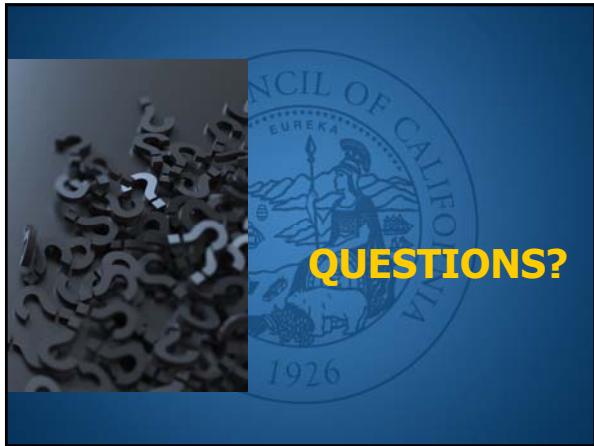JUDICIAL COUNCIL OF CALIFORNIA

QUESTIONS?