DEVIATION

Family Code Section 4057

- (a) Guideline calculation is presumed to be correct.

- (b) Rebuttable presumption—application would be "…unjust or inappropriate…" consistent with the principals in FC Section 4053

Family Code Section 4057
(cont.)

- (b)(1) Parties stipulate—requires inquiry per FC Section 4065 (ability to meet child's needs, no coercion or duress, etc.)—requires calculation of guideline
- (b)(2) Deferred sale of home—where rental value exceeds mortgage payment

Family Code Section 4057
(cont.)

- (b)(3) Extraordinarily high income—guideline exceeds the needs of the child
  - Burden on high earner IRMO Cheriton (2001) 92 CA4th 269
  - Substantial evidence test IRMO Wittgrove (2004) 120 CA4th 1317
  - Needs of children vary with standard of living of the parent per 4053(f) IRMO Hubner (2001) 94 CA4th 175; IRMO Wittgrove , supra

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Family Code Section 4057
(cont.)

- (b)(4) Failure to support commensurate with custodial time
- (b)(5) Guideline would be unjust or inappropriate due to special circumstances, including but not limited to:
  - (A) Different time share for different children
  - (B) Equal parenting time, one parent substantially less housing expense
  - (C) Medical or other needs requiring higher support
  - (D) More than two parents

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Family Code Section 4052.5

- (a) Guideline applies in case with more than two parents
- (b) Presumption that guideline is correct may be rebutted (similar language to 4057)

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- Calculation of guideline

  – Still required to calculate guideline support prior to deviation <u>IRMO Hubner</u>, supra
    - Except parties may stipulate that payor is high earner and what is an appropriate amount of child support <u>Estevez v. Superior Court (Salley)</u> (1994) 22 CA4th 423

-Extraordinarily low income. <u>City and County of San Francisco v. Miller</u> (1996) 49 CA4th 866, at 869, 56 CR2nd 887, at 888.

Federal Poverty Guideline

Concept used to reduce arrears in public assistance case. <u>City and County of San Francisco v. Funches</u> (1999) 75 CA4th 243, at 247, 89 R2nd 49, at 52.

- "The court is not supposed to punch numbers into a computer and award the parties the computer's result without considering the circumstances in a particular case which would make that order unjust or inequitable"
    - <u>Marriage of Fini</u> (1994) 26 CA4th 1033
  – …..It's true, we are not mere robots or potted plants!